

H B

3 4 9



Alaska State Legislature
 House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: 17 FEB 94

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 * HB 323 RELEASE OF CERTAIN DEATH CERTIFICATE INFORMATION
 * HB 349 CIVIL COMMITMENT OF SEXUAL PREDATORS
 BILLS FROM PREVIOUS CALENDARS MAY BE HEARD
 (# INDICATES FIRST PUBLIC HEARING)

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ JAYNE ANDREEN	CDVSA		99811		465-4356	(Y) N	HB 349
✓ CAREN ROBINSON	AK Network on D.O+SA				586-1107	(Y) N	HB 349
✓ JAMES McLAUGHLIN	self				452-4454	(Y) N	HB 349
✓ LEONARD ABDEL	DHSS					(Y) N	
✓ JENS SAALKVITNE	Life Alaska	P.O 230785 Anch	99523		5625423	(Y) N	HB 349
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

H/HESS ROLL CALL FORM

BILL 349

DATE 2/7/94

TAPE 94-09

NUMBER 452

SUBJECT OF VOTE NOTED TO MOVE HB 349 OUT OF
COMMITTEE (ADD OUT TO JUDICIARY)

MEMBER	YEA	NAY	ABS
Rep. Cynthia Toohey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Con Bunde	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u>7</u>	<u>2</u>	<u> </u>

+++++

BILL _____

DATE _____

TAPE 94- _____

NUMBER _____

SUBJECT OF VOTE _____

MEMBER	YEA	NAY	ABS
Rep. Con Bunde	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Gary Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Al Vezey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Pete Kott	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Harley Olberg	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Bettye Davis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Irene Nicholia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tom Brice	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Cynthia Toohey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TOTAL	<u> </u>	<u> </u>	<u> </u>

HOUSE COMMITTEE REPORT

(9)
Date Referred: January 10, 1994

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2/7/94

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 349

HOUSE BILL NO. 349

CIVIL COMMITMENT OF SEXUAL PREDATORS

"An Act providing for the civil commitment of sexually violent predators."

RECOMMENDATIONS: CS HB 349 (HESS) the same title
be replaced with _____ a new title

- have attached amendments(s)
- do pass
- do not pass
- no recommendations
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

fiscal impact H+SS, Law, Admin

fiscal note(s) _____

zero fiscal note Admin

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>			<input checked="" type="checkbox"/>
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>		<input checked="" type="checkbox"/>	

[Signature]
CHAIRMAN'S SIGNATURE

FISCAL NOTE

BILL NO. HB 349

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Revision Date: _____
Title: 'An Act providing for the civil commitment of sexually violent predators.'
Sponsor: Pamell, Toohey
Requestor: House HESS

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	96.0	111.0	126.0	141.0	156.0	171.0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	96.0	111.0	126.0	141.0	156.0	171.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
----------------------	---	---	---	---	---	---

CHANGE IN REVENUES ()	0	0	0	0	0	0
------------------------	---	---	---	---	---	---

FUNDING SOURCE: (Thousands of Dollars)

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	96.0	111.0	126.0	141.0	156.0	171.0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	96.0	111.0	126.0	141.0	156.0	171.0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)
See Attached.

Prepared by: Brant Moseley / Public Advocate
Division: Office of Public Advocacy

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usery
Agency: Administration

Date: 2/1/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HR 349

ANALYSIS: (continued)

This bill mandates the appointment of Office of Public Advocacy to represent sexually violent predators in civil commitment proceedings. The Department of Law estimates that it will present at least two to three such cases each year. Each year annual reviews will be conducted to determine whether the individual should be discharged.

These cases would be both factually and legally complex. The State would present all evidence relating to the person's sexually violent history, which could include numerous cases over a long period of time. Defendants would undoubtedly contest both the facts of these cases and the diagnosis which lead to their classification by the state. Each case would involve extensive expert testing, evaluation and testimony. Finally, each case would involve constitutional challenges not only to the entirety of the statute but to specific sections of the proposed law.

Because the Office of Public Advocacy currently represent, as guardian ad litem, many, if not most child victims of sexual offenders, it is likely that most of these cases would have to be conducted by conflict counsel. Major cases typically cost \$25,000 in attorney fees. The estimate of \$7,000 for expert analysis and testimony tracks that of the Department of Law.

Annual litigation in each case is inevitable. It is anticipated that such costs will average \$5,000 inclusive of both attorney and expert witness fees.

