

SB

216

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 1/12/98

FURTHER: Finance

Date of 5-Day Notice: 3-26-98
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 4-22-98

Judiciary Committee considered SENATE BILL NO. 216

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

and recommends:

- be replaced with _____ CS FOR SA 216 (JUD)
- adopt previous _____ CS _____
- 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
Mike Miller	<input checked="" type="checkbox"/>	<i>[Handwritten signature]</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
		<i>[Handwritten signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Handwritten signature]</i>		CHAIR:			

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
#1 ADMIN./OPA	4/16/98		<input checked="" type="checkbox"/>
#3 CORRECTIONS/ADMIN. OPS.	4/20/98		<input checked="" type="checkbox"/>
#2 ADMIN./PUB. DEF. AGENCY	?		<input checked="" type="checkbox"/>
#4 LAW/CRIM. DIV. OSPA	4/15/98		<input checked="" type="checkbox"/>
#5 HCSS/APE	4/14/98		<input checked="" type="checkbox"/>
#6 TRIAL COURTS	4/14/98		<input checked="" type="checkbox"/>

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

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: 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						
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

#1

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.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. No. 2
Bill Version: CS SB216(TUN)
'S) Publish Date: 4/22/98

Revision Date: _____
Title: "An Act providing for the civil commitment of sexually violent predators"
Sponsor: Senator Halford
Requestor: Sen Judiciary Committee

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
CON. RACTUAL	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

Date: _____

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB 216 (Jud)

#2

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.

FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB 216 (Jud)

#2

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 person 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

No. 3

Bill Version: CSSB216(FIN)

(S) Publish Date: 4/22/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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 <u>Bruce Richards</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date <u>4/21/98</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>4/21/98</u>
Agency <u>Department of Corrections</u>	

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DRAF

Work Draft F
BILL NO. CSSB 216 (JUD) #4

STATE OF ALASKA
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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

DRAFT

Work Draft F

BILL NO. CSSB 216 (JUD) #4

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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 y cost schedule for F Y98/99 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

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

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, and the subsequent years costs reduced as new positions are added to avoid double counting.

		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	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					
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

Version: CS SB216(JUD)
(S) Publish Date: 4/22/98

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						
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: 50.0

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 ($\$250 \text{ per hour} \times 10 \text{ hours} \times 12 \text{ months}$, 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: ASSB246(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	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						
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						
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

Approved by: Stephanie J. Cole, Administrative Director
 Agency: Alaska Court System

Phone: 264-8265
 Date: 04/16/98
 Date: 04/16/98

PREPARER 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

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	\$ 10,089	\$ 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	12,038	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	13,452	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 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	\$ 25,594	\$ 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

0-LS1134F

Luckhaupt

4/13/98

Sen Halford
Att: Bill
cc: A. Carpenter

CS FOR SENATE BILL NO. 216()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Wilken, Lemian

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 Notwithstanding any other provision of law, all records in the custody of a state
23 agency requested by the department for the referral examination shall be provided to
24 the department. The department shall complete the referral examination within 30
25 days and shall forward the results of the examination to the agency with custody and
26 to the attorney general. If the department determines that the person may be a
27 sexually violent predator or upon the request of the attorney general, the agency with
28 custody shall provide the following information to the attorney general:

- 29 (1) information concerning an anticipated plan for employment,
30 residence, conditions of release, and supervision if the person is released as scheduled;
31 (2) a summary of the person's institutional adjustment and any

1 treatment received;

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

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

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

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

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

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

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

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

22 (b) Upon the filing of a petition, notice shall be provided to the person and the
23 court shall schedule a hearing within 72 hours at which the person has a right to
24 appear. At the hearing, the judge shall determine whether probable cause exists to
25 believe that the person named in the petition is a sexually violent predator. If probable
26 cause is found, the judge shall direct that the person be taken into custody, and the
27 person shall be transferred to an appropriate facility for an evaluation as to whether
28 the person is a sexually violent predator. The evaluation shall be conducted by a
29 person professionally qualified to conduct the examination under regulations adopted
30 by the department. The results of the examination conducted under this section are
31 admissible in all further proceedings conducted under AS 47.30.816 - 47.30.824.

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

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

1 safe to be at large. If the court or jury is not satisfied beyond a reasonable doubt that
2 the person is a sexually violent predator, the court shall direct the person's release
3 from the custody of the department.

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

23 (d) The department shall confine a person who is ordered committed under this
24 section in a secure mental health facility. The department may contract with a public
25 or private entity inside or outside the state for the confinement of persons committed
26 under AS 47.30.816 - 47.30.824. Persons committed to the department shall be
27 segregated at all times from other persons under the supervision of the department.
28 The department may not confine a person committed under AS 47.30.816 - 47.30.824
29 in a correctional facility or institution operated by the Department of Corrections. This
30 subsection does not prohibit the department from confining a person committed under
31 AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and

1 located within or on the grounds of a correctional facility. Persons confined in a
2 mental health facility within or on the grounds of a correctional facility shall be
3 segregated at all times from the inmates of the correctional facility. Following
4 confinement of the committed person, the department shall inform the person of the
5 person's rights under AS 47.30.821. The involuntary detention or commitment of a
6 person under AS 47.30.816 - 47.30.824 shall conform to the constitutional
7 requirements for care and treatment.

8 **Sec. 47.30.820. Annual examination.** The department shall provide an
9 examination of the current mental condition of a person committed under
10 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual
11 examination provided by the department, the person may retain or, if the person is
12 indigent and so requests, the court that committed the person may assist the person in
13 obtaining a qualified expert or a professional to examine the person, and the expert or
14 professional shall have access to all records concerning the person. The results of the
15 examinations shall be provided to the court that committed the person.

