

**SB**

**2**

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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

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

## MEMORANDUM

January 25, 1999

**SUBJECT:** Sectional Summary of SB 2 (Work Order No. 21-LS0027\A)

**TO:** Senator Rick Halford  
Attn: Juli Lucky

**FROM:** Gerald P. Luckhaupt *JGL*  
Legislative Counsel

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

Section 1 of the bill is the statutory "meat" of the bill. A number of new sections are created:

AS 47.30.816 provides legislative findings;

AS 47.30.817 requires the agency having custody of a person who may meet the criteria for a sexually violent predator to report the anticipated release of that person to the Attorney General; when a report is made, the Department of Health and Social Services is required to assemble the person's records and evaluate the person and determine if the person might be a sexually violent predator; if the Department of Health and Social Services determines that the person may be a sexually violent predator the agency with jurisdiction of the person must forward that finding and the person's records to the Attorney General;

AS 47.30.818 provides the procedures the Attorney General and the superior court will utilize when it is alleged that a person is a sexually violent predator and requires the superior court to determine if probable cause exists that the person is a sexually violent predator;

AS 47.30.819 provides (1) if probable cause is found under AS 47.30.818, the procedures for trial to determine if beyond a reasonable doubt the person is a sexually violent predator; (2) if the trier of fact determines the person is a sexually violent predator the court shall determine if the person must be committed; and (3) that a person committed shall be held in a secure mental health facility;

Senator Rick Halford  
January 25, 1999  
Page 2

AS 47.30.820 provides that the department of Health and Social Services shall examine a committed person each year and provide the results of that examination to the court;

AS 47.30.821 allows for the release of the committed person if it is no longer likely that the person will commit a sexually violent predatory offense if released and for trial on that issue if that likelihood is contested;

AS 47.30.822 provides that the Department of Health and Social Services is responsible for the costs of evaluation and treatment of committed persons; requires the Department of Health and Social Services to adopt regulations to implement this Act; and provides immunity for the state, its officers, and employees for conduct under the Act;

AS 47.30.823 authorizes the Department of Health and Social Services to release any relevant information concerning a sexually violent offender that is necessary to protect the public;

AS 47.30.824 provides definitions.

Section 2 of the bill provides an applicability section.

GPL:jdr:glc  
99-035.jdr

1-LS0027D ✓  
Luckhaupt  
1/26/99

**CS FOR SENATE BILL NO. 2(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FIRST LEGISLATURE - FIRST SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): SENATORS HALFORD, Green, Leman, Taylor**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act providing for 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **Sec. 47.30.820. Annual examination.** The department shall provide an  
31 examination of the current mental condition of a person committed under

1 AS 47.30.816 - 47.30.824 at least once each year. In addition to the annual  
2 examination provided by the department, the person may retain a qualified expert or  
3 a professional to examine the person, and the expert or professional shall have access  
4 to all records concerning the person. The results of the examination shall be provided  
5 to the court that committed the person.

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

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

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

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

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

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

31 (c) The state, agencies of the state, employees of agencies of the state, and

1 officials are immune from liability for conduct under AS 47.30.816 - 47.30.824 except  
2 that this subsection does not preclude liability for civil damages as a result of gross  
3 negligence or reckless or intentional misconduct.

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

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

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

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

12 (A) strangers;

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

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

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

21 (ii) lives in the same household;

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

23 (A) a violation of AS 11.41.410, 11.41.420(a)(1), or 11.41.434 -  
24 11.41.438, or a felony offense in this or another jurisdiction formerly, or  
25 currently, having elements similar to AS 11.41.410, 11.41.420(a)(1), or  
26 11.41.434 - 11.41.438;

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

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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 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

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 2

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Administration \_\_\_\_\_  
 Title "An Act providing for the civil commitment of BRU Legal and Advocacy Services  
 sexually violent predators." Component Office of Public Advocacy  
 Sponsor Senator Halford  
 Requester (S) JUD Component Serial No. 43

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services						
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	102.0	109.5	124.5	146.0	176.0	213.5
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>110.0</b>	<b>117.5</b>	<b>132.5</b>	<b>154.0</b>	<b>184.0</b>	<b>221.5</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	110.0	117.5	132.5	154.0	184.0	221.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>110.0</b>	<b>117.5</b>	<b>132.5</b>	<b>154.0</b>	<b>184.0</b>	<b>221.5</b>

Estimate of any current year (FY99) cost: \_\_\_\_\_

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Please see attached.

Prepared by Brant McGee, Public Advocate  
 Division Office of Public Advocacy  
 Approved by Commissioner Robert G. Poe  
 Agency Administration

Phone 269-3500  
 Date/Time 1/25/99  
 Date 1/27/99

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## FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 2

### ANALYSIS: (continued)

This fiscal note is predicated on the assumption that the Public Defender will provide representation in 80% of 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 further 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.

The litigation will include not only the underlying offense but will require an in-depth 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 \$40.0. 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 \$50.0. Witness travel and investigation will also be a significant cost.

