

**SB**

**216**

# HOUSE COMMITTEE REPORT

5.98

(7)  
Date Referred to Committee: April 30, 1998

FURTHER REFERRALS:

Finance

Date of Committee Action: 5/6/98

The JUDICIARY Committee considered:

CSSB 216(JUD)

CS FOR SENATE BILL NO. 216(JUD)

CIVIL COMMITMENT OF SEXUAL PREDATORS

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

recommends it be replaced  
with the following committee substitute

<sup>CS</sup>  
HCS<sup>CS</sup> SB 216 (JUD)

the same title  
 a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Due)

fiscal note(s) \_\_\_\_\_

<sup>Senate</sup> fiscal note(s) Adm 4.22.98, Adm 4.23.  
COR 4.22.98, Law 4.23.98, DHSS 4.22  
COURTS 4.22.98

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
Rokeberg			✓	
Bunde			✓	
Green	✓			
James			✓	
	(1)		(3)	

CHAIR'S SIGNATURE

Green

HOUSE CS FOR CS FOR SENATE BILL NO. 216(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

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

A BILL

FOR AN ACT ENTITLED

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

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

3 \* Section 1. AS 47.30 is amended by adding new sections to read:

4 Article 9A. Commitment of Sexually Violent Predators.

5 Sec. 47.30.816. Findings. The legislature finds that a small but extremely  
6 dangerous group of sexually violent predators exist who do not have a mental disease  
7 or defect that renders them appropriate for the existing involuntary treatment  
8 procedure, AS 47.30.700 - 47.30.815, which is intended to be a short-term civil  
9 commitment system primarily designed to provide short-term treatment to individuals  
10 with serious mental disorders and then return them to the community. In contrast to  
11 persons appropriate for civil commitment under AS 47.30.700 - 47.30.815, sexually  
12 violent predators generally have antisocial personality features that are not amenable  
13 to existing mental illness treatment methods, and those features render them likely to  
14 engage in sexually violent behavior. The legislature further finds that the likelihood  
15 of engaging in repeat acts of predatory sexual violence is high among this group. The

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

10 **Sec. 47.30.817. Screening and notice to attorney general before release.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **Sec. 47.30.819. Trial; rights of parties; determination; commitment**  
4 **procedures.** (a) Within 60 days following a judicial determination of probable cause  
5 under AS 47.30.818, the court shall conduct a trial to determine whether the person  
6 is a sexually violent predator. The trial may be continued upon the request of either  
7 party and a showing of good cause or by the court on its own motion in the interests  
8 of justice and when the person will not be substantially prejudiced. At all stages of  
9 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a  
10 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the  
11 person is indigent, the court shall appoint counsel under AS 18.85 to represent the  
12 person. A person examined under AS 47.30.818(b) may retain experts or professionals  
13 to perform an examination on the person's behalf; the expert or professional shall be  
14 permitted reasonable access to the person for the purpose of an examination, and to  
15 all relevant medical and psychological records and reports. Upon motion of the person  
16 or the attorney general, or on the court's own motion, the trial shall be before a jury.  
17 If no motion is made, the trial shall be before the court.

18 (b) The court or jury shall determine, beyond a reasonable doubt, whether the  
19 person is a sexually violent predator. If trial is to a jury, the jury must make the  
20 determination unanimously. Upon a determination that the person is a sexually violent  
21 predator, the court shall consider less restrictive alternatives to confinement and  
22 whether these alternatives, if any, will adequately protect the public so it is safe for  
23 the person not to be confined and will prevent the person from committing a sexually  
24 violent predatory offense. If the court determines that the less restrictive alternatives  
25 will not (1) adequately protect the public so it would be safe for the person to be at  
26 large, or (2) prevent the person from committing a sexually violent predatory offense,  
27 the court shall order the person committed to the custody of the department for control,  
28 care, and treatment until the person's mental illness has so changed that the person is  
29 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that  
30 the person is a sexually violent predator, the court shall direct the person's release  
31 from the custody of the department.

1 (c) If the state files a petition under AS 47.30.816 - 47.30.824 to commit a  
2 person who has been charged with a sexua'ly violent offense and been found  
3 incompetent to be tried for the offense, the trier of fact, in conjunction with the  
4 commitment proceeding, shall make a determination beyond a reasonable doubt  
5 whether the person committed the offense charged. The finding that the perso:  
6 committed the offense may not be used for another purpose than for consideration of  
7 commitment. If the trier of fact finds that the person committed the offense, the trier  
8 of fact may proceed to determine whether the person is a sexually violent predator  
9 under this section.

10 (d) The department shall confine a person who is ordered committed under this  
11 section in a secure mental health facility. The department may contract with a public  
12 or private entity inside or outside the state for the confinement of persons committed  
13 under AS 47.30.816 - 47.30.824 but may not provide treatment for these persons in the  
14 state's central psychiatric facility. Persons committed to the department shall be  
15 segregated at all times from other persons under the supervision of the department.  
16 The department may not confine a person committed under AS 47.30.816 - 47.30.824  
17 in a correctional facility or institution operated by the Department of Corrections. This  
18 subsection does not prohibit the department from confining a person committed under  
19 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and  
20 located within or on the grounds of a correctional facility. Persons confined in a  
21 mental health facility within or on the grounds of a correctional facility shall be  
22 segregated at all times from the inmates of the correctional facility. Following  
23 confinement of the committed person, the department shall inform the person of the  
24 person's rights under AS 47.30.821. The involuntary detention or commitment of a  
25 person under AS 47.30.816 - 47.30.824 shall conform to the constitutional  
26 requirements for care and treatment.

27 **Sec. 47.30.820. Annual examination.** The department shall provide an  
28 examination of the current mental condition of a person committed under  
29 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual  
30 examination provided by the department, the person may retain a qualified expert or  
31 a professional to examine the person, and the expert or professional shall have access

1 to all records concerning the person. The results of the examination shall be provided  
2 to the court that committed the person.

3 **Sec. 47.50.821. Petition for release.** (a) If the commissioner determines that  
4 the person's mental illness has so changed that the person is safe to be at large and is  
5 not likely to commit a sexually violent predatory offense if released, the commissioner  
6 shall authorize the person to petition the court for release. The petition shall be served  
7 upon the attorney general as the attorney for the state. The court, upon receipt of the  
8 petition for release, shall order a hearing within 45 days. The state has the right to  
9 have the petitioner examined by an expert or professional person of their choice. The  
10 hearing shall be before a jury if demanded by either the petitioner or the state. The  
11 burden of proof is upon the state to show beyond a reasonable doubt that the  
12 petitioner's mental illness remains such that the petitioner is not safe to be at large and  
13 that, if discharged, is likely to commit a sexually violent predatory offense. If the  
14 hearing is before a jury, the jury must make this determination unanimously.

15 (b) This section does not prohibit the person from otherwise petitioning the  
16 court for discharge without the commissioner's approval. The commissioner shall  
17 provide the committed person with an annual written notice of the person's right to  
18 petition the court for release over the commissioner's objection. The notice must  
19 contain a waiver of rights. The commissioner shall forward the notice and waiver  
20 form to the court with the annual examination. If the person does not affirmatively  
21 waive the right to petition, the court shall hold a show cause hearing to determine  
22 whether facts exist that warrant a hearing on whether the person's condition has so  
23 changed that the person is safe to be at large and is not likely to commit a sexually  
24 violent predatory offense if discharged. The committed person has the right to have  
25 an attorney represent the person at the show cause hearing and, if the person is  
26 indigent, the court shall appoint counsel under AS 18.85 to represent the person. The  
27 committed person is not entitled to be present at the show cause hearing. If the court  
28 at the show cause hearing determines that probable cause exists to believe that the  
29 person's mental illness has so changed that the person is safe to be at large and is not  
30 likely to commit a sexually violent predatory offense if discharged, the court shall set  
31 a hearing on the issue. At the hearing, the committed person is entitled to be present

1 and to the benefit of all constitutional protections that were afforded to the person at  
2 the initial commitment proceeding. The attorney general shall represent the state and  
3 has the right to a jury trial and to have the committed person evaluated by experts  
4 chosen by the state. The committed person may also have experts evaluate the person  
5 on the person's behalf. The burden of proof at the hearing is upon the state to prove  
6 beyond a reasonable doubt that the committed person's mental illness remains such  
7 that the person is not safe to be at large and, if released, is likely to commit a sexually  
8 violent predatory offense.

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

20 **Sec. 47.30.822. Duties of department; regulations; immunity.** (a) The  
21 department is responsible for costs relating to the evaluation and treatment of persons  
22 committed to its custody under the provisions of AS 47.30.816 - 47.30.824.  
23 Reimbursement may be obtained by the department for the cost of care and treatment  
24 of persons committed to its custody under AS 47.30.819.

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

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

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

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

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

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

9                   (A) strangers;

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

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

15                           (i) is related up to the fourth degree of consanguinity,  
16 whether of the whole or half blood or by adoption computed under the  
17 rules of civil law; or

18                           ii) lives in the same household;

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

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

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

31                   (C) a violation of AS 11.31.100 - 11.31.120, or a felony offense

1 in this or another jurisdiction formerly, or currently, having elements similar  
2 to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or  
3 conspiracy to commit one of the felonies designated in (A) or (B) of this  
4 paragraph;

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

6 (A) has been

7 (i) convicted of a sexually violent offense;

8 (ii) found to have committed a sexually violent offense  
9 as a juvenile;

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

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

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

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

# FISCAL NOTE

No. 6  
 Bill Version: CS SB 216 (JUD)  
 S) Publish Date: 4/22/98

STATE OF ALASKA  
 1998 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Alaska Court System  
 Title: An Act providing for the civil commitment of sexually violent predators BRU: Trial Courts  
 Sponsor: Senator Halford Component: \_\_\_\_\_  
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 788

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	57.9	64.7	73.9	73.9	73.8	73.9
TRAVEL						
CONTRACTUAL	26.3	28.3	28.3	28.3	28.3	28.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>84.2</b>	<b>91.0</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**Fund Source** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	84.2	91.0	100.2	100.2	100.2	100.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other						
<b>TOTAL</b>	<b>84.2</b>	<b>91.0</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>

Estimate of any current year (FY 98) cost: \$ None

**Positions**

Full-Time						
Part-Time	8	3	3	3	3	3
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

See attached analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8265  
 Agency: Alaska Court System Date: 04/16/98

Approved by: Stephanie J. Cole, Administrative Director Date: 04/16/98  
 Agency: Alaska Court System

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

This bill establishes procedures governing the civil commitment of "sexually violent predators". The court first becomes involved in the process when it receives a petition filed by the Department of Law seeking to have a sex offender committed. Upon receipt of the petition the court is required to schedule a hearing within 72 hours to determine whether there is probable cause to believe that the person is a sexually violent predator.

Because the consequences of a determination that a person is a sexually violent predator are severe, it is anticipated that each stage of the process, including the initial probable cause hearing, will be vigorously defended.