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 349

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act providing for civil commitment of BRU: Public Defender
sexually violent predators." Component: Public Defender
 Sponsor: Rep. Pamell
 Requestor: (H) Hes COMPONENT SERIAL NO. 1631

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES	0.0	0.0	0.0	0.0	0.0	0.0
TRAVEL	0.0	0.0	0.0	0.0	0.0	0.0
CONTRACTUAL	0.0	0.0	0.0	0.0	0.0	0.0
SUPPLIES	0.0	0.0	0.0	0.0	0.0	0.0
EQUIPMENT	0.0	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES	0.0	0.0	0.0	0.0	0.0	0.0
GRANTS, CLAIMS	0.0	0.0	0.0	0.0	0.0	0.0
MISCELLANEOUS	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
----------------------	-----	-----	-----	-----	-----	-----

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
------------------------	-----	-----	-----	-----	-----	-----

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usara
 Agency: Administration

Phone: 264-4400
 Date: _____
 Date: 2/7/94

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

For further distribution information call the Governor's Legislative Office

Page 1 of 1

Admin - Public Defender - Fiscal Note

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 349

Revision Date: February 4, 1994
Title: "An Act providing for the civil commitment of sexually violent predators."
Sponsor: Representative Parnell
Requestor: Representative Parnell

Department Affected: Department of Law
BRU: Prosecution
Component: Criminal Justice Litigation
COMPONENT SERIAL NO. 0089

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL					81.7	81.7
TRAVEL					5.0	5.0
CONTRACTUAL	10.0	20.0	30.0	40.0	54.2	64.2
SUPPLIES					3.3	3.3
EQUIPMENT					6.5	
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	10.0	20.0	30.0	40.0	150.7	154.2

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF	10.0	20.0	30.0	40.0	150.7	154.2
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	10.0	20.0	30.0	40.0	150.7	154.2

POSITIONS:

FULL-TIME					1.0	1.0
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard Peques, Director
Division: Administrative Services Division

Phone: 465-3672
Date: February 4, 1994

Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Date: February 4, 1994

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
For further distribution information call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

This bill amends AS 47.30 to provide for the indefinite, long-term civil commitment of sexually violent predators to the custody of the Department of Health and Social Services. The bill is intended to protect the public from what the bill finds is a small but extremely dangerous group of sexually violent predators who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment procedure, under AS 47.30.700 - 47.30.815, which is intended to be a short-term treatment to individuals with serious mental disorders and then return them to the community.

The bill further finds that in contrast to persons appropriate for commitment under the existing law, sexually violent predators generally have antisocial personalty features that are not amendable to existing mental illness treatment methods, and those features render them likely to engage in sexually violent behavior. The bill also finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high, and the bill further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment methods for this population are very different than the traditional treatment methods for people appropriate for commitment under the existing involuntary treatment procedures.

The bill requires that when it appears that a person may meet the criteria for a sexually violent predator, the agency with jurisdiction shall give written notice to the attorney general three months before:

- (1) the anticipated release from total confinement of a person who has been convicted of a sexually violent offense.
- (2) the anticipated release from total confinement of a person found to have committed a sexually violent offense as juvenile;
- (3) the release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial under AS 12.47.100; or
- (4) the release of a person who has been found not guilty by reason of insanity of a sexually violent offense under AS 12.47.040.

The bill defines sexually violent offenses to include sexual assault in the first and second degrees, sexual abuse of a minor in the first, second and third degrees, incest, murder in the first and second degrees, assault in the first and second degrees, kidnapping, and burglary in the first degree.

Upon notification from the appropriate agency, the attorney general would be empowered to file a petition with the court alleging that a person is a sexually violent predator and stating sufficient facts to support the allegation when it appears that the person may be a sexually violent predator and it appears that the person will be or has been released from the jurisdiction of an agency. Upon the filing of a petition, the judge would determine whether probable cause exists to believe that the person is a sexually violent predator. If probable cause is found, the judge would direct that the person be taken into custody and the person be transferred to an appropriate facility for an evaluation as to whether a person is a sexually violent predator.

Within 45 days after the petition is filed, the court would be required to conduct a trial to determine whether the person is a sexually violent predator. A person would be entitled to assistance of counsel and the person would be entitled to retain experts or professionals to perform an examination on the person's behalf. Upon motion of the person or the attorney general, or the court's own motion, the trial would be held before a jury. If no motion is made, the trial would be before the court.

The court or jury would then determine, beyond a reasonable doubt, whether the person is a sexually violent predator. If the state alleged in the petition a prior sexual offense for which a finding of sexual motivation is necessary

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

to classify the offense as a sexually violent offense, the state would have to prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated. Upon a determination that the person was a sexually violent predator, the person would be committed to the custody of the commissioner of health and social services for control, care, and treatment until the person's mental abnormality or personality disorder had so changed that the person would be safe to be at-large. If the court or jury was not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court would direct the person's release from custody.

In the event of commitment, the person would be confined in a secure mental health facility operated by the Department of Health and Social Services. Thereafter, the department would be required to provide an examination of a person committed under the bill's provisions at least once each year. A person would be permitted to retain a qualified expert or professional to examine the person. If the department determines that the person's mental abnormality or personality disorder had so changed that the person is safe to be at-large and is not likely to commit a sexually violent predatory offense, the department would be required to authorize the person to petition the court for release. The court would then be required to order a hearing within 45 days. The state would have the right to have the petitioner examined by an expert or professional person of its choice. The hearing would be before a jury if demanded by either the petitioner or the state. The burden of proof would be on the state to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at-large and that, if discharged, the person is likely to commit a sexually violent predatory offense.