Experience in Washington State indicates that these cases are regarded as second in importance only to capital cases by both parties. In fact, two lawyers are commonly assigned to each side in Washington. One 1997 case cost the defense \$68.5 for one year.

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 Alaska Supreme Court – and perhaps federal courts as well – have settled the fundamental issues, the average cost of appeals would probably drop from \$12.0 to \$7.0 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. Assuming legal costs of \$5.0 and expert costs of \$2.5 per annual review, these costs will accumulate year after year.

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO. SB 2**

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Department of 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 Component Serial No. #0694

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

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	154.7	154.7	154.7	154.7	154.7	154.7
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	9.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>174.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>	<b>165.7</b>

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

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

Estimate of any current year (FY99) 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 SB 2 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/Time 1/25/99 9:05 AM  
 Approved by Commissioner Margaret M. Pugh Date 1-25-99  
 Agency Department of Corrections

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# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB2

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

**Expenditures/Revenues:**

(Thousands of Dollars)

OPERATING	FY00	FY01	FY02	FY03	FY04	FY05
PERSONAL SERVICES	48.0	49.4	233.7	240.7	248.0	255.4
TRAVEL	4.5	4.6	8.8	9.0	9.3	9.6
CONTRACTUAL	619.0	1,239.1	1,845.6	2,442.1	3,043.7	3,645.2
SUPPLIES	5.0	5.2	10.3	10.6	10.9	11.3
EQUIPMENT	10.0		5.0	5.0		
LAND & STRUCTURES						
GRANTS, CLAIMS	40.0	140.2	243.4	349.7	459.2	572.0
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>726.5</b>	<b>1,438.5</b>	<b>2,346.8</b>	<b>3,057.1</b>	<b>3,771.1</b>	<b>4,493.5</b>

CAPITAL EXPENDITURES			Placeholder			
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CHANGES IN REVENUES ( )						
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**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	726.5	1,438.5	2,346.8	3,057.1	3,771.1	4,493.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
<b>TOTAL</b>	<b>726.5</b>	<b>1,438.5</b>	<b>2,346.8</b>	<b>3,057.1</b>	<b>3,771.1</b>	<b>4,493.5</b>

**POSITIONS:**

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

Estimate of any current year (FY99) 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 under AS 47.30.818, 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 and 12 by 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 DHSS 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: Leonard Abel, Ph.D. Phone: 907-269-7103  
 Division: Mental Health and DD Date: 01/22/99  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 1/22/99  
 Agency: Department of Health & Social Services

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**ANALYSIS (cont.):**

2. This fiscal note 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. Preliminary research indicates that such a contract would cost \$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 annual adjustment 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. If a contract cannot be successfully negotiated, the cost of this program will be significantly effected.

It should be noted, that even if DHSS contracts out of 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.

However, despite the inappropriateness of housing 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 probably 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 or FY02, we believe that the screening, evaluation, and review activities in this bill will require the employment of a full-time forensic psychologist. The staffing cost assumption are based on current State of Alaska salaries; costs are adjusted 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 probably 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 SB 2, 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 costs 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, and 5 hours for hearing preparation and testimony at \$300 per hour. Additionally, estimates include 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 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 DOC or Public Safety to defray the costs of transport.

8. This fiscal note assumes, beginning FY01, that the DHSS will approach the Legislature with 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 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.

Position Title Administrative Assistant		No. of Positio 1	Range/Step 13B/C	Bargaining Unit GGU	Bill No. SB2
Time Status FTE	Staff Months 12.0	Location AWA		Election District	
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>		Justification Position would be responsible for tracking all referrals from DOC, assemblage of all criminal and juvenile records, and all other documents relevant to the referral exams, attorney general reviews, and formal evaluations. In addition, position would be responsible for tracking all persons referred for reviews and evaluations, as well as, following commitment as a sexual predator.	
Salary		33.9			
Benefits		14.1			
Premium Pay					
Other					
<b>Total Personal Services (100)</b>		<b>48.0</b>			
100 Travel		2.5			
200 Contractual		5.0			
300 Supplies		5.0			
500 Equipment		5.0			
Other					
<b>Total Cost</b>		<b>65.5</b>			
<b>FUNDING SOURCE for TOTAL COST</b>					
1002 Federal Receipts					
1003 GF Match					
1004 General Fund					
1005 GF/Program Receipts					
1037 GF/Mental Health		65.5			
1007 I/A Receipts					
1061 CIP Receipts					
Other ( )					

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Institutions and Administration  
 COMPONENT: Mental Health & Dev. Dis. Admin.