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

28 (b) This section does not prohibit the person from otherwise petitioning the
29 court for discharge without the commissioner's approval. The commissioner shall
30 provide the committed person with an annual written notice of the person's right to
31 petition the court for release over the commissioner's objection. The notice must

1 contain a waiver of rights. The commissioner shall forward the notice and waiver
2 form to the court with the annual examination. If the person does not affirmatively
3 waive the right to petition the court shall hold a show cause hearing to determine
4 whether facts exist that warrant a hearing on whether the person's condition has so
5 changed that the person is safe to be at large and is not likely to commit a sexually
6 violent predatory offense if discharged. The committed person has the right to have
7 an attorney represent the person at the show cause hearing and, if the person is
8 indigent, the court shall appoint counsel to represent the person. The committed
9 person is not entitled to be present at the show cause hearing. If the court at the show
10 cause hearing determines that probable cause exists to believe that the person's mental
11 illness has so changed that the person is safe to be at large and is not likely to commit
12 a sexually violent predatory offense if discharged, the court shall set a hearing on the
13 issue. At the hearing, the committed person is entitled to be present and to the benefit
14 of all constitutional protections that were afforded to the person at the initial
15 commitment proceeding. The attorney general shall represent the state and has the
16 right to a jury trial and to have the committed person evaluated by experts chosen by
17 the state. The committed person may also have experts evaluate the person on the
18 person's behalf, and the court shall assist the person in obtaining an expert if the
19 person is indigent and requests the assistance. The burden of proof at the hearing is
20 upon the state to prove beyond a reasonable doubt that the committed person's mental
21 illness remains such that the person is not safe to be at large and, if released, is likely
22 to commit a sexually violent predatory offense.

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

1 if the petition is based upon frivolous grounds and, if so, shall deny the petition
2 without a hearing.

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

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

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

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

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

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

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

23 (A) strangers;

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

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

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

1 (ii) lives in the same household;

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

3 (A) a violation of AS 11.41.410, 11.41.420(a)(1), or 11.41.434 -
4 11.41.438, or a felony offense in this or another jurisdiction formerly, or
5 currently, having elements similar to AS 11.41.410, 11.41.420(a)(1), or
6 11.41.434 - 11.41.438;

7 (B) a violation of AS 11.41.100, 11.41.110, 11.41.200, or
8 11.41.300, or a felony offense in this or another jurisdiction formerly, or
9 currently, having elements similar to AS 11.41.100, 11.41.110, 11.41.200, or
10 11.41.300 if the state proves beyond a reasonable doubt, in civil commitment
11 proceedings under AS 47.30.816 - 47.30.824, that, during the course of the
12 offense, the person engaged in or intended to engage in sexual penetration,
13 sexual contact, or sexually gratifying conduct; or

14 (C) a violation of AS 11.31.100 - 11.31.120, or a felony offense
15 in this or another jurisdiction formerly, or currently, having elements similar
16 to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or
17 conspiracy to commit one of the felonies designated in (A) or (B) of this
18 paragraph;

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

20 (A) has been

21 (i) convicted of a sexually violent offense;

22 (ii) found to have committed a sexually violent offense
23 as a juvenile;

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

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

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

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

0-LS1134E
Luckhaupt
4/3/98

CS FOR SENATE BILL NO. 216()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Wilken, Leman

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 a person who has been

15 (1) convicted of a sexually violent offense;

16 (2) found to have committed a sexually violent offense as a juvenile;

17 (3) charged with a sexually violent offense and who was determined
18 to be incompetent to stand trial under AS 12.47.100; or

19 (4) found not guilty by reason of insanity of a sexually violent offense
20 under AS 12.47.040.

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

1 (1) information concerning an anticipated plan for employment,
2 residence, conditions of release, and supervision if the person is released as scheduled;

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

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

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

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

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

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

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

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

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

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

1 person professionally qualified to conduct the examination under regulations adopted
2 by the department. In adopting the regulations under this subsection, the department
3 shall consult with the Department of Corrections and the Council on Domestic
4 Violence and Sexual Assault. The results of the examination conducted under this
5 section are admissible in all further proceedings conducted under AS 47.30.816 -
6 47.30.824.

7 **Sec. 47.30.819. Trial; rights of parties; determination; commitment**
8 **procedures.** (a) Within 60 days following a judicial determination of probable cause
9 under AS 47.30.818, the court shall conduct a trial to determine whether the person
10 is a sexually violent predator. The trial may be continued upon the request of either
11 party and a showing of good cause or by the court on its own motion in the interests
12 of justice and when the person will not be substantially prejudiced. At all stages of
13 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a
14 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the
15 person is indigent, the court shall appoint the office of public advocacy to assist the
16 person. When a person is subjected to an examination under AS 47.30.818(b), the
17 person may retain experts or professionals to perform an examination on the person's
18 behalf. When the person wishes to be examined by a qualified expert or professional
19 of the person's choice, the expert or professional shall be permitted reasonable access
20 to the person for the purpose of an examination, as well as to all relevant medical and
21 psychological records and reports. If the person is indigent, the court, upon the
22 person's request, shall determine if the services are necessary and the compensation for
23 those services is reasonable. If the court determines that the services are necessary and
24 the compensation for the services is reasonable, the court and the office of public
25 advocacy shall assist the person in obtaining an expert or professional to perform an
26 examination or participate in the trial on the person's behalf. Upon motion of the
27 person or the attorney general, or on the court's own motion, the trial shall be before
28 a jury. If no motion is made, the trial shall be before the court.