A person would not be prohibited from petitioning the court for discharge without the commissioner of health and social services approval, and the commissioner would be required to provide the committed person with an annual written notice of the person's right to petition the court for release over the commissioner's objection. If a person does not affirmatively waive the right to petition, the court would hold a show cause hearing to determine whether facts exist that warrant a hearing on whether the person's condition has so changed the person is safe to be at-large and is not likely to commit a sexually violent predatory offense if discharged. The person would have the right to have an attorney represent the person at the show cause hearing. The committed person would not be entitled to be present at the show cause hearing. If the court at the show cause hearing determines that probable cause exists to believe that the person is safe to be at-large and is not likely to commit a sexually violent predatory offense if discharged, the court would set a hearing on the issue. This subsequent hearing would be conducted under the same terms as described above for hearing a petition authorized by the commissioner of health and social services.

As we understand it, this bill is modeled on an existing Washington State law. Experience in Washington state, where their law has been in effect since July 1, 1990, shows that an average of five persons are committed in that state each year. Washington's population is about eight times larger than Alaska's population. However, in view of Alaska's high incidence of abusive behavior, we believe that as many as two or three persons might be committed annually if the bill is approved.

Because of the low number of commitments, the bill would not be an immediate fiscal impact for the Department of Law, except for expert witnesses at commitment hearings and expert witnesses for hearings on committed persons petitions for release. The state's average cost for these witnesses is about \$7,000 each. Witnesses may not be required for every hearing so we are showing an annual cost of \$10,000 for the first year, and an annual increase of \$10,000 as the number of persons committed increases and the number of annual petitions for release increases. By the fifth year of implementation, it will be necessary to add a full-time attorney to handle commitments and annual release petitions, when the number of annual hearings reaches 10 to 15. It is important to point out that there will be a fiscal impact for the Department of Health and Social Services, and there will be fiscal impact for the Office of Public Advocacy, which will provide representation for indigent persons committed under the bill.

Finally, we also note that the bill may have due process problems when reviewed by Alaska courts. Moreover, Washington's Supreme Court has added a requirement to that state's law providing the "least restrictive alternatives" short of total confinement be used or requiring a showing that confinement is the least restrict alternative under the

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB 349

ANALYSIS CONTINUATION:

circumstances. Department of Law staff is available to assist the sponsor address these problems.

02/03/94

13:48:11.0

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT
DEPARTMENT OF LAW
SCENARIO: 2
CRIMINAL JUSTICE LITIGATION
DRU NAME: PROSECUTION

PAGE: 1

COMPONENT #: 6501020500 NAME: CRIMINAL JUSTICE LITIGATION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	D U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#011		ATTORNEY IV	F	JUNEAU	A	XE	AA	24A	12	61008	0	20660	81668.60	

**** JUSTIFICATION:
Attorney IV-CDCO

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	0.00
SUPPLIES COSTS	0.00
EQUIPMENT COSTS	0.00
OTHER COSTS	0.00
TOTAL COSTS	81668.60

*** FUNDING DETAIL:	
1004 GENERAL FUND RECEIPTS	81668.60
TOTAL FUNDING	81668.60

03#047		ATTORNEY IV	F	JUNEAU	A	XE	AA	24A	12	61008	0	20660	81668.60	
--------	--	-------------	---	--------	---	----	----	-----	----	-------	---	-------	----------	--

**** JUSTIFICATION:

This position will be needed when the number of sexually violent predators committed reaches 12 or so, due to the numbers of annual show cause hearings to determine whether a person should be discharged or remain in the custody of the Department of Health & Social Services. These hearings could involve jury trials and voluminous expert testimony. Full-time Attorney legal services would therefore be required.

TRAVEL COSTS	5000.00
CONTRACTUAL COSTS	14200.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00
TOTAL COSTS	110668.60

*** FUNDING DETAIL:	
1004 GENERAL FUND RECEIPTS	81668.60
TOTAL FUNDING	81668.60

**** COMPONENT TOTALS:

FULL TIME NEW POSITIONS	2
PART TIME/SEASONAL NEW POSITIONS	0
NON PERMANENT NEW POSITIONS	0
OTHER.....	0
====	

TOTAL PERSONAL SERVICES	163337.20
TOTAL COSTS INC. ASSOC COSTS	192337.20

NUMBER OF NEW POSITIONS IN COMPONENT: 2

FUNDING DATA: G.F. & G.F. MATCH:	163337.20
OTHER FUNDS:	0.00
TOTAL FUNDING:	163337.20

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. HB349

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: An Act providing for the commitment of BRU: Community Mental Health Grants
sexually violent predators Component: General Mental Health Grants
 Sponsor: Parnell, Toohey
 Requestor: _____ COMPONENT SERIAL NO. _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS	1,200.0	2,460.0	2,580.0	2,709.0	2,844.0	2,986.0
MISCELLANEOUS						
TOTAL OPERATING	1,200.0	2,460.0	2,580.0	2,709.0	2,844.0	2,986.0