**FY00**

Page: 1  
 Revision Date:

Position Title MH Clinician IV-Forensic Psychologist		No. of Positio 1	Range/Step 23-C	Bargaining Unit GGU	Bill No. SB2
Time Status FTE	Staff Months 12.0	Location EBA		Election District 50	
<b>TYPE of EXPENDITURE</b>		<b>AMOUNT</b>		Justification  This fiscal note assumes DHSS/API stall 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.	
Salary		65.1			
Benefits		20.8			
Premium Pay					
Other					
Total Personal Services (100)		85.9			
100	Travel	4.0			
200	Contractual	5.0			
300	Supplies	5.0			
500	Equipment	5.0			
Other					
Total Cost		104.9			
<b>FUNDING SOURCE for TOTAL COST</b>					
1002	Federal Receipts				
1003	GF Match				
1004	General Fund	104.9			
1005	GF/Program Receipts				
1006	GF/Mental Health Trust				
1007	I/A Receipts				
1061	CIP Receipts				
Other ( )					

**REQUEST for  
NEW POSITION**

AGENCY: Health and Social Services  
 BRU: Institutions and Administration  
 COMPONENT: Alaska Psychiatric Institute

**FY00**

Page: 2  
 Revision Date: \_\_\_\_\_

# FISCAL NOTE

BILL NO. SB 2

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

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

Dept. Affected: Administration  
 BRU: Legal and Advocacy Services  
 Component: Public Defender Agency

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)  
 Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	163.8	236.9	297.8	335.1	356.9	356.9
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	3.9	5.8	7.7	8.7	9.2	9.2
Equipment	19.5	8.5	9.1	9.8	10.4	4.2
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>306.9</b>	<b>344.3</b>	<b>432.1</b>	<b>476.7</b>	<b>503.8</b>	<b>497.6</b>

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	306.9	344.3	432.1	476.7	503.8	497.6
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER (Specify Type)						
<b>TOTAL</b>	<b>306.9</b>	<b>344.3</b>	<b>432.1</b>	<b>476.7</b>	<b>503.8</b>	<b>497.6</b>

Estimate of any current year (FY 99) 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/Time: 1/22/99 2:00 PM

Approved by Commissioner: Robert Poe, Jr.  
 Agency: Department of Administration

Date: 1/22/99

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## FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 2

### 1999 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. Recently, 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" who 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. Trials in these cases will be expensive and difficult. Experienced attorneys will need to handle them. 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

## FISCAL NOTE

STATE OF ALASKA

BILL NO. SB 2

### 1999 LEGISLATIVE SESSION

secretarial) will be needed because the cases involve determinations based on the life history of the person on trial.

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.

In last year's legislative session, the Department of Corrections estimated that 160 persons will be released each year who have committed sexually violent offenses. The Department of Law (DOL) estimated that petitions would 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 FY00. This team would be based in Anchorage. In FY01 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 FY02, PDA would need to add an Attorney II to the team. In FY03, another Legal Secretary will need to be added to handle the increased scheduling and litigation support. In FY04 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. SB 2**

**1999 LEGISLATIVE SESSION**

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

# FISCAL NOTE

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 2

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

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

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Personal Services	300.2	356.3	412.5	468.8	506.4	506.4
Travel	6.0	6.2	6.4	6.6	6.7	6.7
Contractual	145.5	110.3	123.1	132.0	135.9	135.9
Supplies	4.6	5.5	6.3	7.2	7.8	7.8
Equipment	26.0	6.5	0.0	13.0	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>482.3</b>	<b>484.9</b>	<b>548.4</b>	<b>627.4</b>	<b>683.3</b>	<b>656.8</b>

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	482.3	484.9	548.4	627.4	683.3	656.8
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>482.3</b>	<b>484.9</b>	<b>548.4</b>	<b>627.4</b>	<b>683.3</b>	<b>656.8</b>

Estimate of any current year (FY99) cost:

**POSITIONS**

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

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

SB 2 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 bill. 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 *Joan M. Kasson*  
Division Attorney General's Office

Phone 465-5370

Date/Time 1/22/99, 9:11 AM

Approved by Commissioner Bruce M. Botelho, Attorney General

Date 1/22/99

Agency Department of Law

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The bill further provides each committed individual an opportunity to petition for release and the Department of Health and Social Services must conduct an examination of the person's mental condition annually. These petitions could result in a jury trial, if the court finds there is probable cause that the person's condition has so changed that they are safe to be released. The Department of Law assumes that in the first two years, all committed individuals would petition for release. Over time, the number of petitions requiring a hearing would decrease relative to the total population of committed sexually violent predators. The bill 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 so 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, the department must screen incoming cases. 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 preparation 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, FY00. The department's standard cost schedule for FY00 is \$133,900 per full-time equivalent attorney, and \$90,000 per FTE paraprofessional. The cost schedule includes all normal overheads including copies, telecommunication, leases, and clerical support at a rate of one clerical position for each three professional positions. One-time new equipment costs are not included in the schedule, and are added separately in this fiscal analysis for all positions, including clerical support positions.

In the second year, the first 4 committed individuals will be subject to annual review, and may petition for release. The annual review process will require less time than the original commitment process. The department assumes that one half-time attorney will

be able to handle 4 of these cases per year. Each year, one more half-time attorney will be needed as the number of civilly committed individuals grows, until year 5, when petitions are assumed to level off.