29 (b) The court or jury shall determine, beyond a reasonable doubt, whether the
30 person is a sexually violent predator. If the state alleges in the petition that the term
31 of confinement has expired for a person who has been convicted of a sexually violent

1 offense or who has been found to have committed a sexually violent offense as a
2 juvenile, the state shall prove beyond a reasonable doubt that the person has engaged
3 in a recent act demonstrating dangerousness. If trial is to a jury, the jury must make
4 the determination required by this subsection unanimously. Upon a determination that
5 the person is a sexually violent predator, the court shall consider less restrictive
6 alternatives to confinement and whether these alternatives, if any, will adequately
7 protect the public so it is safe for the person not to be confined and will prevent the
8 person from committing a sexually violent predatory offense. If the court determines
9 that the less restrictive alternatives will not (1) adequately protect the public so it
10 would be safe for the person to be at large, or (2) prevent the person from committing
11 a sexually violent predatory offense, the court shall order the person committed to the
12 custody of the department for control, care, and treatment until the person's mental
13 illness has so changed that the person is safe to be at large. If the court or jury is not
14 satisfied beyond a reasonable doubt that the person is a sexually violent predator, the
15 court shall direct the person's release from the custody of the department.

16 (c) If the person charged with a sexually violent offense has been found
17 incompetent to stand trial, is about to or has been released, and the person's
18 commitment is sought under this section, the court shall first hear evidence and
19 determine whether the person committed the act or acts charged. The hearing on this
20 issue must comply with the procedures specified in this section. In addition, the rules
21 of evidence applicable in criminal trials and all constitutional rights available to
22 defendants at criminal trials, other than the right to a jury trial and right not to be tried
23 while incompetent, shall apply. After hearing evidence under this subsection, the court
24 shall make specific findings on whether the person committed the act or acts charged,
25 the extent to which the person's incompetence affected the outcome of the hearing,
26 including its effect on the person's ability to consult with and assist counsel and to
27 testify on the person's own behalf, the extent to which the evidence could be
28 reconstructed without the assistance of the person, and the strength of the state's case.
29 If, after the conclusion of the hearing on this issue, the court finds, beyond a
30 reasonable doubt, that the person committed the act or acts charged, it shall enter an
31 order, appealable by the person, on that issue and may proceed to consider whether the

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person should be committed under this section. A finding under this subsection that the person committed the act or acts charged is not a conviction or a finding of guilt for any purpose other than for consideration of commitment.

(d) The department shall confine a person who is ordered committed under this section in a secure mental health facility. The department may contract with a public or private entity inside or outside the state for the confinement of persons committed under AS 47.30.816 - 47.30.824. Persons committed to the department shall be segregated at all times from other persons under the supervision of the department. The department may not confine a person committed under AS 47.30.816 - 47.30.824 in a correctional facility or institution operated by the Department of Corrections. This subsection does not prohibit the department from confining a person committed under AS 47.30.816 - 47.30.824 in a mental health facility operated by the department and located within or on the grounds of a correctional facility. Persons confined in a mental health facility within or on the grounds of a correctional facility shall be segregated at all times from the inmates of the correctional facility. Following confinement of the committed person, the department shall inform the person of the person's rights under AS 47.30.821. The involuntary detention or commitment of a person under AS 47.30.816 - 47.30.824 shall conform to the constitutional requirements for care and treatment.

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

Sec. 47.30.821. Petition for release. (a) If the commissioner determines that the person's mental illness has so changed that the person is safe to be at large and is not likely to commit a sexually violent predatory offense if released, the commissioner shall authorize the person to petition the court for release. The petition shall be served

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

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

1 hearing is upon the state to prove beyond a reasonable doubt that the committed
2 person's mental illness remains such that the person is not safe to be at large and, if
3 released, is likely to commit a sexually violent predatory offense.

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

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

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

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

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

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

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

1 (A) strangers;

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

4 (C) family members if the familial relationship has been
5 exploited for the purpose of victimization; in this subparagraph "family
6 member" means a person who is related up to the fourth degree of
7 consanguinity, whether of the whole or half blood or by adoption computed
8 under the rules of civil law;

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

10 (A) a violation of AS 11.41.410, 11.41.420(a)(1), or 11.41.434 -
11 11.41.438, or a felony offense in this or another jurisdiction formerly, or
12 currently, having elements similar to AS 11.41.410, 11.41.420(a)(1), or
13 11.41.434 - 11.41.438;

14 (B) a violation of AS 11.41.100, 11.41.110, 11.41.200, or
15 11.41.300, or a felony offense in this or another jurisdiction formerly, or
16 currently, having elements similar to AS 11.41.100, 11.41.110, 11.41.200, or
17 11.41.300 if the state proves beyond a reasonable doubt, in civil commitment
18 proceedings under AS 47.30.816 - 47.30.824, that, during the course of the
19 offense, the person engaged in or intended to engage in sexual penetration,
20 sexual contact, or sexually gratifying conduct; or

21 (C) a violation of AS 11.31.100 - 11.31.120, or a felony offense
22 in this or another jurisdiction formerly, or currently, having elements similar
23 to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or
24 conspiracy to commit one of the felonies designated in (A) or (B) of this
25 paragraph;

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

27 (A) has been

28 (i) convicted of a sexually violent offense;

29 (ii) found to have committed a sexually violent offense
30 as a juvenile;

31 (iii) charged with a sexually violent offense and who

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was determined to be incompetent to stand trial under AS 12.47.100; or
(iv) found not guilty by reason of insanity of a sexually
violent offense under AS 12.47.040; and

(B) suffers from a mental illness that makes the person ^{substantially} likely

to commit a sexually violent predatory offense.