If the court determines there is probable cause to believe that the person is a sexually violent predator, the person is taken into custody for the purposes of evaluation. If the results of the evaluation indicate that the person is a sexually violent predator the court is to schedule a trial to be held within 60 days. The trial date can be continued upon the motion of either party or the court.

Because there is no opportunity to plead to a reduced charge (as in criminal cases), it is anticipated that all persons evaluated as sexually violent predators will exercise their right to a jury trial and their right to procure their own experts to conduct evaluations and testify on their behalf. These cases are anticipated to be complex with competing expert testimony regarding the person's mental state and likely future behavior.

If a person alleged to be a sexually violent predator has been found incompetent to stand trial for the underlying sexual offense, the court is to hear evidence to determine whether the person committed the act or acts charged. At the hearing the person is entitled to all the rights available to a defendant in a criminal trial other than the right to a jury trial and the right not to be tried while incompetent. This hearing will be the equivalent of a bench trial and is expected to require the same judicial resources.

After hearing evidence relating to whether the incompetent person committed the act or acts charged, the court is to make specific findings of fact as to whether the person committed the alleged act or acts, the extent to which the person's incompetence affected the outcome of the hearing, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the state's case. If the court finds beyond a reasonable doubt that the person committed the alleged act or acts it may proceed to determine whether the person should be committed. The person has a right to appeal a decision made under this section.

If a sex offender (competent or incompetent) is found by either the court or a jury to be a sexually violent predator, the court is to consider whether less restrictive alternatives to confinement would adequately protect the public. If no alternatives are found, the court is to order the person committed until such time as he or she is safe to be at large.

A person committed as a sexually violent predator has the right to an annual examination of his or her mental condition. He or she also has the right to petition the court for release. It is anticipated that every person in confinement will petition the court each year for release.

There are two ways to petition the court for release: 1) If the Commissioner of the Department of Health and Social Services determines that the person is safe to be at large, he or she will authorize the person to petition the court for release. 2) If the commissioner does not so authorize, the person may petition the court on his or her own.

If the commissioner authorizes the person to petition the court for release, the court shall order a hearing to be held within 45 days of receipt of the petition. The hearing is to be before a jury upon the motion of either the state or the person. The state has the right to obtain its own experts and to have them examine the person. It is estimated that most or all of these hearings will be before a jury.

If a person files a petition for release without authorization from the commissioner, the court is to hold a show cause hearing to determine whether facts exist that warrant a hearing on whether the person is now safe to be at large. The petitioner has the right to be represented by counsel at the hearing but not the right to be present.

If the court finds that probable cause exists that the person is now safe to be at large, it shall set a hearing on the issue. At the hearing, the person is entitled to be present and represented by counsel. He or she is also entitled to all the rights afforded him or her at the initial commitment proceeding. Both the state and the person have the right to retain their own experts and to request a trial by jury. It is anticipated that all cases will be tried before a jury and that the hearings will consume the same judicial resources as the initial civil commitment trial.

If a person has previously filed a petition for release without the approval of the commissioner and the court found, either upon initial review of the petition or following a hearing, that the petition was frivolous or that the petitioner was not safe to be released, the court is to deny any subsequent petition unless it contains new facts upon which the court could find that the person has so changed that a hearing is warranted.

This note is based on the following estimates provided by the Department of Law:

- 1) 5 civil commitment petitions filed per year.
- 2) 5 civil commitment jury trials per year resulting in 4 civil commitments per year.
- 3) 4 petitions for release that result in show cause hearings in FY 2000  
8 petitions for release that result in show cause hearings in FY 2001  
10 petitions for release that result in show cause hearings in FY 2002 and each year thereafter.
- 4) 4 appeals filed in FY 99 and FY 2000  
7 appeals (including appeals from denials of petitions for release) filed in FY 2001.  
8 appeals filed in FY 2002 and each year thereafter.

This note assumes that both the number of petitions for release and the number of appeals filed each year will stabilize after FY 2002. It also assumes that once a person is committed, the commissioner will not (at least by FY 2004) authorize a person to petition the court for release and, additionally, that the court will not (at least by FY 2004) find probable cause that a person is safe to be at large. Because of this, this note does not include any estimated expenses resulting from trials regarding the release of a petitioner. If any of these conservative estimates turn out to be in error, or if the number of civil commitment petitions filed with the court each year should increase, the court may return to the legislature for additional funding. Finally, this note does not reflect the costs associated with the additional 4 to 8 appeals the Supreme Court will hear each year. However, if the number of appeals should increase, the court may return to the legislature for additional funding.

**Alaska Court System**

SBZ16#6

**Fiscal Analysis**

CSSR 218 (JUD) Work Draft E, dated 4/13/88

**FY 99** 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each)

**Personal Services**

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 4.25 months	\$ 20,719	\$ 10,089	\$ 30,818
In-Court Clerk, 12A, Anchorage, PPT 4.25 months	10,247	2,222	12,469
Law Clerk, 13D, Anchorage, PPT, 4.25 months	12,036	2,609	14,645
<b>Total Personal Services</b>			<b>\$ 57,932</b>

**Contractual Services**

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
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**FY 99 Total Cost** 84,182

**FY 00** 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each) & 6 petitions to release (with probable cause hearings @ 2 days each)

**Personal Services**

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 4.75 months	\$ 23,156	\$ 11,287	\$ 34,443
In-Court Clerk, 12A, Anchorage, PPT 4.75 months	11,452	2,483	13,935
Law Clerk, 13D, Anchorage, PPT, 4.75 months	13,452	2,916	16,368
<b>Total Personal Services</b>			<b>\$ 64,746</b>

**Contractual Services**

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
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**FY 00 Total Cost** 90,996

**FY 01 - FY 04** 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each) & 8 (10 in FY 02-04) petitions to release (with probable cause hearings @ 2 days each)

**Personal Services**

	Salary	Benefits	Total
Superior Court Judge Pro Tem, Anchorage, PPT, 5.25 months	\$ 25,504	\$ 12,475	\$ 38,069
In-Court Clerk, 12A, Anchorage, PPT 5.25 months	12,658	3,929	16,587
Law Clerk, 13D, Anchorage, PPT, 5.25 months	14,888	4,409	19,277
<b>Total Personal Services</b>			<b>\$ 73,933</b>

**Contractual Services**

Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials	26,250
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**FY 01 - FY 04 Total Cost** 100,183

STATE OF ALASKA  
 1998 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Health and Social Services  
 Title: Commitment of Sexually Violent Predators BRU: Institutions and Administration  
 Sponsor: Halford, Green, Donnelly Component: Alaska Psychiatric Institute  
 Requestor: Senate (JUD) COMPONENT SERIAL NO. 311  
 See also (SN#): \_\_\_\_\_

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES	48.0	49.4	233.7	240.7	248.0	255.4
TRAVEL	4.5	4.6	8.8	9.0	9.3	9.6
CONTRACTUAL	619.0	1,239.1	1,845.6	2,442.1	3,043.7	3,645.2
SUPPLIES	5.0	5.2	10.3	10.6	10.9	11.3
EQUIPMENT	10.0		5.0	5.0		
LAND & STRUCTURES						
GRANTS, CLAIMS	40.0	140.2	243.4	349.7	459.2	572.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>726.5</b>	<b>1,438.5</b>	<b>2,346.8</b>	<b>3,057.2</b>	<b>3,771.0</b>	<b>4,493.4</b>

CAPITAL EXPENDITURES			Placeholder			
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CHANGES IN REVENUES ( )						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>726.5</b>	<b>1,438.5</b>	<b>2,346.8</b>	<b>3,057.2</b>	<b>3,771.0</b>	<b>4,493.4</b>

POSITIONS:

FULL-TIME	1	1	2	2	2	2
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

Fiscal Assumptions:

1 This fiscal note assumes DHSS/API staff will provide 20 evaluations yearly, resulting in only 4 commitments yearly; under these assumptions, then, the number of persons committed to DHSS' custody as a sexually violent predator will increase by a total of 4 each year, so that the number of predators in DHSS custody by the end of the first year (FY99) is 4, 8 by the end of FY00, 12 in FY01, etc.. This increment in the number of predators in DHSS' custody significantly increases DHSS costs in a very short time, because the same new 20 evaluations must be performed each year, but the required annual review evaluations of predators already committed to DH&SS custody increases the workload until, effectively it is clear that the annual reviews of persons previously committed as sexually violent predators, combined with evaluations of prisoners soon to be released for a determination as to whether they meet the commitment criteria as a predator, will require full-time professional staff to maintain the program of initial screening referrals, evaluations, and annual reviews required by this bill.

Prepared by: Randall Burns, Director API  
 Division: Mental Health and DD

Phone: 907-269-7103  
 Date: 04/14/98

Approved by Commissioner: Karen Perdue, Commissioner  
 Agency: Department of Health & Social Services

Date: \_\_\_\_\_

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## ANALYSIS (cont.):

2. This fiscal notes assumes that a person determined after trial to be a sexually violent predator will not be treated and cared for at Alaska Psychiatric Institute; therefore, the treatment and twenty-four hour care required by this bill for all persons committed to DHSS custody as sexually violent predators will be contracted out. At present, there appears to be one facility in Florida that provides such treatment; the present cost for this service is \$400.00 per day.  $\$400 \times 365 \text{ days} \times 4 \text{ persons}$  totals \$579,200. While first year start up delays may not see this total cost achieved in FY99, this will be the annual cost once the program is up and running; an inflation factor of 3% has been added beginning in FY00. It should be further noted that these costs multiply by a factor of four each year, as persons newly determined to meet commitment criteria are identified and sent for treatment. The State will, through a competitive RFP process, attempt to get the lowest per day cost available to treat and care for this difficult, risk-intensive population of individuals.

It should be noted, however, that even if DHSS contracts out for the treatment and care of committed predators, that the screening referrals, evaluations, and annual reviews will have to be done by the State and in-state, as will any hearings related to any petitions for release filed by committed predators. All the screenings, evaluations, trials, reviews, and hearings anticipated by this legislation will take significant time and may well require at some point in the not-too-distant future that the State invest in the purchase and renovation or construction of a facility, in order to house and care for those inmates and predators attending to the various evaluations and legal processes required by this bill, even if the State always contracts out the treatment portion of this business.

In the short run, however, and despite DHSS' unwillingness to house at API those persons found to be sexually violent predators, this bill will require, prior to an actual commitment determination, that when a court determines that there is probable cause to believe that an inmate is a sexually violent predator, that the inmate be transferred to API's forensic unit for the purpose of an evaluation by API staff. The person will be housed on API's forensic unit during the approximately four weeks required for the evaluation and then up until the person has gone to trial and a determination has been made as to whether the inmate is to be committed to DHSS as a sexually violent predator (a process that, at minimum, will take at least three months). Once a formal determination as to commitment status is made at trial, the person found to be a sexually violent predator will be transferred to the facility with whom DHSS has contracted to treat and care for these persons.