Paraprofessional resources are added at a rate of one for every two attorneys. And expert witness costs are assumed to be less than at trial, but still necessary, and are included at a rate of \$1.0 per case.

#### APPELLATE UNIT

In the first two years particularly, as discussed in the previous section, every civilly committed offender is assumed to appeal the commitment orders and denials of petitions for release. This will be 4 appeals in year 1 and 4 in year 2. After the first two years, the appellate caseload is assumed to decline relative to the total population of committed individuals. The department believes that between those newly committed each year, and those already committed, one attorney will have a half-time caseload. One attorney is added in FY00 with associated support costs.

There will be no expert fees in the appeals process, but transcript 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 FY00 (\$3,917 per half-attorney position, \$2,633 per half-paraprofessional). To avoid double counting, the \$14,383, which would be included as a base cost subsequent years, is reduced each year by the amount of lease overhead included in each new position's rate, until lease costs are fully recovered through the rate in FY04.

STATE OF ALASKA  
1999 LEGISLATIVE SESSION

BILL NO. SB 2

		FTE	COST	FY00	FY01	FY02	FY03	FY04	FY05
<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	133.9	133.9	133.9	133.9	133.9	133.9	133.9
	Paraprofessional	1	90.0	90.0	90.0	90.0	90.0	90.0	90.0
	Legal Secretary	1							
Yr 2	Attorney	0.5	133.9		67.0	67.0	67.0	67.0	67.0
Yr 3	Attorney	0.5	133.9			67.0	67.0	67.0	67.0
Yr 4	Attorney	0.5	133.9				67.0	67.0	67.0
	Legal Secretary	1					0.0	0.0	0.0
Yr 5	Paraprofessional	0.5	90.0					45.0	45.0
	One-time equipment purchases			19.5	6.5		13.0	6.5	0.0
	All lease costs to FY00; base adjusted for rate recovery			14.4	10.5	6.5	2.6	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
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	133.9	133.9	133.9	133.9	133.9	133.9	133.9
	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
<b>TOTAL COSTS</b>				<b>482.3</b>	<b>484.9</b>	<b>548.4</b>	<b>627.4</b>	<b>663.3</b>	<b>656.8</b>
<u>Trial Unit</u>	PFT attorney			1.0	1.5	2	2	2	2
	PPT attorney						1	1	1
	PFT paraprofessional			1	1	1	1	1	1
	PPT paraprofessional							1	1
	PFT legal secretary			1	1	1	2	2	2
<u>Appellate Unit</u>	PFT attorney			1	1	1	1	1	1
<b>TOTAL PFT</b>				<b>4</b>	<b>5</b>	<b>5</b>	<b>6</b>	<b>6</b>	<b>6</b>
<b>TOTAL PPT</b>							<b>1</b>	<b>2</b>	<b>2</b>

Re: SB 2

NATMI  
SCOT L. WHEAT  
PO BOX 2353  
HOMER, AK. 99603-2353

101-25-99 Monday  
ph/fax: 235-6840

"An act providing for civil commitment of sexually violent predators."

Teleconference at L.I.O. Mon. 25<sup>th</sup>, 1999 @ 1:30pm.

I would be here in person but for a meeting I must attend in Anch. at 5pm.

My main concern is that Sexual Predators are not mentally ill, they are criminals and therefore under the purview of D.O.C./Judiciary. Mental Illness, as defined in MHT Trust settlement, does not include this population, so no M.H. money, beds, or services should be provided them. There is no known treatment for them.

Title 47 usually places a person at API, the only state run facility outside D.O.C. for treatment of mental illness. This must not happen.

This would be a bastardization of psychiatry if mental illness is mentioned in this bill. Does the American/Alaskan Chapter of the

Association of Psychiatrists support this bill as written? Or any other mental health related group? Thank you for your time.

Faxed 1/25  
(9) SWB

Scott Wheat

1/25/99

Re: SB 2 Civil commitment of  
sexually violent predators

Dear Senator Torgeson:


As a Homer/Kenai Peninsula resident who is very concerned about mental health issues that come before the legislature the fast tracking of SB 2 has caught my attention.

VOTE NO on SB 2.

We talked in December at your Homer office. The language in this bill has been altered to omit Alaska Psychiatric Institute. The current bill vaguely refers to commitment to a state run mental health facility. There is no room on the forensic unit at API.

Please remember this is a criminal behavior not a mental illness. I can appreciate Sens. Halford, Green, et al for wanting to protect society from these vicious criminals who shatter lives. over & over. However, unless mental illness is divorced from this bill you will usurp scarce mental health dollars into this scheme & leave those needing treatment on a wait list they & the state cannot afford.