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

MAR 30 1998



TONY KNOWLES, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 24, 1998

The Honorable Rick Halford
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Dear Senator Halford,

The Governor's Council on Disabilities and Special Education understands the nature of the legislative attention devoted to the serious problem of sexual assault by persons prematurely released from criminal justice custody. Nevertheless, in regard to SB 216, an Act providing for the civil commitment of sexually violent predators, we have not been able to come to a conclusion regarding benefits and risks in relation to the community we are charged with serving. Therefore, we have decided to neither oppose nor endorse SB 216.

There are three elements of the proposed legislation that we find interesting. They are:

1. Because sexual offenders with developmental disabilities (DD) have very specific treatment needs, the potential for their effective treatment in an undifferentiated sex offender population may be very low. SB 216 does not address how effective treatment for this population might be provided.
2. Sex offenders with DD are frequently highly vulnerable to sexual predation themselves. The level of risk to these individuals, if housed with non-DD predators, may be unacceptably high.
3. The legislation, as currently written, allows for civil commitment to the least restrictive environment, which under some conditions will enhance the ability of treatment providers to engage offenders in meaningful community based treatment. The Council recognizes this particular aspect of SB 216 as positive.

We believe that SB 216's impact on persons with developmental disabilities would be limited to a relatively few individuals. However, the effect upon those few individuals might be significant. We will continue, therefore, to follow further developments in this legislation with interest. We are grateful for the opportunity to express the needs of the DD community in relation to legislation coming out of your office.

Sincerely,
Handwritten signature of Jennifer Reynolds in cursive script.

Jennifer Reynolds
Chair

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 2, 1998

Senator Rick Halford
Alaska State Legislature
State Capitol
Juneau AK 99801

Dear Senator Halford:

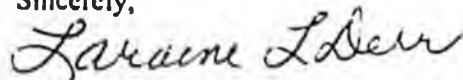
The Alaska State Hospital and Nursing Home Association has reviewed Senate Bill 216, "Civil Commitment of Sexual Predators." While we support and fully endorse your efforts to protect the citizens of Alaska from sexual predators, we would like to share some of our reservations about the proposed legislation.

We recognize the state's need to protect the general population from sexual predators, due to the substantial risk these individuals pose to public safety upon their release from the Department of Corrections. We believe this group should be placed in a facility. If such a facility is not funded, we are concerned about the impact of the proposed civil commitment process on API. If sufficient funds are not appropriated for this new mission, API could be ordered by the court to house and treat these individuals. As there is little chance for release, this population could continue to grow each year with a new cohort of civil commitments from the Department of Corrections. With time, these individuals could actually displace and remove from care those acutely mentally ill Alaskans who rely on the state hospital.

As you are well aware, Alaska has been planning to replace the present API with a new smaller facility. In the past year API admitted 1300 individuals, sometimes with a daily census in excess of the number of licensed beds. As the state mental health system moves to more community based care and reliance on general hospitals, it is important to keep the capacity at API available for those mentally ill who can and do benefit from tertiary treatment. These individuals range in age from older children through seniors and are very vulnerable in their decompensated condition. It would be against appropriate care standards to house them with a predatory population that has been deemed enough of a threat to be removed from the general society.

Therefore we strongly support the needed funding to obtain a separate facility for these civilly committed predators, preferably on the campus of another Department of Corrections facility. We also are aware that other states are now developing specialty facilities and suggest that Alaska look at the option of contracting for the care out of state if it is more cost efficient.

Sincerely,



Laraine L. Derr, President/CEO

APR 02 1998

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 2, 1998

Senator Rick Halford
Alaska State Legislature
State Capitol
Juneau AK 99801

Dear Senator Halford:

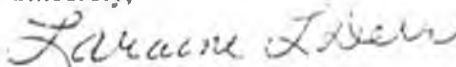
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We recognize the state's need to protect the general population from sexual predators, due to the substantial risk these individuals pose to public safety upon their release from the Department of Corrections. We believe this group should be placed in a facility. If such a facility is not funded, we are concerned about the impact of the proposed civil commitment process on API. If sufficient funds are not appropriated for this new mission, API could be ordered by the court to house and treat these individuals. As there is little chance for release, this population could continue to grow each year with a new cohort of civil commitments from the Department of Corrections. With time, these individuals could actually displace and remove from care those acutely mentally ill Alaskans who rely on the state hospital.

As you are well aware, Alaska has been planning to replace the present API with a new smaller facility. In the past year API admitted 1300 individuals, sometimes with a daily census in excess of the number of licensed beds. As the state mental health system moves to more community based care and reliance on general hospitals, it is important to keep the capacity at API available for those mentally ill who can and do benefit from tertiary treatment. These individuals range in age from older children through seniors and are very vulnerable in their decompensated condition. It would be against appropriate care standards to house them with a predatory population that has been deemed enough of a threat to be removed from the general society.

Therefore we strongly support the needed funding to obtain a separate facility for these civilly committed predators, preferably on the campus of another Department of Corrections facility. We also are aware that other states are now developing specialty facilities and suggest that Alaska look at the option of contracting for the care out of state if it is more cost efficient.