It is our view that API will be able to provide space for this service for a maximum of two fiscal years. At that point, both because of long-standing API 2000 Project plans and the significant number of inmates and predators involved in either evaluations or annual reviews and the attendant legal proceedings, API will no longer have sufficient beds to house the inmates and predators impacted by this bill.

3. At least initially, during the first two fiscal years, this fiscal notes assumes the use existing API psychiatrists and psychologists for the performance of the screening referrals, formal evaluations, and commitment reviews; we have, from the outset, added one administrative assistant to handle the significant paper work, scheduling complexities, and tracking required by this bill. However, beginning in FY01, we believe that the screening, evaluation, and review activities in this bill will require the employment of a full-time forensic psychiatrist or psychologist. The staffing cost assumptions are based on current State of Alaska salaries; costs are inflated 3% each year.

4. The fiscal note assumes that travel associated with inmate or predator screening referrals, evaluations, and annual reviews should be contained in the Grants line of the budget. Travel costs in the Grants line includes in-state costs for API staff to travel from API to various DOC facilities for the first referral screening of identified inmates by API staff (\$20.0), as well as for the cost of escorted travel when transferring a committed predator to the treatment facility (round-trip costs of \$2.0 per person). The cost of travel to API by inmates, where the court has found that probable cause exists to believe that an inmate may be a sexually violent predator and must be transferred to API for evaluation would be borne by DOC. Following commitment as a predator, and upon time for that predator's annual review, the cost of transporting the predator, with escorts, from their place of treatment back to Anchorage must also be factored in (round-trip costs of \$2.0 per person).

**ANALYSIS (cont.):**

5. This fiscal note assumes, in accordance with Sec. 47.30.822 of CSSB 216, that DHSS must pay costs relating to the evaluation of persons previously committed to its custody as a sexually violent predator. Therefore, this fiscal note includes funds to pay for the cost of evaluations and testimony for experts hired by the defense in annual reviews and petition for release cases (cost estimates are based on 4 annual evaluations per year, beginning in FY00, at \$200 per hour for 30 hours, as well as 5 hours for hearing preparation and testimony at \$300 per hour; as well as 4 petition for release hearings that would involve a similar number of hours for evaluation, preparation and testimony for such a hearing). The costs of these review evaluations will increase by an increment of four each year, as the predator population increases.

6. This fiscal note assumes that API will have access to forensic experts for consultative purposes, assuming \$250 per hour for up to 10 hours per month (\$250 per hour X 10 hours X 12 months, equals \$30,000)

7. In addition, separate from travel costs, there exists inmate and predator transportation costs, to pay for the cost of hiring security transport for the inmates and predators who must appear in court for probable cause hearings, commitment trials, review hearings, etc. API does not presently provide security escorts, as all transportation for its forensic patients are arranged by DOC, the State Troopers, or Anchorage Police Department. Although civilly committed, predators will require significant safeguards to ensure public safety and to avoid the possibility of escapes. Therefore, a transport service will have to be developed and budgeted for in DOC or Public Safety to defray the costs of transport.

8. This fiscal note assumes, beginning in FY01, that the DHSS will approach the Legislature with a capital request to provide the housing necessary to hold those inmates and predators being evaluated. Within four years of passage of this legislation, the State will be confronted with the annual 20 evaluations of inmates who may meet commitment criteria as a sexually violent predator, plus the 16 annual reviews and no doubt at least 10 petition for release hearings and reviews, each of which will require housing in Anchorage for a minimum of 90 days, but more likely 120 or more days, meaning that the State must have access to at least a 30 to 40 bed facility to hold these persons.

Whether the State should opt to construct a facility, or attempt to contract for the beds, is a policy question for future consideration, but there is little doubt such a facility or the beds will be required within only a few years of passage of this legislation. DHSS has placed the word "Placeholder" in the capital expenditure line, to direct the present Legislature to the fact that a decision point lies ahead, and that a large capital expense is one option at that time. If the cost of housing inmates and predators is handled by contracting out this service, only the cost of housing the inmates held for evaluation would constitute an additional cost, since the \$400 a day treatment cost anticipated above for an entire year could be split between the treatment facility and the facility providing housing while the predator is receiving his or her annual review or release hearing.

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

J.J. 4 \*\*\*CORRECTED\*\*

Bill Version: CSSB 216 (JUD)

(S) Publish Date: 4/23/98

Revision Date (Note if correction) \_\_\_\_\_ Dept Affected Law  
 Title An Act providing for the civil commitment of BRU Criminal Division  
sexually violent predators Component OSPA  
 Sponsor Senator Halford  
 Requester Senate Judiciary Committee Component Senal No 2203

**Expenditures/Revenues (Thousands of Dollars)**

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	300.5	357.1	413.7	470.3	507.4	507.4
Travel	5.9	6.1	5.3	6.4	6.6	6.6
Contractual	142.6	107.0	119.3	127.7	130.9	130.9
Supplies	4.9	5.8	6.7	7.6	8.2	8.2
Equipment	26.0	6.5	0.0	13.0	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>479.9</b>	<b>482.5</b>	<b>546.0</b>	<b>625.0</b>	<b>659.6</b>	<b>653.1</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	479.9	482.5	546.0	625.0	659.6	653.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>479.9</b>	<b>482.5</b>	<b>546.0</b>	<b>625.0</b>	<b>659.6</b>	<b>653.1</b>

Estimate of any current year (FY98) cost: \_\_\_\_\_

**POSITIONS**

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

**ANALYSIS:** (Attach a separate page if necessary)

CSSB 216 (JUD) Work Draft B 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 work draft. 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.

Prepared by Joan M. Kasson Phone 465-5370  
 Division Attorney General's Office Date 4/21/98  
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 4/21/98  
 Agency Department of Law

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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, as the bill further 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 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, incoming cases must be screened by the department. 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 preparations 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, FY99. The department's standard cost schedule for FY98/99 is \$133,500 per full-time equivalent attorney, and \$88,500 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 FY99 with associated support costs.

There will be no expert fees in the appeals process, but transcripts 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 FY99 (\$3,730 per half-attorney position, \$3,186 per half-paraprofessional). To avoid double counting, the \$14,400, 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 FY03.

		FTE	COST	FY99	FY00	FY01	FY02	FY03	FY04
<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	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	Paraprofessional	1	88.5	88.5	88.5	88.5	88.5	88.5	88.5
	Legal Secretary	1							
Yr 2	Attorney	0.5	133.5		66.8	66.8	66.8	66.8	66.8
Yr 3	Attorney	0.5	133.5			66.8	66.8	66.8	66.8
Yr 4	Attorney	0.5	133.5				66.8	66.8	66.8
	Legal Secretary	1					0.0	0.0	0.0
Yr 5	Paraprofessional	0.5	88.5					44.2	44.2
	One-time equipment purchases			19.5	6.5		13.0	6.5	0.0
	All lease costs to FY99: base adjusted for rate recovery			14.4	10.6	6.9	3.2	0.0	0.0
<b>Per Case costs</b>									
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
Yrs 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	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	One-time equipment purchases			6.5					
<b>Per Case costs</b>									
Yrs 1-6	Transcriptions		1.0	4.0	4.0	7.0	8.0	8.0	8.0
<b>TOTAL COSTS</b>				<b>479.9</b>	<b>482.5</b>	<b>546.0</b>	<b>625.0</b>	<b>659.6</b>	<b>653.1</b>
<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
<b>TOTAL PFT</b>				<b>4</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>6</b>
<b>TOTAL PPT</b>							<b>1</b>	<b>2</b>	<b>2</b>

# FISCAL NOTE

No. 3

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Bill Version: CSSB216(FIN)  
(S) Publish Date: 4/22/98

Revision Date (Note if correction)	Dept. Affected	Corrections
Title <u>An Act providing for the civil commitment of</u>	BRU	Administration and Operations
<u>sexually violent predators</u>	Component	ALL
Sponsor <u>Senator Halford</u>	Component Serial No.	#0694
Requester <u>Senate Judiciary Committee</u>		

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	154.7	154.7	154.7	154.7	154.7	154.7
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	9.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>174.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	174.7	165.7	165.7	165.7	165.7	165.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>174.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time	3	3	3	3	3	3
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

Section 1 of CSSB 216 (FIN) requires the Department of Corrections to pre-screen offenders who might meet the criteria for a sexually violent predator. The DOC will be the first agency in most cases to assess potentially sexually violent predators and will provide its findings and related records to the Dept. of Health and Social Services. This will require 3 new full time positions; One (1) Mental Health Clinician III, one (1) Admin Clerk III, and one (1) Admin Clerk II. After the screening process, offenders who appear to meet the definition of a Sexually Violent Predator will be referred to the Dept. of Health and Social Services for a thorough referral examination.

Prepared by Bruce Richards  
 Division Commissioner's Office  
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh*  
 Agency Department of Corrections

Phone 465-3307  
 Date 4/21/98  
 Date 4/21/98

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**FISCAL NOTE**

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL No.** 2 **\*\*CORRECTED\*\***  
**Bill Version:** CSSB 216 (JUD)  
**(S) Publish Date:** 4/23/98

**Revision Date:** \_\_\_\_\_  
**Title:** "An Act providing for the civil commitment of sexually violent predators"  
**Sponsor:** Senator Halford  
**Requester:** S (JUD)

**Department Affected:** Administration  
**BRU:** Legal and Advocacy Services  
**Component:** Public Defender Agency

**COMPONENT SERIAL NO.** 1631

**EXPENDITURES/REVENUES:**

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	162.9	235.9	298.7	333.6	355.2	355.2
TRAVEL	6.0	9.5	13.0	13.5	14.5	14.5
CONTRACTUAL	113.7	83.8	104.5	109.6	112.8	112.8
SUPPLIES	3.8	5.7	7.6	8.5	9.0	9.0
EQUIPMENT	19.5	6.5	6.5	6.5	6.5	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>305.9</b>	<b>341.2</b>	<b>428.3</b>	<b>471.7</b>	<b>498.0</b>	<b>493.5</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE:**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	305.9	341.2	428.3	471.7	498.0	493.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>	<b>305.9</b>	<b>341.2</b>	<b>428.3</b>	<b>471.7</b>	<b>498.0</b>	<b>493.5</b>

**Estimate of any current year (FY 98) cost:** \$ -0-

**POSITIONS:**

FULL-TIME	3	4	5	6	6	6
PART-TIME					1	1
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director  
 Division: Public Defender Agency

Phone: (907) 264-4414  
 Date: \_\_\_\_\_

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

Date: 4/22/98

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## 1998 LEGISLATIVE SESSION

## ANALYSIS: (continued)

This bill represents a major shift in criminal justice philosophy. Instead of punishing people for crimes they have committed, for the first time in Alaska, the state would be incarcerating people based on a prediction that they might commit crimes in the future. Last summer, the United States Supreme Court in Kansas v. Hendricks, 117 S.Ct. 2072 (June 23, 1997), decided that similar legislation did not violate "substantive due process." However, Hendricks was a close (5-4) decision. If the bill passes and is challenged, the Alaska Supreme Court may find the dissenting opinions in Hendricks persuasive.