CAPITAL EXPENDITURES	25.0	30.0	10.0	10.0	10.0	10.0
-----------------------------	-------------	-------------	-------------	-------------	-------------	-------------

CHANGES IN REVENUES						
----------------------------	--	--	--	--	--	--

FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY95	FY96	FY97	FY98	FY99	FY00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA	1,225.0	2,490.0	2,590.0	2,719.0	2,854.0	2,996.0
Other						
TOTAL	1,225.0	2,490.0	2,590.0	2,719.0	2,854.0	2,996.0

POSITIONS:

POSITIONS	FY95	FY96	FY97	FY98	FY99	FY00
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) cost \$ 0.0

ANALYSIS: (Attach a separate page if necessary)

If the effective date of HB349 were July 1, 1994, there would be no FY94 fiscal impact.

In FY95, there would be an increased operating cost of \$1,200.0, providing grant funds for the rental and operation of the first 10-bed facility. There would also be some capital costs, in the amount of \$25.0, to provide for needed building renovation.

In FY96, the operating cost would increase to \$2,460.0, to provide for 5% inflation at the first facility and the opening of the second facility. Capital costs would rise to \$30.0, to provide for repairs or other capital expenditures at the first facility, and to do the initial renovations on the second facility.

Prepared by: Leonard Abel, Ph.D. Phone: 465-3370
 Division: Mental Health and Developmental Disabilities Date: 02/04/94

Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. Date: 2-4-94
 Agency: Department of Health & Social Services

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE
 For further distribution information call the Governor's Legislative Office

ANALYSIS (cont.):

For FY97 through FY00, the increase in operating costs reflect inflation. The capital costs would be \$10.0 per year for repairs and maintenance.



Official Business

Alaska State Legislature

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT
House Bill 349
Civil Commitment of Sexual Predators

This bill provides the State with a mechanism to deal with dangerous sexual predators who are about to be released from the correctional system. It is aimed at only those offenders whose disposition, history and low amenability to conventional treatment warrant pursuing civil commitment.

House Bill 349 authorizes the Attorney General to petition the Courts for a civil commitment hearing when someone who has been convicted of a sexually violent offense is about to be released from Corrections. This bill provides for a hearing to determine beyond a reasonable doubt that a person is a sexually violent predator. If this is successfully demonstrated by the State, the person would be civilly committed by Health and Social Services until the person is treated and cured.

Sponsor Statement

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

January 11, 1994

SUBJECT: Sectional Summary of HB 349 (Work Order No. 1-8LS1449\E)

TO: Representative Sean Parnell
Attn: Michael

FROM: Jerry Luckhaupt *Jerry Luckhaupt*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill - the bill itself is the best statement of its contents.

Section 1 of the bill adds a new article 8A to AS 47.30 and adds these new sections:

AS 47.30.816 provides findings;

AS 47.30.817 provides for notice to the attorney general whenever a person who has been convicted of, found to have committed as a juvenile, charged with and found incompetent to stand trial for, or found not guilty by reason of insanity of, a sexually violent offense is about to be released;

AS 47.30.818 provides the attorney general with the authority to file a petition alleging that a person is a sexually violent predator; if probable cause is shown by the attorney general that a person is a sexually violent predator, permits a court to order the person to be taken into custody and to be examined;

AS 47.30.819 provides for a trial to determine if beyond a reasonable doubt a person is sexually violent predator; the burden of proof shall be on the state; the trial shall be a jury trial if requested by the person, the attorney general, or the court, otherwise the trial shall be before the court; the person has the right to the assistance of counsel and to the retention of experts at state expense; if the person is found to be a sexually violent predator then the person shall be committed to the department of health and social services until the person's mental abnormality or personality disorder has so changed that the person is safe to be at large; if the person was not convicted of a sexually violent offense due to having been found incompetent to stand

Sectional Analysis

trial the court shall first hold a hearing to determine beyond a reasonable doubt if the person did commit the crime;

AS 47.30.820 provides for annual examinations for anyone committed as a sexually violent predator;

AS 47.30.821 provides that the commissioner of corrections shall seek the release of a person committed as a sexually violent predator if the person's mental abnormality or personality disorder has so changed that the person is no longer likely to commit a sexually violent offense and is safe to be at large; allows the person to seek release even if the commissioner declines and provides procedures;

AS 47.30.822 provides that the department of health and social services is responsible for all costs relating to the evaluation and treatment of persons committed to its custody under this bill; allows the department to seek reimbursement of costs; provides for immunity to the state and its employees for good faith actions undertaken under this bill;

AS 47.30.823 allows the release of information that is necessary to protect the public concerning any sexually violent predator committed under this bill;

AS 47.30.824 provides definitions.