Sincerely, J. VOTE,  
Colleen A. Behen  
PO Box 2353 Homer 99603



# ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary  
 Committee on Senate Bill No 2 Dated 1/19/99  
Committee Name  
Bill / Subject

I agree with the intent of the Bill, but I definitely do not want to add the stigma and danger of housing or treating repeated sexual offenders with those receiving psychiatric treatment. I suggest that you carefully evaluate the financial implications of building new facilities and staffing additional programs for a supposedly small group of repeat sexual offenders.

We want to minimize central facilities and treat psychiatric patients in local communities whenever feasible. The same logic should apply to sexual offenders, and using secure prison grounds for housing those people locally makes a lot more sense.

I do not want sexual offenders associated with people having true mental illness

SIGNED: Stephen H. Karling  
 Testifier

Self  
 Representing

POB 84180 Fairbanks, AK 99708-4680  
 Address / Phone Number (907) 479-4944



ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary  
Committee Name  
 Committee on Senate Bill 2 Dated 1-25-99  
Bill / Subject

This is a public safety issue not a mental health issue. SVP's need to be housed in a facility run by DOC. We cannot house a heinous victimizer with vulnerable people who are in a hospital (API) for treatment for a serious mental illness, which are biological brain disorder.

Mental health funds cannot be used on this population who do not fit the clinical definition of mental illness, Adding them to beneficiary group will dilute already inadequate funds for serious mental illness.

I am also concerned that classifying SVPs as mentally ill will increase stigma towards those who courageously live with a serious mental illness. The majority of those people are less violent than the public as a whole but they are very vulnerable to victimization.

SIGNED: Janette Grant  
Testifier

NAMI Alaska + NAMI Fairbanks  
Representing

1369 Ballaine Rd, Fbks, AK 99709  
Address / Phone Number  
907-455-6263



# ALASKA STATE LEGISLATURE



## TELECOPY COVER SHEET Fairbanks Legislative Information Office

Office - (907) 452-4448

Fax - (907) 456-3346

TO: Mel (Sen. Judiciary) FAX: \_\_\_\_\_ PHONE: \_\_\_\_\_

FROM: Fly LIO PHONE: \_\_\_\_\_

INSTRUCTIONS: Written testimony for SB2  
filed/forwarded on 1/25/99 @ 1:30 p.m.

RECEIVED: Date \_\_\_\_\_ Time \_\_\_\_\_

SENT: Date 1/25/99 Time \_\_\_\_\_

DISPOSAL OF ORIGINAL: Discard \_\_\_\_\_ Hold for Pickup \_\_\_\_\_

NUMBER OF PAGES: 4 (Not counting cover sheet)

SENT BY: Fly

As I read through this bill, I'm concerned about the innuendo that all sexual predators are mentally ill - or that all mentally ill are sexual predators.

Another concern I have is for the victims of sexual offenders - that if there is a trial to (over) →

SIGNED: Kris Jenkins  
Testifier

Self (consumer)  
Representing PO Box 55268  
North Pole, Alaska 99705

Address / Phone Number wk ph: 459-7272  
hm ph: 488-7361

cont.

determine whether a person is a sexual predator - my hope is that the ~~hearing~~ hearing will be based on facts already available - and not become another opportunity to have women, or children be - revictimized.

Kris Jenkins

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Public Testimony for SB-2A  
Monday January 25th, 1999, 1:30 pm  
Beth LaCrosse, M.S.

My name is Beth LaCrosse, and I am the Board Vice-President of NAMI Alaska (formerly known as the Alaska Alliance for the Mentally Ill). In addition, I serve on the Alaska Mental Health Board. I also have a psychiatric disability. I am here to testify on SB-2A by proxy. I recognize that there are legitimate concerns for protecting the general public from sexually violent predators. However, I do not believe that SB-2A is an acceptable solution to this problem.

The fact is, most sexually violent predators are refractive to known medical and psychiatric treatment. According to the American Psychiatric Association's (APA) Task Force on Sexually Dangerous Offenders, only those sexual offenders who have been diagnosed with paraphilic disorders are candidates for treatment. The APA's Task Force has questioned the notion that treatment is a primary purpose of bills such as SB-2A. They argue that if treatment was the aim, then commitment would not be delayed until sexually violent predators have completed their sentences.

The Task Force concluded that the real purpose of sex offender commitment laws is the "preventative detention of sex offenders who have completed their criminal sentence". I do not disagree that high risk sexually violent predators need to be detained after the completion of their criminal sentence, if they have been found to be a danger to the public. I do disagree with the intent that these sexually violent predators should be committed to the Alaska Psychiatric Institute.

The Supreme Court is sending a similar message to states considering sex offender commitment laws with their ruling on Kansas v. Hendricks. That message is: To avoid constitutional uncertainty, civil commitment

should be reserved for people with a legitimate psychiatric disability who have the ability to respond to treatment.