The premise of the bill is that there is a "small but extremely dangerous group of sexually violent predators" that are likely to commit sex offenses on strangers or targeted victims. The courts may find that the sciences of psychology and psychiatry do not have sufficient knowledge or expertise to identify who belongs in this group and who does not. A Task Force Report of the American Psychiatric Association recently came out against these commitment laws. The task force found that involuntary civil commitment of dangerous sex offenders who have completed prison terms distorts the traditional civil commitment process, inappropriately uses scarce resources allocated for mental health services, and constitutes an abuse of the primary purpose of the mental health system, treating those with mental illness. Thus, the experts on whose opinions the "sexually violent predator" finding must rest are unwilling and, by their own admission, unable to make the predictions called for in the bill.

Although the current version of the bill narrows definitions somewhat, the bill still casts a broad net. To be committed, a person must have been convicted as an adult or a juvenile of a "sexually violent offense" (or have been charged with one and found incompetent or not responsible due to a mental illness.) "Sexually violent offenses" include a broad range of crimes. For example, an attempt to have "sexual contact" is a "sexually violent offense." Although a person would also have to be found "substantially likely" to commit sexual offenses in the future, this element may not be all that difficult to prove, even beyond a reasonable doubt.

## SEXUAL PREDATOR COMMITMENT CASES

There is a potential lifetime of involuntary commitment at stake in these cases. PDA expects that the civil commitment proceedings will be time-consuming and expensive. They will be the functional equivalent of murder cases.

The proceedings are quite complicated. First, a probable cause hearing has to be held within 72 hours after a sexual predator petition is filed. If probable cause is found, an evaluation by a mental health professional would be done. A trial will be scheduled to take place 60 days later but may be continued for good cause. The trials will be expensive and difficult. Experienced attorneys will need to handle these cases. The cases will involve difficult predictions of future dangerousness based on opinions of expert psychiatrists, psychologists, and other mental health professionals. A great deal of litigation support (paralegal, investigative, and secretarial) will be needed because the cases involve determinations based on the life history of the person on trial.

## 1998 LEGISLATIVE SESSION

At trial, the burden is proof beyond a reasonable doubt, the same standard as in a criminal trial. The cases would have most of the features of a complex criminal trial, including jury selection, opening and closing arguments, direct and cross-examination of witnesses, and argument on the admissibility of evidence. If a person is committed, he or she would have the right to appeal to the Alaska Court of Appeals or Alaska Supreme Court. A person committed would also have a right to petition for release. These could be filed multiple times, although the court would not have to hear frivolous petitions. It is also quite possible that persons committed will file applications for post-conviction relief trying to overturn the original convictions on which the commitment was based.

Effective, experienced representation would have to be provided at all levels of these complex proceedings in order to assure the courts that the legislation complies with substantive and procedural due process guaranteed by the constitution.

## FISCAL IMPACT

This bill will have a substantial fiscal impact on the Public Defender Agency (PDA). Under the bill a person whose commitment is sought will have a right to court appointed counsel at all stages of the proceedings.

Because the bill is aimed at persons being released from jail or institutional confinement, virtually all of the people will be eligible for court-appointed counsel. (Also, a private attorney would want a large up-front payment before starting one of these cases.) We estimate that there will be conflicts of interest in about 20% of the cases. The Office of Public Advocacy (OPA) will be appointed to those cases.

The Department of Corrections estimates that 160 persons will be released each year who have committed sexually violent offenses. The Department of Law (DOL) estimates that petitions will be filed in only 5 of these cases per year. (PDA has doubts about this estimate. Many of the released prisoners will have committed serious offenses. The public will certainly press for commitment in many cases -- it may well be that more than 5 petitions per year are filed.) Based on DOL's estimate, in the first year PDA would be appointed to 4 cases, while OPA would be appointed to 1.

In order to handle the 4 trials in the first year, PDA would need 1 Attorney IV, 1 Paralegal, and 1 Secretary in FY99. This team would be based in Anchorage. In FY00 PDA would need to add an additional Attorney III. This lawyer would handle appeals from commitment trials, annual review hearings, and probable cause hearings, as well as help the Attorney IV in the trial work. In FY01, PDA would need to add an Attorney II to the team. In FY02, another Legal Secretary will need to be added to handle the increased scheduling and litigation support. In FY03 we would need a half-time paralegal to cope with the increase in petitions for release from commitment and appellate work.

## 1998 LEGISLATIVE SESSION

Finally, PDA expects extensive litigation concerning whether a person committed under this bill can be placed in an institution outside the State of Alaska. In a recent case, Brandon v. State, Department of Corrections, 938 P.2d 1029 (Alaska 1997), the Alaska Supreme Court decided that a prisoner's rehabilitation could be affected by transfer to a jail outside the state. It is even more likely that a person who is civilly committed would have a right to placement inside the state if treatment would be adversely affected.

**FISCAL NOTE**

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. No. 1  
Bill Version: CSSB216(JUD)  
(S) Publish Date: 4/22/98

Revision Date: \_\_\_\_\_  
Title: "An Act providing for the civil commitment of sexually violent predators."  
Sponsor: Senator Halford  
Requestor: (S) JUD

Department Affected: Administration  
BRU: Legal and Advocacy Services  
Component: Office of Public Advocacy

COMPONENT SERIAL NO. 43

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	102.0	72.0	72.0	72.0	72.0	72.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>110.0</b>	<b>80.0</b>	<b>80.0</b>	<b>80.0</b>	<b>80.0</b>	<b>80.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	110.0	80.0	80.0	80.0	80.0	80.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
<b>TOTAL</b>						

Estimate of any current year (FY 98) cost: \$ 0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary.)

Though previous versions of this bill make the Office of Public Advocacy (OPA) responsible for providing representation to respondents in these civil commitment cases, CSSB 216(JUD) Work Draft F seems to make the Public Defender responsible for such services. This fiscal note is predicated on the assumption that the Public Defender will provide representation in 80% of such cases and the Office of Public Advocacy, because of inevitable conflicts of interest, will provide representation in 20% of such cases. Based on the Department of Law's projection of five cases per year this means that OPA would provide representation in but one case each year. Because OPA will have represented the child victims in many of these cases, this fiscal note assumes that such cases will be handled by OPA contract attorneys.

All agencies involved in these cases, as well as the courts, will perceive them as the equivalent of murder cases because of the high stakes involved. Litigation of these petitions will be seen as the second step on the road to a life sentence for many offenders.

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy

Phone: 269-3500  
Date: \_\_\_\_\_

Approved by Commissioner: Mark Bover  
Agency: Administration

Date: 4/16/98

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STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216(JUD) Work Draft F

**ANALYSIS:** (continued)

The litigation will include not only the underlying offense but will require an indepth investigation of the defendant's personal and educational background, contacts with the justice system, and prior treatment. Of course, the primary issue will revolve around the efforts of experts to predict future behavior--a highly debatable proposition.

Based on OPA's prior experience with murder cases we would estimate a minimum average lawyer representation cost of \$30,000.00. Like the Department of Law, we estimate that the initial cost for experts in the first few cases considered under this will be at least \$50,000.00. Witness travel and investigation will also be a significant cost.

In every case in which the state prevails, OPA will be responsible for paying for appellate counsel. In the first years of the statute's operation, this representation will include numerous constitutional and statutory challenges. Once the Alask Supreme Court--and perhaps federal courts as well--have settled the fundamental issues, the average cost of appeals would probably drop from \$12,000.00 to \$7,000.00 per case.

Annual reviews, of course, pose a separate and distinct fiscal issue. The fact that the court may, under the statute, find a particular application ultimately frivolous does not mean that OPA would not be obliged to pay the cost of counsel to litigate the action. There is, to our knowledge, no comparable legal action which would allow us to estimate the cost of annual review litigation at this time.



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958

P.O. Box 670190  
Chugiak, Alaska 99567  
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## Sponsor Statement

### Senate Bill 216

#### "An Act Providing for the Civil Commitment of Sexual Predators"

In the past we have been powerless to prevent the release from custody of dangerous sexual predators who have not been rehabilitated and are almost assured to re-offend. Now, thanks to a recent United States Supreme Court ruling (*Kansas v. Hendricks*), we have the ability to employ another tool to help protect our citizens from society's most heinous sexual predators. SB 216 would provide the tool -- which meets constitutional requirements -- to keep some of the worst sexual predators off the streets. This will help us prevent future sexual assaults, and the destroyed lives which often result.

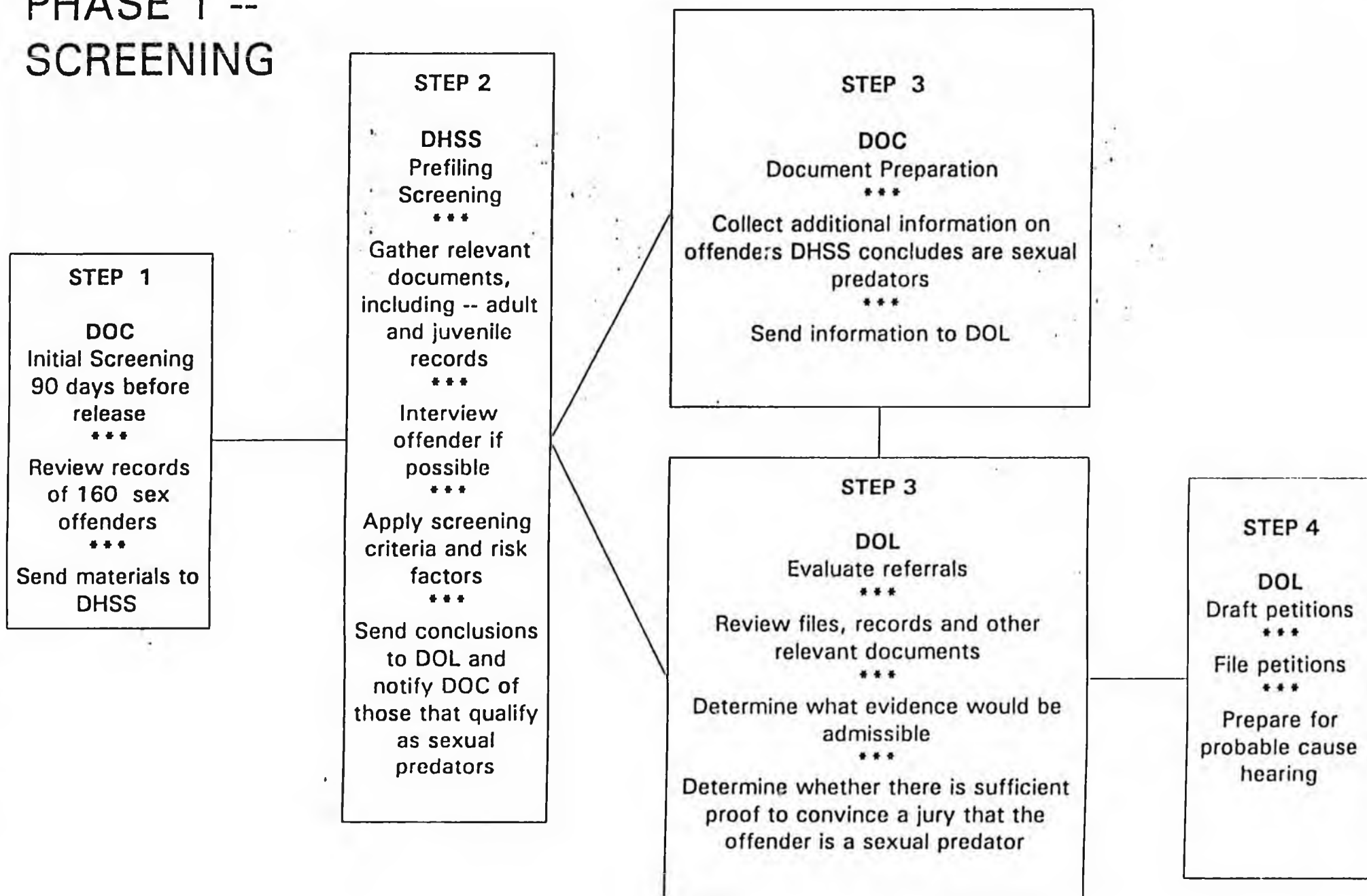
Arizona, Kansas, Minnesota, New Jersey, Washington, Wisconsin and Illinois are among the states that have already enacted civil commitment laws. SB 216 is modeled after Kansas' statute, which has been upheld by the highest court of the land. The experience in the other states is that this provision has been used sparingly, and only in the case of some of the very worst repeat sexual offenders who are determined likely to re-offend.

