

SB

216

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 4/22/98

FURTHER: REPORTED OUT OF
SCS 4/27/98

DATE TURNED
 IN TO OFFICE: 4/27/98

Finance Committee considered SENATE BILL NO. 216

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

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS SB 216 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
- same title
 - new title
- House Bill:**
- same title
 - technical title
 - new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Paul E. ...</i>	7	<i>John ...</i>	✓		
<i>Jan ...</i>	7				
Co-Chair:		Co-Chair: <i>Deane</i>	✓		
Co-Chair:		Co-Chair: <i>...</i>	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal
Admin/OPA	4/22/98		110.0
★ Admin/PDA	4/23/98		305.9
Corrections/ALL	4/22/98		174.7
★ Law/OSPA	4/23/98		479.9
HESS/RPI	4/22/98		726.5
Court	4/22/98		84.2

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. No. 1
Bill Version: CSSB 216(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						
TOTAL OPERATING	110.0	80.0	80.0	80.0	80.0	80.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE:

(Thousands of Dollars)

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

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 Boyer
Agency: Administration

Date: 4/16/98

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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 sexually violent predators</u>	BRU	Administration and Operations
Sponsor <u>Senator Halford</u>	Component	ALL
Requester <u>Senate Judiciary Committee</u>	Component Serial No.	#0694

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						
TOTAL OPERATING	174.7	165.7	165.7	165.7	165.7	165.7

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

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

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

4/21/98

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: 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	296.7	333.6	355.2	355.2
TRAVEL	6.0	9.5	13.0	13.5	14.5	14.5
CONTRACTUAL	113.7	83.6	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						
TOTAL OPERATING	305.9	341.2	428.3	471.7	498.0	493.5

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE:

(Thousands of Dollars)

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

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

Alison M. Elger

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.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB 216 (JUD)

#2

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

Bill Version: CSSB 216 (JUD)
 (S) Publish Date: 4/23/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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 Serial 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	6.3	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						
TOTAL OPERATING	479.9	482.5	546.0	625.0	659.6	653.1

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
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)						
TOTAL	479.9	482.5	546.0	625.0	659.6	653.1

Estimate of any current year (FY98) cost: _____

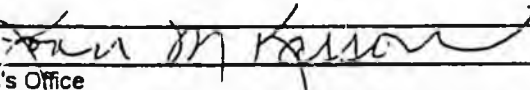
POSITIONS

POSITIONS	4	5	5	6	6	6
Full-time						
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 
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date 4/21/98
 Date 4/21/98

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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
Per Case costs									
Yr 1	Expert fees first case to trial		50.0	50.0					
Yrs 1-6	Expert fees per trial		5.0	20.0	25.0	25.0	25.0	25.0	25.0
	Witness travel & subsistence		1.0	5.0	5.0	5.0	5.0	5.0	5.0
	Depositions/court reporter		1.0	5.0	5.0	5.0	5.0	5.0	5.0
Yrs 2-6	Expert Fees per petition		1.0	0.0	4.0	3.0	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					
Per Case costs									
Yrs 1-6	Transcriptions		1.0	4.0	4.0	7.0	8.0	8.0	8.0
TOTAL COSTS				479.9	482.5	546.0	625.0	659.6	653.1
<u>Trial Unit</u>	PFT attorney			1.0	1.5	2	2	2	2
	PPT attorney						1	1	1
	PFT paraprofessional			1	1	1	1	1	1
	PPT paraprofessional							1	1
	PFT legal secretary			1	1	1	2	2	2
<u>Appellate Unit</u>	PFT attorney			1	1	1	1	1	1
TOTAL PFT				4	5	5	6	6	6
TOTAL PPT							1	2	2

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 5

REPORTED OUT OF
9/27/98

Version: CS 9B216(Sud)
(S) Publish Date: 4/22/98

Revision Date: _____ Dept. Affected: Health and Social Services
 Title: Commitment of Sexually Violent Predators BRU: Institutions and Administration
 Component: Alaska Psychiatric Institute
 Sponsor: Halford, Green, Donnelly COMPONENT SERIAL NO. 311
 Requestor: Senate (JUD) 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						
TOTAL OPERATING	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4

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)						
TOTAL	726.5	1,438.5	2,346.8	3,057.2	3,771.0	4,493.4

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 Phone: 907-269-7103
 Division: Mental Health and DD Date: 04/14/98

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

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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 sexual, 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 ($\$250 \text{ per hour} \times 10 \text{ hours} \times 12 \text{ months}$, equals \$30.0)

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

No. 6

Bill Version: CSSB216(JUD)

(S) Publish Date: 4/22/98

STATE OF ALASKA 1998 LEGISLATIVE SESSION

Revision Date:

Title:

An Act providing for the civil commit-
ment of sexually violent predators

Dept. Affected:

Alaska Court System

ERU:

Trial Courts

Component:

Sponsor:

Senator Halford

Requestor:

Senate Judiciary

COMPONENT SERIAL NO.

788

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 98	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	57.9	64.7	73.9	73.9	73.9	73.9
TRAVEL						
CONTRACTUAL	26.3	26.3	26.3	26.3	26.3	26.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	84.2	91.0	100.2	100.2	100.2	100.2

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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Fund Source

(Thousands of Dollars)

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

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

None

Positions

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

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by:

Doug Wooliver, Administrative Attorney

Agency:

Alaska Court System

Phone:

264-8285

Date:

04/16/98

Approved by:

Stephanie J. Cole, Administrative Director

Agency:

Alaska Court System

Date:

04/16/98

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Rev 1/98

Page 1 of 4

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

Fiscal Analysis

CSSR 218 (JUD) Work Draft E, dated 4/13/98

SB216#6

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	\$ 10,099	\$ 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
Total Personal Services			\$ 57,932

Contractual Services

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

FY 00 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 15 days each) & 4 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	13,462	2,918	16,368
Total Personal Services			\$ 64,746

Contractual Services

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

FY 01 - FY 04 8 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	\$ 25,594	\$ 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	14,868	4,409	19,277
Total Personal Services			\$ 73,933

Contractual Services

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