The National Association of State Mental Health Program Directors (NASMHPD) caution that the increased civil commitment of high risk sexually violent predators could "skew the entire mission of state mental health agencies and drain resources from services for persons with diagnosable mental illness". In fact, NASMHPD has issued a policy statement urging that "every effort should be made to fund, administer, and provide services for sexually violent predators outside the state mental health agency". I firmly believe that the detention of high risk sexually violent predators is a public safety issue and should be addressed with public safety funds, not mental health monies.

Financially, committing sexually violent predators to a forensic unit at API at the completion of their sentence would cost the state \$100 thousand to \$200 thousand dollars per patient per year. In comparison, it only costs \$25 to \$35 thousand dollars per patient per year to commit them to a mental health facility located on the grounds of a correctional center. Alaska currently has 3500 registered sex offenders. How many of these offenders qualify as "violent" and "sexual" predators is unknown. It would definitely save the state money to house sexually violent predators at a mental health facility located on the grounds of a correctional center, much like that found at the Highland Mountain Correctional Center.

SB-2A states that the legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for existing involuntary commitment procedures. This group of sexually violent predators has a high risk of re-offending, making them a danger to the general public.

Later the bill states that sexually violent predators generally "have anti-social personality features that are not amenable to existing treatment methods for mental illness, and that the prognosis for curing this group of sexually violent predators is poor...". If these sexually violent predators are refractive to medical and psychiatric treatment, then why should they be placed in a psychiatric hospital at a significantly higher cost to the state. The answer to that question is they should not be hospitalized! One strength of SB-2A is that it leaves the door open for the department to confine high risk sexually violent predators in a mental health facility within or on the grounds of a correctional center.

In summary, I would like to say this: I believe that these high risk sexually violent predators should be confined after the term of their criminal sentence is complete if they have been found to be a danger to the public. I must emphasize that these high risk sexually violent predators do NOT belong in the Alaska Psychiatric Institute, but rather in a separate mental health facility located on the grounds of a correctional center. I must also emphasize that these sex offenders are a public safety issue, and as such should be funded by the Department of Public Safety and not by the Department of Mental Health and Developmental Disabilities.

For 2/25/99 Teleconference 465 3922 Juneau  
 1:30 Today Public Opinion Message

Anchorage Legislative Information Office (LIO)  
 • 716 W 4<sup>th</sup> Avenue, Suite 200, Anchorage, AK 99501 • Phone: 258-8111 Fax: 268-1801 269-0229

This form MUST be completely filled out. You may phone, fax, or deliver your P.O.M. to any LIO.

From: Please PRINT the information below. Robin Bowen / Suzanne Olivieri

No., Mr., Mrs...	First name W.A.S.P.	Initials —→	Last name We Against Sexual Predators	No., Mr., Mrs...
Mailing address	PO Box 91788 Anchorage AK 99509-1788			Zip code
Residence (street) address if different from mailing address				Zip code
Direct & telex phone number B22-1517	Group affiliation (if applicable) WASP	Signature RB Bowen	Date 1-25-99	

To: Put a ✓ in the appropriate box(es).

Committees		House members		Senate members	
H or S					
<input type="checkbox"/>	Community & Regional Affairs (cra)	<input type="checkbox"/>	Austerman (aue)	<input type="checkbox"/>	Adams (ada)
<input type="checkbox"/>	Finance (fin)	<input type="checkbox"/>	Barnes (bar)	<input type="checkbox"/>	Donley (don)
<input checked="" type="checkbox"/>	Health, Ed., & Social Services (hea)	<input type="checkbox"/>	Berkowitz (ber)	<input type="checkbox"/>	Duncan (dun)
<input checked="" type="checkbox"/>	Judiciary (jud)	<input type="checkbox"/>	Brice (bri)	<input type="checkbox"/>	Ellis (eli)
<input type="checkbox"/>	Labor & Commerce (l&c)	<input type="checkbox"/>	Bunde (bun)	<input checked="" type="checkbox"/>	Green (gre)
<input type="checkbox"/>	Resources (rea)	<input type="checkbox"/>	Cowdery (cwo)	<input checked="" type="checkbox"/>	Halford (hal)
<input type="checkbox"/>	Rules (ria)	<input type="checkbox"/>	Craft (cro)	<input type="checkbox"/>	Hoffman (hof)
<input type="checkbox"/>	State Affairs (sta)	<input type="checkbox"/>	Davies (dav)	<input type="checkbox"/>	Kelly, T. (kel)
<input type="checkbox"/>	Transportation (tra)	<input type="checkbox"/>	Davis (dag)	<input checked="" type="checkbox"/>	Leman (lem)
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		<input type="checkbox"/>	Ellon (ell)	<input type="checkbox"/>	Pamell (par)
		<input type="checkbox"/>	Ellon (ell)	<input type="checkbox"/>	Pearce (par)
		<input type="checkbox"/>	Ellon (ell)	<input type="checkbox"/>	Phillips, R. (phi)
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		<input type="checkbox"/>	Ellon (ell)	<input type="checkbox"/>	Wilken (wik)

Subject: Fill out the boxes below OR enter a Subject.