SB 216 will allow the state to confine the most serious sexual predators, such as pedophiles who, as statistics show, have a recidivism rate of over 85%. Civil commitment could only be accomplished following a civil trial, in which the court or jury finds that a person is a sexually violent predator using the "beyond a reasonable doubt" standard.

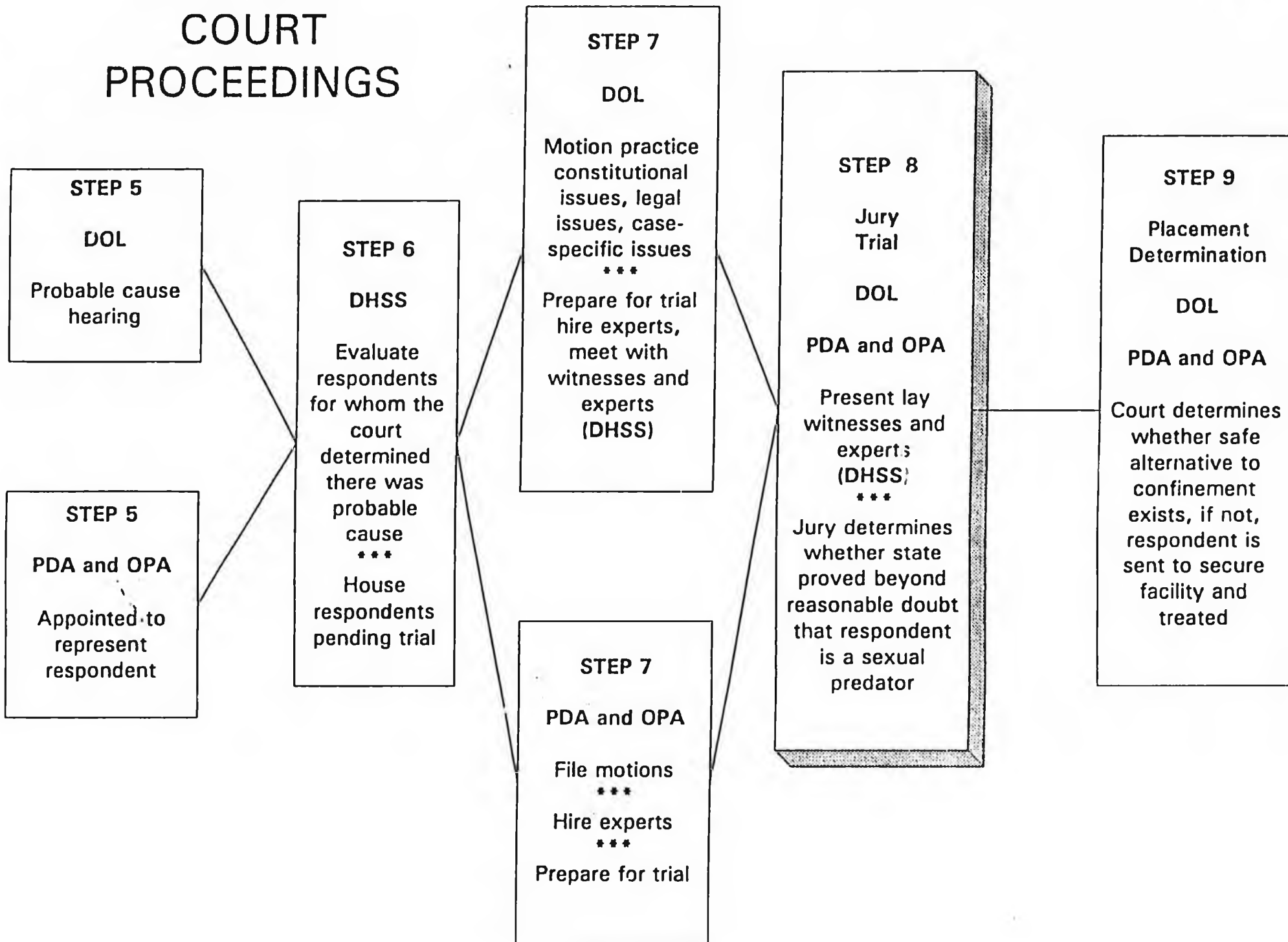
This small group of dangerous sexual offenders pose a real threat, particularly to the women and children of our state. SB 216 would provide a tool to prevent our most vulnerable citizens from being further terrorized by these known sexual predators.

(FOR SB 2/6)

# PHASE 1 -- SCREENING



# PHASE 2 -- COURT PROCEEDINGS



# PHASE 3 -- APPEAL and ANNUAL REVIEW

**STEP 10**  
**DOL**  
Defend commitment on appeal in state court and possibly United States Supreme Court

**STEP 10**  
**DHSS**  
Provide secure facility and treatment

**STEP 10**  
**PDA and OPA**  
Appeal commitment

**STEP 11**  
**DHSS**  
Conducts annual evaluation \*\*\*  
Commissioner authorizes filing of release petition if respondent no longer presents danger \*\*\*  
If believe still a danger, respondent notified and may request hearing

**STEP 12**  
**RELEASE HEARING**  
**DOL**  
**PDA and OPA**  
Parties hire experts \*\*\*  
Court determines whether state has proved beyond a reasonable doubt that respondent still a sexual predator \*\*\*  
Court may deny second or successive petition for release by respondent without a hearing if it determines that petition is frivolous

**STEP 13**  
**DOL**  
Defend appeals of denial of petitions for release

**STEP 13**  
**PDA and OPA**  
Appeal denials of petitions for release

**ONGOING RESPONSIBILITIES**  
**DHSS and DOL**  
Secure housing and treatment provided by DHSS  
Lawsuits challenging conditions of confinement defended by DOL

SUPREME COURT

# Too Dangerous to Set Free?

He's spent his life sexually abusing children. But Leroy Hendricks has served his prison sentence. Can Kansas find a way to keep him off the streets?  
 BY JERRY ADLER AND PETER ANNIN

**S**HOULD LEROY HENDRICKS be set free? There is no question that Hendricks, 62, has done some terrible things and may be capable of doing them again. He has been committing sexual crimes against children as young as 7 for most of his life, dating back to a conviction for exposing himself to two girls when he was just 21. For years he abused his own stepdaughter and stepson, and the last time he was out of jail, back in 1984, he attempted to fondle two 13-year-old boys who had walked into a Wichita, Kans., store where he



A life told in mug shots: Leroy Hendricks has been in and out of jail since the age of 21. 1956: His first arrest, in Wichita, Kans., for exposing himself to two girls. He was fined \$2.90. 1960: Guilty of molesting two boys in Spokane, Wash., he was sentenced to 20 years, but served only two. 1963: Charged with molesting a 7-year-old girl in Seattle, he was committed to a mental hospital as a "sexual psychopath." 1967: He was arrested in Seattle again, charged with molesting a young girl and her brother. 1984: His last arrest, in Wichita, for fondling two teenage boys. 1994: Released from prison, he was committed to a Kansas mental hospital.

worked. At a hearing in 1994, Hendricks admitted that he most likely was still a pedophile. Asked if he could guarantee that he wouldn't molest again, he said simply, "The only way to guarantee that is to die."

So should he be locked up?

He did, after all, serve his full sentence in the case involving the two boys—10 years of a 5-to-20-year term, with mandatory credit for "good behavior." None of his crimes involved violence (although obviously a sexual advance on a young child can have devastating psychological consequences). And he is not delusional. He doesn't hear voices commanding him to commit crimes. He understands that what he did was wrong. He is sexually attracted to children, but he believes, or claims to believe, that he can now manage and control those feelings. That description, by the way, could fit a great many people, most of whom are not now in jail.

The question of whether to free Leroy Hendricks is important enough that the U.S. Supreme Court will decide it, after hearing arguments next week. Hendricks is appealing his detention under Kansas's 1994 Sexual Violent Predator Act, which permits authorities to keep certain sex offenders locked up indefinitely by committing them to a mental hospital after their prison time is up. By a 4-3 vote earlier this year, the Kansas Supreme Court ruled that the law violated the constitutional guarantee of due process. But state Attorney General Carla Stovall, who calls Hendricks "a tremendous menace to the public and a tremendous frustration to the government," is hoping the justices will see it differently. And the court appears eager to grapple with the tricky constitutional questions that arise from the movement to make child abuse a uniquely stigmatizing crime.

Many more such questions will arise in the next few years, as federal legislation takes effect requiring every state to monitor convicted sex offenders and make the information available to their neighbors. A federal judge has already struck down a New York state law mandating the same thing, and that case, too, could well end up before the justices. Only seven states now have laws providing for civil commitment of sex offenders after release from prison. But no fewer than 45 states and territories filed briefs supporting the law that's keeping Leroy Hendricks locked up.