Sincerely,



Laraine L. Derr, President/CEO

MAR 30 1998



TONY KNOWLES, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 24, 1998

The Honorable Rick Halford
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

Dear Senator Halford,

The Governor's Council on Disabilities and Special Education understands the nature of the legislative attention devoted to the serious problem of sexual assault by persons prematurely released from criminal justice custody. Nevertheless, in regard to SB 216, an Act providing for the civil commitment of sexually violent predators, we have not been able to come to a conclusion regarding benefits and risks in relation to the community we are charged with serving. Therefore, we have decided to neither oppose nor endorse SB 216.

There are three elements of the proposed legislation that we find interesting. They are:

1. Because sexual offenders with developmental disabilities (DD) have very specific treatment needs, the potential for their effective treatment in an undifferentiated sex offender population may be very low. SB 216 does not address how effective treatment for this population might be provided.
2. Sex offenders with DD are frequently highly vulnerable to sexual predation themselves. The level of risk to these individuals, if housed with non-DD predators, may be unacceptably high.
3. The legislation, as currently written, allows for civil commitment to the least restrictive environment, which under some conditions will enhance the ability of treatment providers to engage offenders in meaningful community based treatment. The Council recognizes this particular aspect of SB 216 as positive.

We believe that SB 216's impact on persons with developmental disabilities would be limited to a relatively few individuals. However, the effect upon those few individuals might be significant. We will continue, therefore, to follow further developments in this legislation with interest. We are grateful for the opportunity to express the needs of the DD community in relation to legislation coming out of your office.

Sincerely,
Handwritten signature of Jennifer Reynolds in cursive script.

Jennifer Reynolds
Chair

APR 02 1998

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

April 2, 1998

Senator Rick Halford
Alaska State Legislature
State Capitol
Juneau AK 99801

Dear Senator Halford:

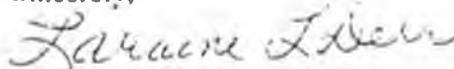
The Alaska State Hospital and Nursing Home Association has reviewed Senate Bill 216, "Civil Commitment of Sexual Predators." While we support and fully endorse your efforts to protect the citizens of Alaska from sexual predators, we would like to share some of our reservations about the proposed legislation.

We recognize the state's need to protect the general population from sexual predators, due to the substantial risk these individuals pose to public safety upon their release from the Department of Corrections. We believe this group should be placed in a facility. If such a facility is not funded, we are concerned about the impact of the proposed civil commitment process on API. If sufficient funds are not appropriated for this new mission, API could be ordered by the court to house and treat these individuals. As there is little chance for release, this population could continue to grow each year with a new cohort of civil commitments from the Department of Corrections. With time, these individuals could actually displace and remove from care those acutely mentally ill Alaskans who rely on the state hospital.

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Therefore we strongly support the needed funding to obtain a separate facility for these civilly committed predators, preferably on the campus of another Department of Corrections facility. We also are aware that other states are now developing specialty facilities and suggest that Alaska look at the option of contracting for the care out of state if it is more cost efficient.

Sincerely,



Laraine L. Derr, President/CEO



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
Phone (907) 694-4958

600 E. Railroad Avenue
Wasilla, Alaska 99654
Phone (907) 376-4958

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.



NAMI of Sitka, Alaska

We care about people who have a mental illness

3509 Halibut Point Road
Sitka, AK 99835

Phone and Fax (907) 747-3096
e.mail DW99835@aol.com

February 23, 1998

Honorable Robin Taylor, Chair
Senate Judiciary Committee
Senate, State Capitol
Juneau, AK 99801-1182

Re: Comments on SB 216

RECEIVED
FEB 24 1998

Dear Senator Taylor:

Ans'd.....

We are happy to see that the legislature is considering legislation to reduce the huge human suffering caused by sex offenders. The victims of sexual assault suffer serious long-term disabilities. Hence, there is a huge cost to taking no action. Among the more vulnerable populations are people who are disabled from a mental illness and children.

However, SB 216 is not a good solution.

The state currently has 3500 registered sex offenders, many if not most of whom would meet the definition of a violent sexual predator. At \$200-thousand per patient per year at a hospital such as API, the state cannot afford to confine enough sex offenders there to make a difference. While we don't know the statistics, pedophiles sexually molest many children before they are caught, and many of these offenders may not qualify as violent. Hence SB 216 is costly, ineffective, and too narrow.

Several states have passed legislation similar to SB 216. The only review of those programs that we found was an article by Brody and Green in the Bulletin of American Academy of Psychiatric Law 1994, entitled "Washington State's unscientific approach to the problem of repeat sex offenders." The authors concluded that the law is unscientific, treatments are inadequate to ensure future safety, and the law selects poor candidates for treatment.

Our review of recent research in the National Library of Medicine, found that there has been a lot of research looking for effective treatments for sex offenders, with mixed results. Some states use inpatient civil confinement while other states use out-patient civil confinement. Out-patient confinement coupled to a variety of services may decrease the problem. However, SB 216 is a single solution to a very complex problem, and no one solution is going to solve the problems.

Alaska needs a "best practices" solution to this issue that has high human and economic costs.

We recommend that the legislature form an independent, multidisciplinary, advisory panel to the legislature, similar to the National Academy of Science's Institute of Medicine. The panel should not be a part of any department, because that perpetuates past practices. The purpose of such a panel would be to review the current research and recommend to the legislature a "best practice" program.

Sincerely,

Dick Wilson
President

RECEIVED

FEB 21 1998

Ans'd.....

The Alaska Psychiatric Association

A District Branch of the American Psychiatric Association
P.O. Box 143147, Anchorage, Alaska 99514-3147

907.566.7800

February 13, 1998

Senator Robin Taylor
State Capitol, Room 30
Juneau, AK 99801-1182

RE: SB 216 Commitment of Sexually Violent Predators

Dear Senator Taylor:

The Alaska State Legislature is currently considering a bill by Senators Halford, Green and Donley, which would provide for the civil commitment of "sexually violent predators." Currently, 11 other states have passed or are considering similar legislation.