HB or SB SB	Bill number 2	and check one:	<input checked="" type="checkbox"/> Support	<input type="checkbox"/> Oppose	<input type="checkbox"/> Amend	OR enter a general Subject (LIO staff may modify):
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Message: Your PRINTED message cannot exceed 50 words or contain any vulgar language.

Please	support	SB 2	for	the	3
Children	of	Alaska,	they	deserve	10
no	less.	Equipping	our	judicial	14
system	with	concise	clear	laws	20
ensured	a	greater	level	of	28
safety	for	our	children.	Thank	30
you	for	your	continued	diligence	38
In	putting	the	children	first	40
as	evident	In	this	excellent	45
bill	concerning	Violent	Predators		50

# ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200  
Anchorage, Alaska 99501

Tel: (907) 264-4400  
Direct line: 264-4412  
Fax: (907) 269-5476  
e-mail: Blair\_McCune@admin.state.ak.us

## FAX

TO: Ms. Juli Lucky, Office of Sen. Halford  
Fax No.: 465-4928

FROM: Blair McCune, Deputy Public Defender



RE: SB 2 comments

DATE: January 26, 1999

=====

Enclosed are the comments I said I'd send.

Thanks for considering these.

# MEMORANDUM

## ALASKA PUBLIC DEFENDER AGENCY

900 West Fifth Avenue, Suite 200  
Anchorage, Alaska 99501

Tel: (907) 264-4400  
Direct line: 264-4412  
Fax: (907) 269-5478  
e-mail: Blair\_McCune@admin.state.ak.us

TO: Hon. Rick Halford  
Senate Judiciary Committee

Hon. Johnny Ellis  
Senate Judiciary Committee

FROM: Blair McCune, Deputy Public Defender *Blair McCune*

RE: SB 2 – Civil Commitment of Sexual Predators

DATE: January 26, 1999

=====

I was listening in on the teleconference in Anchorage during the hearing on SB 2. I'll be available to testify and answer questions on Wednesday, but I had some more technical comments that I thought I'd submit prior to the hearing.

I've represented a number of clients in mental health commitments and insanity defense cases over the years. I hope these suggestions will be helpful.

### Mental Illness Definition

The discussion about the definition of "mental illness" (page 9, line 6) was very interesting. I was concerned that this definition might be overbroad. I have attached a compilation of "mental abnormality" and "mental disorder" definitions from other states' statutes. As you can see, SB 2's definition is much broader than any of these.

SB 2's definition is taken from AS 12.47.090, which reads as follows:

(2) "mental illness" means any mental condition that increases the propensity of the defendant to be dangerous to the public peace or safety; however, it is not required that the mental illness be sufficient to exclude criminal responsibility under AS 12.47.010, or that the mental illness presently suffered by the defendant be the same one the defendant suffered at the time of the criminal conduct.

An example will show the breadth of AS 12.47.090. If someone has headaches (a mental condition) and those headaches increase the person's tendency to be dangerous (increased propensity), the person could be "mentally ill" under this definition. →

I believe drawing the SB 2 definition from AS 12.47.090 is not a good idea. The definition of "mental illness" in AS 12.47.090 only applies to that particular statute. AS 12.47.090 defines mental illness in extremely broad language so that a person who seeks to be released from a commitment after a finding of Not Guilty By Reason of Insanity (NGI) cannot be released merely on the grounds that he or she has been cured of the mental illness on which the NGI defense was based. Consequently, "mental illness" in AS 12.47.090 is probably the broadest definition of mental illness or disease in the Alaska Statutes.

In contrast, the definition of "mental disease or defect" in AS 12.47.130(5) is a much narrower definition. It is the definition used to determine whether someone has a serious enough mental illness to claim an insanity defense. The definition of "mental illness" in AS 47.30.915(12) for civil mental health commitments is also much narrower.

This bill walks a constitutional tightrope. In Kansas v. Hendricks, the United States Supreme Court held that a person committed under these statutes must be both "mentally ill" and dangerous. If the definition of mental illness is too broad, this statute will run into problems in the courts.

Finally, there were several comments from the National Alliance for the Mentally Ill about the use of the term "mental illness" to describe the people this bill should target. The legislature might be a lot better off using a term like "mental abnormality" or "sexually disordered person". It would be a lot less offensive to the many people who suffer from mental illnesses but are in no way dangerous to the public.

### Sexually Violent Offense Definition

Another definitional problem is found in the definition of "sexually violent offense" (page 8, line 18). Again, this term is very broadly defined. This bill is intended to target "sexual predators." I believe that the public would think that a "sexual predator" would be one of the worst type of serial rapists or rabid pedophiles.

However, the bill casts a much broader net. To be a "sexual predator," 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." It's obviously a serious crime (a class C felony) to attempt to have sexual contact with someone. However, I don't think we would think some misguided individual

who merely attempts, unsuccessfully, to have sexual contact with someone else is a "sexual predator." (Sexual abuse of a minor in the third degree AS 11.41.438 is included. Again, this is a class C felony, but it did not seem to me that the sexual activity outlawed by this statute would be heinous sexual predation.)