No state wants to be the home of the next Megan Kanka, the 7-year-old New Jersey girl whose murder, allegedly by a paroled sex offender living nearby, touched off the campaign for community-notification laws. Few crimes are as horrifying, as gratuitously evil, as hurting a child for one's own sexual pleasure. Most people, of course, would never think of doing it, but they also have an uneasy appreciation of the intensity of even

normal sexual desire. The sheer persistence of some sex offenders—like Christopher Hubbard, a 46-year-old California man who once was arrested for raping a woman the same day he got out of prison—is one of the minor wonders of penology. Hubbard has been locked up under a California law similar to the one in Kansas. "He can't help himself from raping women," says Santa Clara County Deputy District Attorney Peter Waite. Earlier this year his incarceration was upheld by a California Superior Court judge, but Hubbard plans another appeal.

**T**HE FUTILITY OF PUNISHMENTS that fall short of total incarceration is brought home with depressing regularity. Most recently this happened in Ft. Lauderdale, Fla., where a 7-year-old girl and her 11-year-old sister were found strangled last month—in the attic of a 30-year-old man who was under house arrest for a previous conviction on indecent assault. The suspect, Howard Ault, has confessed to the murders. Formally, he has pleaded innocent. His lawyer hopes to mount an insanity defense. Ault's "community control officer" had stopped by just a few hours after the girls had been killed—and noticed nothing amiss.

Still, it is a myth that sexual molestation is a habit impossible to break. According to the Association for the Treatment of Sexual Abusers, the reoffense rate for "untreated sex offenders who primarily target children" ranges in various studies from 10 percent to 40 percent, not the "80 percent to 90 percent" that many laypeople assume by extrapolating from the 6 o'clock news. The association has no position for or against civil-commitment laws, but it filed a brief in the Hendricks case, asking the justices to bear in mind two points: that experts can indeed predict which offenders are most likely to get into trouble again, and that at least some sex offenders can be treated. One way to tell who is likely to commit another sexual offense: read him a story about deviant sexual behavior and measure his sexual arousal. The trend in treatment is to focus narrowly on specific deviant acts, avoiding any larger psychological issues. "The most important things we do," says association president William Murphy, "are attempt to instill victim empathy and to get the perpetrator to appreciate the consequences of his acts to his family, his friends and himself." To put it another way, acknowledging the futility of knowing why someone is aroused by exposing himself to children, the therapist encourages him to

## Keeping Track of Sex Offenders

Under federal law, states are required to keep databases of sex offenders. Beginning next September, states will also have to notify communities of the presence of these criminals. Already, all but 10 states allow the public some access to that information. Seven states have laws to keep offenders in custody after their prison terms are over.



**☐ Notification**  
Mandatory release of information to the public at large or to certain groups such as school districts or child-care facilities

**▬ Access**  
Individuals can request information kept on file by law-enforcement officials

**▮ No access**  
Public does not have any access to files and is not notified when sex offenders are released from custody

**● Civil commitment**  
States can seek to hold sex offenders in mental institutions after they finish their jail sentences

control the impulse, to modify his fantasies and, at all costs, to stay the hell out of playgrounds. But even Murphy, with 20 years' experience treating sex offenders, admits that these techniques have their limits: "You still have the Polly Klaas type of guy," he says. "I don't know what to do with them; nobody knows what to do with them. When you get to the child sadists and killers—they are too dangerous to let out."

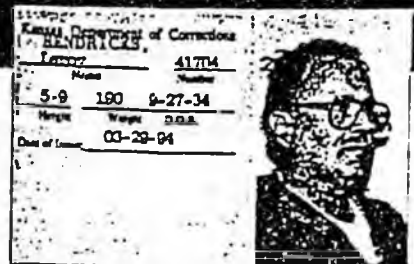
As for Hendricks—well, at least no one can say that the state locked him up capriciously. The Kansas law sets up an elaborate, multistep process for reviewing the cases of sex offenders before their release from prison, involving two separate panels, a judge, psychological evaluations and ultimately a full civil trial. A 12-person jury must unanimously agree that the offender has a "mental abnormality" that makes him "likely to engage" in sexual offenses. Of 618 offenders reviewed since the law began, only nine have been committed. (On the other hand, getting released after committal can entail a comparable process, including finding a mental-health worker willing to put his career on the line if he's wrong; none of the nine has been released yet.) To Hendricks's lawyer, Tom Weilert, all those elaborate safeguards don't change the fact that his client served his term and had every expectation of getting out of prison in 1994—only to find himself back under lock and key for what amounts to the same offense, or for things he never did. "Our criminal-justice system is based on incarcerating people for what they've done—not what they might do in the future," Weilert says.

Weilert acknowledges that if the legislature had passed a law before 1984 putting people like Hendricks away for life, there wouldn't be much he could do about it now. For that matter, under laws then on the books, Hendricks could have been given as much as 45 to 180 years. That's exactly the point, Weilert says: "Apparently, back in 1984 the state didn't see Leroy as a big enough threat to incarcerate him for the rest of his life." No one can say now why he was allowed to plea-bargain his way down to an effective 10-year term. But it's not unusual for district attorneys to offer pleas in child-molestation cases, rather than put children through the trauma of testifying.

Technically, Hendricks's fate may rest on the question of whether a mental abnormality—the standard for incarceration in the Kansas law—is substantively equivalent

**Bitter: Stepdaughter Rose Loux, who says she was molested by Hendricks over the course of four years**

TWOHA BIEDERMAN, COURTESY DISTRICT ATTORNEY'S OFFICE, WICHITA, KANS. (LOWER RIGHT)



A committed man: Hendricks in 1994

**Making a monster:** Hendricks claims his mother dressed him in girls' clothing, including a brassiere, and an older female cousin abused him sexually when he was 5. No excuse, just an explanation.

lent to "mental illness." Hendricks arguably has the former but not the latter, and the distinction matters, according to Harvard Law professor Carol Steiker. Until now, preventive detention was imposed only on people who are both mentally ill and dangerous to themselves or others. This is the John Hinckley standard—someone in the grip of an unmistakable and potentially harmful delusion. "If we permit preventive detention for the 'dangerous,' as opposed to the 'dangerous mentally ill,'" Steiker says, "we're going down a potentially slippery slope that is very broad."

Of course, implicit in Steiker's remarks is the admission that Hendricks may in fact be dangerous. He admitted as much himself, in saying that he couldn't "guarantee" that he'd never attack another child, a remark his lawyer says shows his candor and

his honest effort to come to grips with his inner demons. Which, by the way, may have had their origins in a mother who he claims dressed him in girls' clothing, including a bra, and an older female cousin who he says abused him sexually when he was 5. Not that that excuses what he did to his own stepdaughter, Rose Loux, 33, who says Hendricks molested her twice a week for four years, starting when she was about 9, bribing her with treats and privileges. Asked what punishment she thinks is appropriate for Hendricks, she replies laconically, "Capital punishment."

But she doesn't get to decide. The Supreme Court, standing in for all of society, has that privilege and duty.

Should Leroy Hendricks go free?

With PETER KATEL in Miami and JEANNE GORDON in Los Angeles

providers, family groups and others during which he'll propose to protect kids from indecency with a software fix.

While the details have yet to be worked out, White House staff members hope to talk Website operators into a kind of universal rating system. Combining it with software browsers used to access much of the Net, parents could in theory set their own comfort level and filter out the naughty bits. "If we are to make the Internet a powerful resource for learning, we must give parents and teachers the tools they need to make the Internet safe for children," Clinton said last week. "With the right technology and rating systems, we can help ensure that our children don't end up in the red-light districts of cyberspace."

Good luck. Software filters and online ratings systems have been around since before the CDA was born, and they've always been beset with problems. Recently, for instance, when Microsoft began backing a rating standard known as RSACI and started including the filter as part of its browser, Internet Explorer, the company quickly found that the "solution" could keep large numbers of viewers away from its news site, MSNBC. Microsoft quietly removed the rating. The problem should have been foreseen. News, after all, frequently covers violent, adult-oriented subjects, which puts many news stories into the same verboten range as porn. While RSACI officials have proposed offering a news exemption, it's hard to see how that could work. Readers of the sex-oriented newspaper *Screw*, for instance, might well consider it just as newsworthy as the *New York Times*.

Still, the First Amendment notwithstanding, many Americans feel that parents have a legitimate right to protect their kids from inappropriate material. "You can't connect every high school in America to the Net unless there's some way to ensure that kids won't see what they're not supposed to," says Lawrence Lessig, a Harvard Law School professor and author of an essay, "Reading the Constitution in Cyberspace," that was cited repeatedly by Justice O'Connor in a minority opinion. "It can't be the case that Congress has no power to regulate here."

It can be the case, however, that Congress's power is largely symbolic. Even if the government figures out a constitutional way to impose limited censorship online, these rules can apply only within the U.S.—and the Internet is international. If parents want to control what their children see, they'll probably have to resort to an old-fashioned, low-tech solution: they'll have to supervise their kids' time online.

—Reported by John F. Dickerson/  
Washington and Noah Robischon/New York

# Throwing Away the Key

## The Supreme Court allows states to keep "sexual predators" locked up beyond their terms in prison

**L**EROY HENDRICKS HAD DONE HIS TIME. In August 1994, after serving 10 years for taking "indecent liberties" with two 13-year-old boys, Hendricks walked out of prison in Hutchinson, Kans.—and was almost immediately transported to the Larned Correctional Mental Health Facility, where he has been locked up ever since. Under a 1994 state law called the Sexually Violent Predator Act, a judge ordered Hendricks confined indefinitely after ruling that his "mental abnormality"

criminals for what they have done, not for what they might do. Only those deemed dangerous and insane are locked away to protect themselves and society from their potential actions. Hendricks' lawyers argued that the "mental abnormality" clause in the Kansas statute created too low and too vague a standard for committing a person and so was a violation of due process. They also claimed that the law subjected Hendricks to double jeopardy and that it violated the Constitution's *ex post facto* clause, which forbids the enactment of new laws that extend punishment for past crimes.

The court was not convinced. Writing for the majority, Clarence Thomas asserted that the Kansas law's standard for what constitutes a dangerous mental illness was as strict as the standards in many laws the court has long upheld. Thomas further concluded that since the Kansas law was a version of these well-established "civil commitment" statutes, Hendricks' confinement could not be considered "punishment"—because punishment, in constitutional terms, arises from criminal proceedings, not civil ones.

Many legal experts are worried that the decision will allow states to lock up all sorts of people. "Today we're dealing with sexual predators," says Steven Shapiro, the legal director of the American Civil Liberties Union. "Who is it tomorrow that we're going to label

as abnormal and potentially dangerous?" The dissenting Justices, however, agreed with Thomas that Kansas' criteria for committing someone were valid. Their objection, as expressed by Stephen Breyer in the minority opinion, was that Hendricks has received virtually no treatment even though the law requires it. To Breyer, the state's failure to live up to its promise makes Hendricks' confinement look a lot like punishment.