In response to this alarming trend, the American Psychiatric Association put together a special task force in 1996 to study and put forth recommendations. The State Mental Health Forensic Directors reviewed the task force report, concurred with the findings, and referred their report to the National Association of State Mental Health Program Directors with the following specific findings:

Sexual predator statutes have the primary purpose of incapacitating dangerous sex offenders after such offenders have completed prison sentences and can no longer be incarcerated. Indefinite civil commitment is merely a pretext to achieve further detention.

Most dangerous sex offenders do not have a mental illness. Many do not even have a primary sexual disorder amenable to treatment. Filling psychiatric hospitals with individuals without a treatable condition distorts the treatment milieu, to the detriment of those with mental illness who do benefit from treatment.

Civil commitment of dangerous sexual offenders will undoubtedly siphon already scarce resources from the mentally ill. Under the current sexual predator laws, those committed as dangerous sex offenders are likely to have lengthy periods of commitment. Over several years, state mental health systems could see a large percentage of resources devoted to sex offenders without treatable mental conditions.

Alternatives to involuntary civil commitment which address societal interests of detention and treatment should be pursued.

The recommendations of the APA Task Force were as follows¹:

- I. The Task Force recommends an increased investment in research on paraphilic disorders and in the clinical training of psychiatrists and other mental health professionals regarding assessment and treatment of persons with these disorders.
- II. Societal concerns about the need for punishment and incapacitation of dangerous sex offenders should be met through customary sentencing alternatives within the criminal justice system and not through involuntary civil commitment or broadly based involuntary medication statutes that exclude adequate diagnosis and treatment considerations.
- III. If legislatures and correctional agencies have a genuine interest in providing an opportunity for treatment to dangerous sex offenders as a means of reducing the rate of recidivism, they should establish adequately funded programs within the correctional system that are based on current clinical knowledge. Such programs can be implemented through a variety of legal models, including diversion and indeterminate sentencing.

The concerns of the Alaska District Branch of the American Psychiatric Association are focused on the following issues:

1. Since these offenders do not have a mental illness which is responsive to treatment, do we want to use our mental health resources to "contain" these offenders and jeopardize the treatment of mental health clients who can respond to treatment. (It is estimated that treatment will cost from \$50,000 to \$100,000 per year

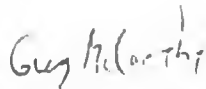
¹ Amended from the Task Force Report to APA Board of Directors, 1996.

per offender, not including legal costs or the cost of a treatment facility.)

2. If we are going to commit these offenders to mental health institutions, should we include in this legislation aspects of Community Protection Acts, such as those in Washington: i.e., increased penalties for sex crimes, extended post-release supervision for certain sex offenders, and required registration compliance. (Alaska currently has about 50% compliance with registration.)
3. Are there other alternatives to this legislation which would offer further containment of offenders; special-track indeterminate criminal sentences for sexual predators, multiple sentencing to extend sentences, enhanced treatment while in custody, for example.
4. Given the already over-burdened State Hospital and mental health system, should we tie specific funding to this legislation if it is to be enacted?

We respectfully thank you for your consideration of these issues.

Sincerely,



Greg McCarthy, M.D.
President, Alaska Psychiatric Association

cc: Alaska State Senators
Karen Perdue



TONY KNOWLES, GOVERNOR
State of Alaska

GOVERNOR'S COUNCIL ON DISABILITIES AND SPECIAL EDUCATION

P.O. Box 240249 • Anchorage, Alaska 99524-0249 • Phone: 907-269-8990 • Fax: 907-269-8995

March 24, 1998

The Honorable Robin Taylor
Alaska State Legislature
State Capitol (MS3100)
Juneau, Alaska 99801-1182

RECEIVED
MAR 30 1998

Ans'd.....

Dear Senator Taylor,

The Governor's Council on Disabilities and Special Education understands the nature of the legislative attention devoted to the serious problem of sexual assault by persons prematurely released from criminal justice custody. Nevertheless, in regard to SB 216, an Act providing for the civil commitment of sexually violent predators, we have not been able to come to a conclusion regarding benefits and risks in relation to the community we are charged with serving. Therefore, we have decided to neither oppose nor endorse SB 216.

There are three elements of the proposed legislation that we find interesting. They are:

1. Because sexual offenders with developmental disabilities (DD) have very specific treatment needs, the potential for their effective treatment in an undifferentiated sex offender population may be very low. SB 216 does not address how effective treatment for this population might be provided.
2. Sex offenders with DD are frequently highly vulnerable to sexual predation themselves. The level of risk to these individuals, if housed with non-DD predators, may be unacceptably high.
3. The legislation, as currently written, allows for civil commitment to the least restrictive environment, which under some conditions will enhance the ability of treatment providers to engage offenders in meaningful community based treatment. The Council recognizes this particular aspect of SB 216 as positive.

We believe that SB 216's impact on persons with developmental disabilities would be limited to a relatively few individuals. However, the effect upon those few individuals might be significant. We will continue, therefore, to follow further developments in this legislation with interest. We are grateful for the opportunity to express the needs of the DD community in relation to legislation coming out of your office.

Sincerely,

Handwritten signature of Jennifer Reynolds in cursive script.
Jennifer Reynolds
Chair

AMENDMENT

#1
ADOPTED

OFFERED IN THE SENATE

BY SENATOR

TO: CSSB 216 ()

Version 0-LS1134\F

Page 2, line 21:

Following "sexually violent predator." insert:

"The standards for screening persons referred under (a) of this section shall be adopted by the department in consultation with the departments of law and corrections."