Section 2 of the bill provides an applicability section.

GPL:gc
94-019.glc

Child molester charged again with rape

By SHEILA TOOMEY
Daily News reporter

A convicted Alaska child molester, whose sentence was reduced as too harsh, has been charged in Montana with raping a 5-year-old girl after kidnapping her as she biked along a rural road.

Kenneth Whitlow, 41, is being held on \$100,000 bond in Hamilton, Mont., charged with aggravated kidnapping and sexual intercourse without consent, said Ravalli

County Sheriff Jay Printz.

The child was on her way home on July 8 from a candy trip to the local grocery store in Pinesdale, Mont., when she disappeared, Printz said. Pinesdale is a community of about 650 people. The store is about a quarter-mile from the girl's home. Searchers found her bicycle and candy bars by the side of the road.

About two hours later, Whitlow delivered the child, bleeding, to a local hospital and

said he found her wandering in the woods several miles from where her bike was found. Whitlow said he had been fishing and had fishing gear with him, according to Printz.

Investigators believe the girl was raped by digital penetration, the sheriff said.

Whitlow lives in Darby, Mont., about 25 miles south of Pinesdale, and was not

Please see Page B-3, MOLESTER

MOLESTER: Arrested again

Continued from Page B-1

known to the victim's family, Printz said. The small towns of Ravalli County are located in a wooded valley of the Bitterroot Mountains, hard up against the border between Montana and Idaho.

In 1985, Whitlow was convicted in Alaska of molesting his 12-year-old daughter, then hiding her so she couldn't testify at his trial. At the time, he was charged with attempted sexual assault and two counts of sexual abuse.

Whitlow's maneuver succeeded in delaying the trial, but he eventually pleaded no contest to a single count of second-degree sexual abuse and one count of witness tampering.

His girlfriend, Helen Oehler, who still lives with him, was convicted of helping him hide the girl.

Among his defenses, Whitlow claimed his daughter was lying about the abuse, that she looked 19 despite being only 12, that she was psychologically damaged by previous abuse in her mother's home in Georgia and had repeatedly attempted suicide.

Superior Court Judge Victor Carlson sentenced Whitlow to 12 years. "There's no question about the fact that she was badly damaged when she arrived here and then you continued to damage her," Carlson said

as he handed down what proved to be an illegally harsh term.

"I also, when I listen to you, think that you're about 90 degrees off base from what reality is with regard to understanding things like the rest of us understand things. Therefore, I hold out little hope that you're going to become rehabilitated ever, and certainly not soon."

The Alaska Court of Appeals cut the 12 years to six and Whitlow was released April 29, 1989, having served the mandatory four years, according to Department of Corrections records. While in prison, he failed to complete the Hilland Mountain sex offender treatment program. His probation ended in 1990 and he returned to his home state of Montana.

Last year, Montana child welfare officials removed Oehler's two teen-age daughters from the Whitlow home after investigating allegations that he had sexually molested them, Printz said. No criminal charges were filed.

Whitlow is being held in lieu of \$100,000 bond and is not due in court again until Aug. 4. Oehler did not respond to a message left on her answering machine.

If convicted, Whitlow's sentence could range anywhere from two to 100 years, Printz said.

News
Clippings



In Our Opinion . . .

Lessons learned from sex offender

Several lessons can be learned from Langley's recent experience with convicted sex offender William Lange. Lange, of course, is the man who was given refuge by a Langley family after he served his time in prison for first degree rape. He registered as a sex offender, and police warned neighbors and the community that they still considered him dangerous. Meanwhile, Lange was telling his new family and everyone else who would listen that he was a changed man, "born again" in fact, who was no threat to anyone. As events unfolded, Lange fled town when a woman became concerned that he might be stalking her. A few days later, police in Alaska reported that he had been arrested there on suspicion of another heinous sex crime.

One important reminder from all this is that the police can tell the good guys from the bad guys. The Langley Police Department and Island County Sheriff's Office did the right thing in warning the community about Lange's presence. A community should know when a predator is in its midst, and it's largely thanks to local police that Lange did not strike here.

Another lesson is that sex offenders are consummate liars, able to look someone in the eye and tell them time after time, in all apparent sincerity, that they've changed their ways. You don't have to be particularly gullible to believe that line if you are not familiar with sex offenders.

A final lesson is that Washington's sex offender registration law is working and well worth keeping. Without it, Lange would have been like a wolf among ignorant sheep. The fact that he went to Alaska to apparently strike again shows that our law is working, and that Alaska and other states without a registration law should adopt one as quickly as possible for the protection of their own citizens.