Six states have sexual-predator laws; similar statutes being considered in at least 30 others are likely to be enacted swiftly. To mark their days to freedom, people like Hendricks are going to need new calendars.

—By James Collis. Reported by  
Andrea Sachs/New York and Tim Miller/Lawrence

An excerpt from the majority opinion by Justice Clarence Thomas:  
*"It cannot be said that the involuntary civil confinement of a limited subclass of dangerous persons is contrary to our understanding of ordered liberty."*



"POSTER BOY FOR PEDOPHILES": Mug shots from Hendricks' first arrest in 1956 and his last in 1994

made him likely to attack again. Hendricks challenged the constitutionality of that law, but last week, in a 5-to-4 decision, the Supreme Court upheld it.

Hendricks is just the kind of fiend the Kansas legislature had in mind when it passed the Predator Act. His 1984 molestation conviction was his fifth in almost 30 years. The only sure way to make him stop molesting children, he has admitted, would be to kill him. "He's really a poster boy for pedophiles," says Wichita district attorney Nola Foulston. "Sometimes he was a carnival worker. He would ingratiate himself with single mothers by taking their children out for ice cream. The mothers would think, 'What a nice man.'"

The American justice system punishes

*From the Legal Information Institute and Project Hermes*



[Other parts of the opinion. WordPerfect versions. and related documents]

(Bench Opinion)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

Syllabus

KANSAS v. HENDRICKS

certiorari to the supreme court of kansas

No. 95-1649. Argued December 10, 1996 -- Decided June 23, 1997

[n.\*]

Kansas' Sexually Violent Predator Act establishes procedures for the civil commitment of persons who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." Kansas filed a petition under the Act in state court to commit respondent (and cross petitioner) Hendricks, who had a long history of sexually molesting children and was scheduled for release from prison. The court reserved ruling on Hendricks' challenge to the Act's constitutionality, but granted his request for a jury trial. After Hendricks testified that he agreed with the state physician's diagnosis that he suffers from pedophilia and is not cured and that he continues to harbor sexual desires for children that he cannot control when he gets "stressed out," the jury determined that he was a sexually violent predator. Finding that pedophilia qualifies as a mental abnormality under the Act, the court ordered him committed. On appeal, the State Supreme Court invalidated the Act on the ground that the precommitment condition of a "mental abnormality" did not satisfy what it perceived to be the "substantive" due process requirement that involuntary civil commitment must be predicated on a "mental illness" finding. It did not address Hendricks' *ex post-facto* and double jeopardy claims.

*Held:*

1. The Act's definition of "mental abnormality" satisfies "substantive" due process requirements. An individual's constitutionally protected liberty interest in avoiding physical restraint may be overridden even in the civil context. *Jacobson v. Massachusetts*, 197 U.S. 11, 26. This Court has consistently upheld involuntary commitment statutes that detain people who are unable to control their behavior and thereby pose a danger to the public health and safety, provided the confinement takes place pursuant to proper procedures and evidentiary standards. *Foucha v. Louisiana*, 504 U.S. 71, 80. The Act unambiguously requires a precommitment finding of dangerousness either to one's self or to others, and links that finding to a determination that the person suffers from a "mental abnormality" or "personality disorder." Generally, this Court has sustained a commitment statute if it

couples proof of dangerousness with proof of some additional factor, such as a "mental illness" or "mental abnormality," see, e.g., *Heller v. Doe*, 509 U.S. 312, 314-315, for these additional requirements serve to limit confinement to those who suffer from a volitional impairment rendering them dangerous beyond their control. The Act sets forth comparable criteria with its precommitment requirement of "mental abnormality" or "personality disorder." Contrary to Hendricks' argument, this Court has never required States to adopt any particular nomenclature in drafting civil commitment statutes and leaves to the States the task of defining terms of a medical nature that have legal significance. Cf. *Jones v. United States*, 463 U.S. 354, 365, n. 13. The legislature is therefore not required to use the specific term "mental illness" and is free to adopt any similar term. Pp. 8-13.

2. The Act does not violate the Constitution's double jeopardy prohibition or its ban on *ex post-facto* lawmaking. Pp. 13-24.

(a) The Act does not establish criminal proceedings, and involuntary confinement under it is not punishment. The categorization of a particular proceeding as civil or criminal is a question of statutory construction. *Allen v. Illinois*, 478 U.S. 364, 368. Nothing on the face of the Act suggests that the Kansas Legislature sought to create anything other than a civil commitment scheme. That manifest intent will be rejected only if Hendricks provides the clearest proof that the scheme is so punitive in purpose or effect as to negate Kansas' intention to deem it civil. *United States v. Ward*, 448 U.S. 242, 248-249. He has failed to satisfy this heavy burden. Commitment under the Act does not implicate either of the two primary objectives of criminal punishment: retribution or deterrence. Its purpose is not retributive: It does not affix culpability for prior criminal conduct, but uses such conduct solely for evidentiary purposes; it does not make criminal conviction a prerequisite for commitment; and it lacks a scienter requirement, an important element in distinguishing criminal and civil statutes. Nor can the Act be said to act as a deterrent, since persons with a mental abnormality or personality disorder are unlikely to be deterred by the threat of confinement. The conditions surrounding confinement--essentially the same as conditions for any civilly committed patient--do not suggest a punitive purpose. Although the commitment scheme here involves an affirmative restraint, such restraint of the dangerously mentally ill has been historically regarded as a legitimate nonpunitive objective. Cf. *United States v. Salerno*, 481 U.S. 739, 747. The confinement's potentially indefinite duration is linked, not to any punitive objective, but to the purpose of holding a person until his mental abnormality no longer causes him to be a threat to others. He is thus permitted immediate release upon a showing that he is no longer dangerous, and the longest he can be detained pursuant to a single judicial proceeding is one year. The State's use of procedural safeguards applicable in criminal trials does not itself turn the proceedings into criminal prosecutions. *Allen, supra*, at 372. Finally, the Act is not necessarily punitive if it fails to offer treatment where treatment for a condition is not possible, or if treatment, though possible, is merely an ancillary, rather than an overriding, state concern. The conclusion that the Act is nonpunitive removes an essential prerequisite for both Hendricks' double jeopardy and *ex post-facto* claims. Pp. 13-21.

(b) Hendricks' confinement does not amount to a second prosecution and punishment for the offense for which he was convicted. Because the Act is civil in nature, its commitment proceedings do not constitute a second prosecution. Cf. *Jones, supra*. As this commitment is not tantamount to punishment, the detention does not violate the Double Jeopardy Clause, even though it follows a prison term. *Baxstrom v. Herold*, 383 U.S. 107. Hendricks' argument that, even if the Act survives the "multiple punishments" test, it fails the "same elements" test of *Blockburger v. United States*, 284 U.S. 299, is rejected, since that test does not apply outside of the successive prosecution context. Pp. 22-23.

(c) Hendricks' *ex post-facto* claim is similarly flawed. The *Ex Post-Facto* Clause pertains exclusively to penal statutes. *California Dept. of Corrections v. Morales*, 514 U.S. 499, 505. Since the Act is not punishment, its application does not raise *ex post-facto* concerns. Moreover, the Act clearly does not have retroactive effect. It does not criminalize conduct legal before its enactment or deprive Hendricks of any defense that was available to him at the time of his crimes. Pp. 23-24.

259 Kan. 246, 912 P. 2d 129, reversed.

Thomas, J., delivered the opinion of the Court, in which Rehnquist, C. J., and O'Connor, Scalia, and Kennedy, JJ., joined. Kennedy, J., filed a concurring opinion. Breyer, J., filed a dissenting opinion, in which Stevens and Souter, JJ., joined, and in which Ginsburg, J., joined as to Parts II and III.

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### Notes

\* Together with No. 95-9075, *Hendricks v. Kansas*, also on certiorari to the same court.

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By LINDA GREENHOUSE

**W**ASHINGTON -- The Supreme Court ruled on Monday that states may confine violent sex offenders in mental hospitals after they have served their criminal sentences, even if the offenders are not so mentally ill as to meet a state's ordinary criteria for civil commitment against their will.

The 5-4 decision upheld a 1994 Kansas law, one of a number of recent efforts by states to protect communities from sex offenders who are deemed likely to repeat their crimes once released from prison. The defendant in this case is a 62-year-old confessed acknowledged pedophile who once told authorities that the only way he could stop molesting children was "to die."

The Kansas Supreme Court had declared the law unconstitutional, finding that its vague definition of "mental abnormality" and its lack of a guarantee of treatment violated the 14th Amendment guarantee of due process. The case was watched closely by other states, five of which -- Arizona, California, Minnesota, Washington and Wisconsin -- have similar laws.

Despite the division on the court on Monday, Justice Clarence Thomas' majority opinion and Justice Stephen Breyer's dissenting opinion were actually not very far apart. In fact, the dissenting justices went out of their way to indicate how Kansas and other states could craft laws to achieve the same goals while addressing constitutional concerns.

Both sides disagreed with the Kansas Supreme Court's analysis of the due-process question. The dispute on the court came over how to characterize the confinement imposed on Leroy Hendricks, the first person

to whom the state had applied its new Sexually Violent Predator Act.

Hendricks argued that by sending him to a state hospital for the criminally mentally ill as he was about to complete 10 years of a prison sentence for molesting two 13-year-old boys, Kansas had subjected him unconstitutionally to double jeopardy -- two punishments for the same offense -- and to an ex post facto law, new punishment for a previous crime.

The Kansas Supreme Court had not addressed either of these arguments. For Hendricks to prevail, the court would have had to agree with him that the additional confinement constituted punishment, rather than just a novel approach to involuntary civil commitment.

The majority opinion, in which Thomas was joined by Chief Justice William Rehnquist and by Justices Sandra Day O'Connor, Antonin Scalia and Anthony Kennedy, found that the confinement was not punishment.

The dissenting justices -- Breyer joined by Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg -- concluded that Hendricks's confinement was "basically punitive" because he was being restrained rather than treated for his psychiatric and behavioral problems.

Consequently, Breyer said, the confinement violated the constitutional prohibition against retroactive imposition of new punishments. But he said the law would not be unconstitutional in two ways: if it operated prospectively or if it provided treatment and not simply incarceration.

In the majority opinion, *Kansas vs. Hendricks*, No. 95-1649, Thomas said it did not matter that Kansas did not restrict application of the law to those who would otherwise meet the requirements under Kansas law for involuntary commitment as mentally ill. Thomas said that a simple finding of dangerousness, "standing alone," would not be enough to justify the extended confinement; there had to be "proof of some additional factor," he said, and the Kansas law's reference to "mental abnormality" or "personality disorder" was acceptable in narrowing "the class of persons eligible for confinement to those who are unable to control their dangerousness."