0-LS1134E
Luckhaupt
4/3/98

CS FOR SENATE BILL NO. 216()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS HALFORD, Green, Donley, Taylor, Wilken, Leman

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 a person who has been

15 (1) convicted of a sexually violent offense;

16 (2) found to have committed a sexually violent offense as a juvenile;

17 (3) charged with a sexually violent offense and who was determined
18 to be incompetent to stand trial under AS 12.47.100; or

19 (4) found not guilty by reason of insanity of a sexually violent offense
20 under AS 12.47.040.

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

1 (1) information concerning an anticipated plan for employment,
2 residence, conditions of release, and supervision if the person is released as scheduled;

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

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

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

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

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

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

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

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

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

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

1 person professionally qualified to conduct the examination under regulations adopted
2 by the department. In adopting the regulations under this subsection, the department
3 shall consult with the Department of Corrections and the Council on Domestic
4 Violence and Sexual Assault. The results of the examination conducted under this
5 section are admissible in all further proceedings conducted under AS 47.30.816 -
6 47.30.824.

7 **Sec. 47.30.819. Trial; rights of parties; determination; commitment**
8 **procedures.** (a) Within 60 days following a judicial determination of probable cause
9 under AS 47.30.818, the court shall conduct a trial to determine whether the person
10 is a sexually violent predator. The trial may be continued upon the request of either
11 party and a showing of good cause or by the court on its own motion in the interests
12 of justice and when the person will not be substantially prejudiced. At all stages of
13 the proceedings under AS 47.30.816 - 47.30.824, a person who is the subject of a
14 petition filed under AS 47.30.818 is entitled to the assistance of counsel, and, if the
15 person is indigent, the court shall appoint the office of public advocacy to assist the
16 person. When a person is subjected to an examination under AS 47.30.818(b), the
17 person may retain experts or professionals to perform an examination on the person's
18 behalf. When the person wishes to be examined by a qualified expert or professional
19 of the person's choice, the expert or professional shall be permitted reasonable access
20 to the person for the purpose of an examination, as well as to all relevant medical and
21 psychological records and reports. If the person is indigent, the court, upon the
22 person's request, shall determine if the services are necessary and the compensation for
23 those services is reasonable. If the court determines that the services are necessary and
24 the compensation for the services is reasonable, the court and the office of public
25 advocacy shall assist the person in obtaining an expert or professional to perform an
26 examination or participate in the trial on the person's behalf. Upon motion of the
27 person or the attorney general, or on the court's own motion, the trial shall be before
28 a jury. If no motion is made, the trial shall be before the court.

29 (b) The court or jury shall determine, beyond a reasonable doubt, whether the
30 person is a sexually violent predator. If the state alleges in the petition that the term
31 of confinement has expired for a person who has been convicted of a sexually violent

1 offense or who has been found to have committed a sexually violent offense as a
2 juvenile, the state shall prove beyond a reasonable doubt that the person has engaged
3 in a recent act demonstrating dangerousness. If trial is to a jury, the jury must make
4 the determination required by this subsection unanimously. Upon a determination that
5 the person is a sexually violent predator, the court shall consider less restrictive
6 alternatives to confinement and whether these alternatives, if any, will adequately
7 protect the public so it is safe for the person not to be confined and will prevent the
8 person from committing a sexually violent predatory offense. If the court determines
9 that the less restrictive alternatives will not (1) adequately protect the public so it
10 would be safe for the person to be at large, or (2) prevent the person from committing
11 a sexually violent predatory offense, the court shall order the person committed to the
12 custody of the department for control, care, and treatment until the person's mental
13 illness has so changed that the person is safe to be at large. If the court or jury is not
14 satisfied beyond a reasonable doubt that the person is a sexually violent predator, the
15 court shall direct the person's release from the custody of the department.

16 (c) If the person charged with a sexually violent offense has been found
17 incompetent to stand trial, is about to or has been released, and the person's
18 commitment is sought under this section, the court shall first hear evidence and
19 determine whether the person committed the act or acts charged. The hearing on this
20 issue must comply with the procedures specified in this section. In addition, the rules
21 of evidence applicable in criminal trials and all constitutional rights available to
22 defendants at criminal trials, other than the right to a jury trial and right not to be tried
23 while incompetent, shall apply. After hearing evidence under this subsection, the court
24 shall make specific findings on whether the person committed the act or acts charged,
25 the extent to which the person's incompetence affected the outcome of the hearing,
26 including its effect on the person's ability to consult with and assist counsel and to
27 testify on the person's own behalf, the extent to which the evidence could be
28 reconstructed without the assistance of the person, and the strength of the state's case.
29 If, after the conclusion of the hearing on this issue, the court finds, beyond a
30 reasonable doubt, that the person committed the act or acts charged, it shall enter an
31 order, appealable by the person, on that issue and may proceed to consider whether the

1 person should be committed under this section. A finding under this subsection that
2 the person committed the act or acts charged is not a conviction or a finding of guilt
3 for any purpose other than for consideration of commitment.

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

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

28 **Sec. 47.30.821. Petition for release.** (a) If the commissioner determines that
29 the person's mental illness has so changed that the person is safe to be at large and is
30 not likely to commit a sexually violent predatory offense if released, the commissioner
31 shall authorize the person to petition the court for release. The petition shall be served

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

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

1 hearing is upon the state to prove beyond a reasonable doubt that the committed
2 person's mental illness remains such that the person is not safe to be at large and, if
3 released, is likely to commit a sexually violent predatory offense.