Suspect in 2 rapes arrested

Truck driver cruised bar area, police say

By LIZ RUSKIN
Daily News reporter

A tow-truck driver who police believe cruises a Fourth Avenue bar for women to rape was arrested Tuesday on charges he kidnaped and sexually assaulted two women on separate occasions this summer.

Police say Henry G. Buchholz also is suspected in the rapes of two other women. One, Mary Sophie Wilson, was found dead in a ditch near Far North Bicentennial Park in April. Wilson's death was attributed to a combination of alcohol and hypothermia. Troopers suspected foul play because some of her clothes were missing, and it appeared she had been raped.

Buchholz, 32, told a District Court judge Wednesday that he is self-employed, but police say they believe he worked for Spenard Wreckers.

Anchorage Police Sgt.

Please see Back Page, RAPE

RAPE: Anchorage tow-truck driver a suspect in several sexual assaults

Continued from Page A-1

S.J. Bjornstrom said Wednesday that all four rapes have several things in common: The victims were Alaska Natives who had been drinking at the Hub Bar, they were tied or handcuffed, and they were sexually raped.

The charges against Buchholz allege he picked up a 38-year-old victim from the Hub Bar on July 15. The woman said she'd seen him in the bar several times and figured he would be a safe ride. But instead of taking her to the Brother Francis Shelter as she requested, he drove his red tow truck to a mobile home. He handcuffed her hands and ankles, bound her elbow behind her and blindfolded her.

She described him and the tow truck to police. The next day, a police officer stopped a red tow truck near Russian Jack Park. The driver, Buchholz, was interviewed briefly and allowed to go on his way. The woman could not pick his 1991 photo from a

lineup. A Hub worker, however, called police Aug. 10 and said a man he knows as "Buck" drives a red tow truck and frequents the Hub at closing time. He gave them Buchholz's license plate number. The next day, police again stopped Buchholz's tow truck. This time, they photographed Buchholz so they could show the woman a more recent picture. But again she failed to pick him out of a lineup, and Buchholz was not arrested.

Ten days after he was stopped by police the second time, Buchholz raped again, according to the charges against him. The 34-year-old woman told police she left the Hub shortly after midnight Aug. 21 and was walking near Ninth Avenue and Ingra Street when a white man grabbed and shoved her into a maroon sedan. He drove south on the Seward Highway and dragged her into a building near a junkyard. He handcuffed her to a



Henry G. Buchholz

hook on the ceiling and raped her.

The suspect told her to stop fighting because he had already killed someone before, police detective Linda Branchflower wrote in a charging document.

The woman said the rapist took her identification

card during the attack.

She described her assailant and took Branchflower to the neighborhood of the attack, a Seward Highway frontage road between 66th and 68th avenues. With that, and information about the other three rapes, police got a search warrant for Buchholz's trailer, which is on the frontage road. There they found two sets of handcuffs, ropes, magazines depicting bondage and a toy hook they believe may have been used in the Aug. 21 attack. They also found the woman's identification card.

Troopers say they are still investigating two earlier rapes in which Buchholz is a suspect and plan to send information to the District Attorney's office for possible charges.

The earliest occurred Nov. 12. That victim told troopers she was walking in front of the Hub Bar when a white man driving a red pickup stopped and offered her a ride. Instead of taking her

where she was going, he drove her to Stuckagait Heights and bound her ankles and arms with duct tape. He also taped her mouth and eyes.

After the assault, she walked to a house nearby and called the troopers. She led officers to the scene of the rape, where they found ropes and tape. They also found a trailer-hitch ball that was apparently used in driving-license violations in the past decade. He also has a 1981 burglary conviction from New Mexico.

He was charged in March with stealing a \$500 watch from a friend's house. He confessed to taking the watch and was sentenced to 30 days in jail.

Authorities also believe Buchholz raped Mary Sophie Wilson, 37. Her body was found near Abbott Road and Main Tree Drive, not far from Stuckagait Heights. During the autopsy, paper wedging was found in her vagina. Ligature marks on

her left wrist indicated she had been bound. District Attorney Ed McFally was careful not to call Wilson's death a murder. Its legal status hasn't been determined, he said.

Buchholz has a lengthy criminal record, but his convictions are for nonviolent offenses. Court records show he has been convicted four times each of shoplifting and driving-license violations in the past decade. He also has a 1981 burglary conviction from New Mexico.

He was charged in March with stealing a \$500 watch from a friend's house. He confessed to taking the watch and was sentenced to 30 days in jail.

Authorities also believe Buchholz raped Mary Sophie Wilson, 37. Her body was found near Abbott Road and Main Tree Drive, not far from Stuckagait Heights. During the autopsy, paper wedging was found in her vagina. Ligature marks on

Southeast towns on alert for fugitive

By DIANE RAAB

THE JUNEAU EMPIRE

A fugitive wanted in connection with a brutal rape in Massachusetts may be at large in Southeast Alaska, according to Alaska State Troopers and the Federal Bureau of Investigation.