The Kansas law requires a trial-type proceeding with many criminal-law overtones. The state has the burden of proving beyond a reasonable doubt that the person it seeks to confine meets the law's criteria as a sexually violent predator. The individual has a right to a lawyer, who may cross-examine witnesses and review the state's evidence. Once confinement is ordered, a state court must conduct an annual review to see if it is still justified.

"That Kansas chose to afford such procedural protections does not transform a civil commitment proceeding into a criminal prosecution," Thomas said. He said the law did not entail "either of the two primary objectives of criminal punishment: retribution or deterrence."

Rather, he continued, "incapacitation may be a legitimate end of the civil law." even if no treatment is available. Thomas cited a 1902 Supreme Court case permitting the involuntary quarantine of people suffering from communicable diseases.

"It would be of little value to require treatment as a precondition for civil confinement of the dangerously insane when no acceptable treatment existed," Thomas said, adding: "To conclude otherwise would obligate a state to release certain confined individuals who were both mentally ill and dangerous simply because they could not be successfully treated for their afflictions."

Hendricks had resisted treatment in the past, spending half his life in prisons or mental hospitals since committing his first sex offenses against young children in the 1950s.

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M. Kennedy, and Clarence Thomas in striking down the Brady Act provisions. Justices John Paul Stevens, David H. Souter, Ruth Bader Ginsburg, and Stephen G. Breyer dissented.

The ruling came in a pair of cases, *Printz v. U.S.*, No. 95-1478, and *Mack v. U.S.*, No. 95-1503, brought by the sheriffs of Ravalli County, Montana and Graham County, Arizona, respectively.

The Brady Act was designed to improve enforcement of the Gun Control Act of 1968, which prohibits gun dealers from selling handguns to convicted felons, fugitives from justice, users of illegal drugs, "mental defectives," and certain other categories of persons. At issue before the Supreme Court were provisions requiring state and local law enforcement officers to receive "Brady forms" from gun dealers identifying prospective purchasers, and to make "a reasonable effort" to check criminal history records or otherwise determine whether the buyer is ineligible.

The sheriffs who brought the lawsuits "object to being pressed into federal service, and contend that Congressional action compelling state officers to execute federal laws is unconstitutional," Justice Scalia noted. The Supreme Court agreed.

Justice Scalia reviewed the history of the relationship between the U.S. Congress and state officials, and concluded that "there is not only an absence of executive-commandeering statutes in the early Congresses, but there is an absence of them in our later history as well, at least until very recent years."

Scalia also analyzed the Brady requirements in the context of the overall structure of the Constitution, and found that Congress's imposition on state officials violates the system of "dual sovereignty" between the federal and state governments. "The Framers' experience under the Articles of Confederation had persuaded them that using the states as the instruments of federal governance was both ineffectual and provocative of federal-state conflict," Scalia wrote.

"The power of the federal government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 states," Scalia continued. One of the problems with allowing that to occur is that it blurs the lines of accountability among public officials, he indicated.

"Members of Congress can take credit for 'solving' problems without having to ask their constituents to pay for the solutions with higher federal taxes. . . . [And states are] put in the position of taking the blame for [the law's] burdensomeness and for its defects," Scalia wrote. "Under the present law, for example, it will be the [state officer] and not some federal official who stands between the gun purchaser and immediate possession of his gun. And it will likely be the [state official], not some federal official, who will be blamed for any error . . . that causes a purchaser to be mistakenly rejected."

The Clinton Administration and other supporters of the Brady Act had argued that the imposition on state officials was minimal, temporary, and meant to accomplish an im-

portant purpose. But such a "balancing" of federal and state interests was an inappropriate way to analyze the law, Scalia wrote. "It is the very *principle* of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect."

The impact of the ruling may be lessened by the fact that the requirement of background checks by state law enforcement officials is due to expire on November 30, 1998. By that date, the Brady Act requires the Attorney General to establish a nationwide computerized "instant check" system that will allow gun dealers to determine immediately whether a proposed gun purchase is illegal.

Justice O'Connor, in a concurring opinion, noted the instant check deadline and said, "Our holding, of course, does not spell the end of the objectives of the Brady Act. States and chief law enforcement officers may voluntarily continue to participate in the federal program. . . . Congress is also free to amend the interim program to provide for its continuance on a contractual basis with the states if it wishes, as it does with a number of other federal programs." (Congress could condition federal grants on states' continuing to participate, she noted.)

The National Association of Police Organizations (NAPO), one of the law enforcement groups that has strongly supported the Brady Act, said it was "concerned" about the Supreme Court ruling and will encourage state and local law enforcement to continue the background checks on a voluntary basis. The five-day waiting period, left untouched by the court, will continue to serve as a "cooling off period," preventing some crimes of passion, NAPO said.

**Court upholds civil commitment of "sexual predators":** In another case, the Supreme Court upheld a Kansas law that provides for the civil commitment of "sexually violent predators" after they have completed their criminal sentences. The court rejected various Constitutional challenges to the law, including an argument that such commitments amount to thinly disguised criminal punishment, violating the double jeopardy clause.

"The state may take measures to restrict the freedom of the dangerously mentally ill," Justice Clarence Thomas wrote for the court. "This is a legitimate non-punitive governmental objective and has been historically so regarded."

The case, *Kansas v. Hendricks*, No. 95-1649, decided by a 5-to-4 margin and handed down on June 23, was of interest to officials in other states, many of which have similar laws or are considering enacting such measures. Thirty-eight states had filed a brief urging the Supreme Court to allow such commitments of sex offenders.

The case involved Leroy Hendricks, a man with a history of molesting children, including his stepdaughter and stepson, dating to 1955, as well as a history of resisting treatment because he considered it useless. In 1994, Hendricks was approaching the end of a 10-year prison

...for molesting two adolescent boys when the Kansas legislature approved the Sexually Violent Predator Act. He was the first person to be committed under the new law.

Kansas already had a statute providing for the involuntary commitment of persons defined as "mentally ill," but the state legislature said that law was "inadequate to address the risk [that] sexually violent predators pose to society." Sexually violent predators are less amenable to treatment, more likely to engage in repeat acts of violence, and generally more dangerous than those covered under the traditional involuntary commitment law, the legislature said.

The Kansas legislature defined "sexually violent predator" as "any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in the predatory acts of sexual violence."

The law applied to persons convicted of violent sex crimes and scheduled for release, as well as those charged with such crimes but found incompetent to stand trial or found not guilty by reason of insanity or mental defect.

The law contains certain due process protections, including a requirement that the state prove beyond a reasonable doubt that a person is a sexually violent predator; the right to a trial to make that determination; and the right to assistance of counsel, an examination by mental health professionals, and an opportunity to present and cross-examine witnesses. If a commitment is ordered, the court must conduct an annual review to determine whether continued detention is warranted.

Hendricks challenged his confinement under the law on due process, double jeopardy, and *ex post facto* grounds, and the Kansas Supreme Court invalidated the law. The U.S. Supreme Court reversed the state court, however.

The Supreme Court easily rejected the due process challenge, saying the United States has a long history of providing for the forced civil detention of people who pose a danger to the public health or safety. A finding of dangerousness, standing alone, ordinarily is not sufficient to justify an indefinite involuntary commitment, Justice Thomas acknowledged; proof of dangerousness must be coupled with proof of "some additional factor, such as a 'mental illness' or 'mental abnormality,'" he wrote. The Kansas law "plainly" meets that requirement, he said.

Hendricks had argued that past cases by the Supreme Court required a finding of "mental illness" for civil commitment, not merely the "mental abnormality or personality disorder" specified in the Kansas law. The Supreme Court disagreed.

"Contrary to Hendricks' assertion, the term 'mental illness' is devoid of any talismanic significance," Justice Thomas wrote. "Not only do psychiatrists disagree widely and frequently on what constitutes mental illness, but the court itself has used a variety of expressions to describe the mental condition of those properly subject to civil confinement. Indeed, we have never required state legislatures to adopt any particular nomenclature in drafting civil commit-

ment statutes. Rather, we have traditionally left to legislators the task of defining terms of a medical nature that have legal significance."

The court rejected the double jeopardy and *ex post facto* arguments because both of those claims apply only to penal statutes. The Kansas statute provides for civil commitments, not criminal punishments, the Supreme Court said.

"The mere fact that a person is detained does not inexorably lead to the conclusion that the government has imposed punishment," Justice Thomas wrote, quoting a 1987 Supreme Court opinion. "Where the state has disavowed any punitive intent, limited confinement to a small segment of particularly dangerous individuals, provided strict procedural safeguards, directed that confined persons be segregated from the general prison population and afforded the same status as others who have been civilly committed, recommended treatment if such is possible, and permitted immediate release upon a showing that the individual is no longer dangerous or mentally impaired, we cannot say that it acted with punitive intent."

Hendricks argued that the law is punitive because it failed to offer him "treatment" for his disorder. The Supreme Court was unpersuaded. "[W]e have never held that the Constitution prevents a state from civilly detaining those for whom no treatment is available, but who nevertheless pose a danger to others," the court said. "[U]nder the appropriate circumstances and when accompanied by proper procedures, incapacitation may be a legitimate end of the civil law."

The Kansas law does contain language requiring the state to provide treatment to committed sexual predators, and there was disagreement about the extent to which Hendricks received treatment for his disorder. But the Supreme Court majority did not consider the point dispositive. "Although the treatment program initially offered Hendricks may have seemed somewhat meager, it must be remembered that he was the first person committed under the act," Justice Thomas said. "That the state did not have all of its treatment procedures in place is thus not surprising."

The dissenting members of the court—Justices Breyer, Stevens, and Souter, joined in part by Justice Ginsburg—agreed with much of the majority's analysis, but said the lack of treatment provided to Hendricks led them to conclude that the purpose of the law was "basically punitive," and thus its application to Hendricks was a violation of the *ex post facto* clause.

The Constitution "does not stand as an obstacle to achieving important protections for the public's safety," but if the purpose of a civil commitment law is the non-punitive aim of providing treatment, that is what must be provided, Justice Breyer wrote. "[W]here so significant a restriction of an individual's basic freedoms is at issue, a state cannot cut corners," he wrote.

**No immunity from lawsuits for private prison employees:** In another case decided by a 5-to-4 majority, the Supreme Court ruled that employees of private com-

A M E N D M E N T 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIS

TO: HB 261

*Adopted*

1 Page 1, line 1, following "relating":

2 Insert "to fines and"

3 Page 2, following line 14:

4 Insert a new bill section to read:

5 "\* Sec. 3. AS 12.55.035 is amended by adding a new subsection to read:

6 (f) In imposing a fine, the court may not reduce the fine by the amount of a  
7 surcharge or otherwise consider the applicability of a surcharge to the offense."

8 Renumber the following bills sections accordingly.

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE DAVIS

TO: HB 261

1 Page 2, line 19, following "violation of":

2 Insert "a misdemeanor offense under"

3 Page 2, line 20:

4 Following "or a":

5 Insert "violation of a"

6 Following "comparable to":

7 Insert "a misdemeanor offense under"