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

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

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

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

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

- 30 (1) "mental illness" has the meaning given in AS 12.47.090;
31 (2) "predatory" means that acts are directed towards:

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(A) strangers;

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

(C) family members if the familial relationship has been exploited for the purpose of victimization; in this subparagraph "family member" means a person who is related up to the fourth degree of consanguinity, whether of the whole or half blood or by adoption computed under the rules of civil law;

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

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

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

(C) a violation of AS 11.31.100 - 11.31.120, or a felony offense in this or another jurisdiction formerly, or currently, having elements similar to AS 11.31.100 - 11.31.120, that is an attempt, criminal solicitation, or conspiracy to commit one of the felonies designated in (A) or (B) of this paragraph;

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

(A) has been

(i) convicted of a sexually violent offense;

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

(iii) charged with a sexually violent offense and who

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was determined to be incompetent to stand trial under AS 12.47.100; or
(iv) found not guilty by reason of insanity of a sexually
violent offense under AS 12.47.040; and

(B) suffers from a mental illness that makes the person ^{substantially} likely

to commit a sexually violent predatory offense.

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

FISCAL NOTE

DRAFT

Workdraft F

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

Revision Date (Note if correction) _____	Dept. Affected <u>Corrections</u>
Title <u>An Act providing for the civil commitment of</u>	BRU <u>Administration and Operations</u>
<u>sexually violent predators</u>	Component <u>ALL</u>
Sponsor <u>Senator Halford</u>	
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>#0694</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						
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) Workdraft F requires the Department of Corrections to pre-screen offenders who might meet the criteria for a sexually violent predator. 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. Through 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 <u>Bruce Richards</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date <u>4/20/98</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>4/20/98</u>
Agency <u>Department of Corrections</u>	

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DRAFT

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. Workdraft F CSSB 216 (JUD)

Revision Date: _____
 Title: "An Act providing for the civil commitment of sexually violent predators"
 Sponsor: Senator Halford
 Requestor: Sen Judiciary Committee

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

Date: _____

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FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB.

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.

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BILL NO. CSSB 216

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)

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

Work Draft F, dated 4/13/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

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: _____
 Repeater: 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	73.9	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						
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						
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 Phone: 264-8285
 Agency: Alaska Court System Date: 04/16/98
 Approved by: Stephanie J. Cole, Administrative Director Date: 04/16/98
 Agency: Alaska Court System

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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 SystemFiscal Analysis

CSSB 218 (IJD) Work Draft E, dated 4/13/98

<u>FY 99</u> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
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
Total Personal Services			\$ 57,932
<u>Contractual Services</u>			
Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials			26,250
FY 99 Total Cost			84,182
<u>FY 00</u> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each) & 4 petitions to release (with probable cause hearings @ 2 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
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
Total Personal Services			\$ 64,746
<u>Contractual Services</u>			
Jury fees for 14 person jury for 15 days at \$26 a day for 5 trials			26,250
FY 00 Total Cost			90,996
<u>FY 01 - FY 04</u> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each) & 8 (10 in FY 02-04) petitions to release (with probable cause hearings @ 2 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
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
<u>Contractual Services</u>			
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

DRAFT

FISCAL NOTE

Workdraft F

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

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)

Table with columns: OPERATING EXPENDITURES, FY 99, FY 00, FY 01, FY 02, FY 03, FY 04. Rows include Personal Services, Travel, Contractual, Supplies, Equipment, Land & Structures, Grants & Claims, Miscellaneous, and TOTAL OPERATING.

CAPITAL EXPENDITURES table with columns for FY 99 through FY 04.

CHANGE IN REVENUES () table with columns for FY 99 through FY 04.

FUND SOURCE (Thousands of Dollars)

Table with columns: 1002 Federal Receipts, 1003 GF Match, 1004 GF, 1005 GF/Program Receipts, 1037 GF/Mental Health, Other (Specify Type), and TOTAL. Includes values for FY 99 through FY 04.

Estimate of any current year (FY98) cost:

POSITIONS

Table with columns for Full-time, Part-time, and Temporary positions across FY 99, FY 00, FY 01, FY 02, FY 03, and FY 04.

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 4/15/98
Approved by Commissioner Bruce M. Botelho, Attorney General Date 4/15/98
Agency Department of Law

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**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

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 y 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

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Work Draft F
BILL NO. CSSB 216 (JUD)

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, and the subsequent years costs reduced as new positions are added to avoid double counting.

		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	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					
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				7					
TOTAL PPT							1	2	2

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB216 (JUD)

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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DRAFT

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 X 365 days X 4 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 RFF 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).

DRAFT

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 ($\$250 \text{ per hour} \times 10 \text{ hours} \times 12 \text{ months}$, 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.

DRAFT

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

Revision Date (Note if correction) _____ Dept. Affected Corrections
 Title An Act providing for the civil commitment of BRU Administration and Operations
sexually violent predators Component ALL
 Sponsor Senator Halford
 Requester Senate Judiciary Committee 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 Phone 465-3307
 Division Commissioner's Office Date 4/21/98
 Approved by Commissioner Margaret M. Pugh *Margaret M. Pugh* Date 4/21/98
 Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB216 (JUD)

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						
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: Karl R. Burns, Director API Phone: 907-269-7103
 Division: Mental Health and DD Date: 04/21/98
 Approved by Commissioner: Karen Perdue, Commissioner Date: 4/21/98
 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 X 365 days X 4 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 \$30.0)

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.