Scott A. Burgess, 30, is wanted for a 1992 rape and kidnapping in Watertown, Mass., said Jeff Glover, FBI special agent in Juneau.

Burgess had worked at a cannery in Petersburg last summer, and state troopers and the FBI believe he may be somewhere in Alaska.

Authorities say Burgess is 5-foot-11, 170 pounds, with blue eyes and brown or blonde hair, usually worn in a ponytail.

Joe Deignan, a detective for the Watertown Police Department, said Burgess has tattoos all over his upper torso and a Tweety Bird tattoo on one of his forearms. His left thumb and wrist is tattooed with a distinctive KKK.

Glover said a person matching that description had been seen in mid-January in Craig, a community of 1,535 residents on Prince of Wales Island. In February, another Craig resident reported seeing a man matching Burgess' description.

"We can't say it's confirmed, but pretty strongly believe it is him because of the uniqueness of



SCOTT A. BURGESS

the tattoo," Glover said.

The FBI does not know if Burgess is still in the area. Glover said he has not been seen since February.

Juneau police have been notified. State ferry terminals and Southeast airports also have been notified, Glover said.

Burgess, who also uses the name Scott Lee, is known to have

lived in Montana, Alaska, New Mexico, Washington, Florida, Arizona and Massachusetts, Deignan said.

Burgess is wanted by Massachusetts authorities for allegedly kidnapping, beating and raping a woman Dec. 12, 1992. Burgess abandoned her in a Boston suburb, Glover said.

On Nov. 27, 1991, Burgess was arrested for assault, threats and intimidation toward a woman in Lake Havasu City, Ariz., Glover said.

In late June 1992, Burgess was held in protective custody in Petersburg for an incident involving alcohol. Burgess allegedly tried to get into a woman's dormitory, and was subsequently fired from his cannery job, Glover said.

Petersburg Police Chief Marvin Ronimus said residents are concerned that Burgess might return to Petersburg.

After the most recent sighting in Craig, the community's police chief said he has received at least

100 calls. "People are thinking children shouldn't walk to and from school, (but) this is not a serial rapist or serial murderer ... it's more of a common criminal," Police Chief Jim Ser said.

"We have no proof that he is here. I have arrested several people on this island with KKK tattoos in various places," he said.

"It's not like the general population is at risk. Yes, he committed a crime, but it's not like everybody's children are at risk. This guy picked a woman up in a bar, that type of thing. The general population is not at risk."

Rapist gets 15 more years

Paroled man assaulted relative

By LIZ RUSKIN
Daily News reporter

A few hours after he was released from a two-year prison term for sexual assault, Timothy Seton went downtown and raped the first woman who showed him an ounce of kindness.

The woman, a relative of Seton's, told police she ran into Seton at a Fourth Avenue bar one afternoon last summer. She was glad to see him and they drank together. Later, they took a cab to a Fairview liquor store, bought more alcohol and began walking through the neighborhood. Without warning, he struck her in the face and dragged her into a wooded area. He wrapped his belt around her neck to keep her from screaming during the assault.

His denim jacket was found near the scene, his parole papers and a bottle of Canadian Club whiskey still in the pockets.

"It's bad enough to commit this crime against a total stranger," Superior Court



JIM LAVRAKAS / Anchorage Daily News

Timothy Seton apologizes to the victim during his sentencing hearing Tuesday.

Please see Page B-3, **RAPIST**

PIST: Man sentenced to 15 years

Continued from Page 8-1

Judge Rene Gonzalez said at Seton's sentencing hearing Tuesday. "Here's your own flesh and blood."

Gonzalez sentenced Seton, who confessed to the rape but pleaded no contest to the lesser charge of attempted rape, to 15 more years in jail. He also imposed three years that were suspended from a 1991 attempted-rape conviction.

That charge stemmed from Seton's attack on a stranger, a 60-year-old Hooper Bay woman. Seton was released on mandatory parole from Hiland Mountain Correctional Center on Aug. 11, the day he raped his relative, a woman in her 20s.

"This man has hurt me in thousands of ways and in lots of ways I can't explain," she said, sobbing. "He may be related to me but I don't see it that way anymore."

She said the attack has undermined her self-respect and caused some family members to turn against her.

Seton, 28, buried his face in his hands as she spoke.

Assistant District Attorney Suzanne Lombardi said Seton has a long history of assaults on women.

In 1981, she said, Seton tried to sexually assault his teacher. He sneaked into the teacher's house and crawled into bed with her, Lombardi said. A few months later, he

went into an 18-year-old girl's bedroom and tried to remove her clothes. In 1982, he approached a young girl, asked her for alcohol, then hit her in the face and tried to pull her pants down.

Lombardi said Seton has been diagnosed as having low intelligence. She quoted from a presentence report in which an older sister said Seton's problems began in infancy.

"Timothy is like a little baby. He's not like the rest of us," the sister said. "He died when he was a little baby and he hasn't been the same since."

Defense attorney Andrew Lambert said Seton has brain damage and "should be treated with kid gloves." Previous attempts at rehabilitation did not take his limited intelligence into account, Lambert said.

The judge said Seton needed to be isolated from society but said the last prison stay had obviously not helped.

"When you got out of prison you were basically no better off to deal with the world than when you went in," Gonzalez said.

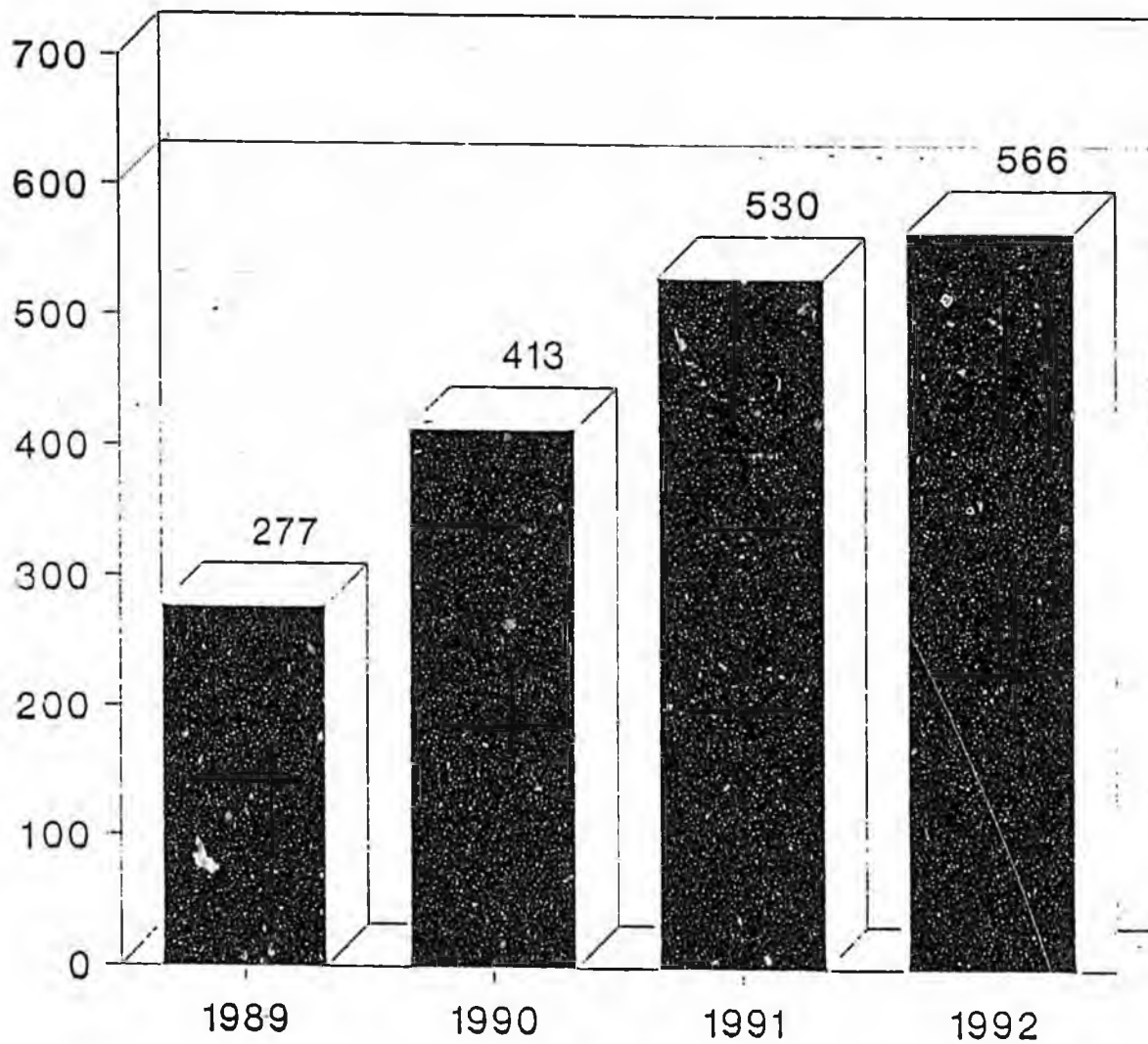
He recommended that Seton undergo sex-offender treatment before he is released from prison again.

When it was his turn to speak, Seton wept and apologized to his family.

"It's nobody's fault," he said. "It's only my fault."

Rape in Alaska

Numbers of Reported Rapes



 Uniform Crime Report

Source: Dept. Public Safety UCR
Provided by Alaska Network on
Domestic Violence & Sexual Assault