I would suggest that "sexually violent offenses" be limited to serious crimes such as rape (sexual assault in the first degree), serious child molestation (sexual abuse of a minor in the first degree), and kidnapping.

I hope these comments have been helpful. I'll be available Wednesday to answer any questions the committee might have.

### REQUIRED MENTAL CONDITION

This chart outlines the statutory definitions of the various mental conditions required for commitment under the states' sexually violent predator commitment statutes.

STATE	DEFINITION OF MENTAL CONDITION REQUIRED	STATUTE
Arizona	Mental disorder means a paraphilia, personality disorder or conduct disorder or any combination of paraphilia, personality disorder and conduct disorder that predisposes a person to commit sexual acts to such a degree as to render the person a danger to the health and safety of others.	ARIZ. REV. STAT. ANN. § 36-3701(5) (as amended by S.B.1277 43 <sup>rd</sup> leg.(West 1998)) (formally encoded as §13-4601(2)(West Supp. 1997)).
California	Diagnosed mental disorder includes a congenital or acquired condition affecting the emotional or volitional capacity that predisposes the person to the commission of criminal sexual acts in a degree constituting the person a menace to the health and safety of others.	CAL. WEL. & INST. CODE § 6600(c)(West Supp. 1998).
Florida	Mental abnormality means a mental condition affecting the person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses.	FLA. STAT. ANN. § 916.32(5) (H.B. 3327 (1998)).
Illinois	Mental disorder means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.	725 ILL. COMP. STAT. ANN. § 207/5(b) (West Supp. 1998).
Kansas	Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.	KAN. STAT. ANN. § 59-29a02(b) (as amended by S.B. 671 77 <sup>th</sup> Leg. (1998)).
Minnesota	There are two mental conditions provided. (1)Sexual psychopathic personality: the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal contact with respect to sexual matters. if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons. (2) Sexually dangerous person is a person who has engaged in harmful sexual conduct and has manifested a sexual, personality, or other mental disorder or dysfunction, and as a result is likely to engage in acts of harmful sexual conduct.	MINN. STAT. § 253B.02 (18)(b),(c) (1997).
North Dakota	Sexually dangerous individual means an individual who is shown to have engaged in sexually predatory conduct and who has a	N.D. CENT. CODE § 25-03.3-01(7) (Supp. 1997).

STATE	DEFINITION OF MENTAL CONDITION REQUIRED	STATUTE
	congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental safety of others.	
Washington	Mental abnormality means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such a person a menace to the health and safety of others.	WASH. REV. CODE § 71.09.020(2) (1997).
Wisconsin	Mental disorder means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.	WIS. STAT. ANN. § 980.01(2) (West Supp. 1997).



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

State Capitol  
Juneau, Alaska  
99801-1182  
Phone (907) 465-4958  
Fax (907) 465-4928

P.O. Box 670190  
Chugiak, Alaska 99567  
Phone (907) 694-4958  
Fax (907) 694-0549

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

## Sponsor Statement Senate Bill 2

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

In the past, we have been powerless to keep dangerous sexual predators, who have not been rehabilitated and are very likely to re-offend, from being released from custody into our communities. Senate Bill 2 would provide a mechanism to help protect our citizens from society's most heinous sexual predators: civil commitment.

Many states, including Arizona, California, Illinois, Kansas, Minnesota, New Jersey, Washington and Wisconsin, have already enacted civil commitment laws. SB 2 is based on Kansas's statute, which was upheld by the U.S. Supreme Court in 1997 (*Kansas v. Hendricks*). 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 highly likely to continue their sexually violent behavior.

SB 2 will allow the state to confine the most serious sexual predators, such as pedophiles, who, as statistics show, have an extremely high recidivism rate. 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. The small group of violent sexual offenders that would be affected by this bill poses a real threat, particularly to the women and children of our state. SB 2 would provide a valuable tool to prevent our citizens from being repeatedly terrorized by these known sexual predators.

Similar legislation was considered by the 20th Legislature. The measure passed the Senate unanimously and completed the committee process in the House before dying on the House calendar on the final day of session.

**SPONSOR  
STATEMENT**

## PHASE ONE: SCREENING

### STEP 1 AGENCY: DOC INITIAL SCREENING

- 90 days before release
- Review records of sex offenders who meet criteria
- Send materials to DHSS

### STEP 2 AGENCY: DHSS PREFILING SCREENING

- Prefiling Screening
- Gather relevant documents – including adult and juvenile records
- Interview offender, if possible
- Apply screening criteria and risk factors
- Send conclusions to DOL and notify DOC of those that qualify as sexual predators

### STEP 3

#### AGENCY: DOC DOCUMENT PREPARATION

- Collect additional information on offenders DHSS concludes are sexual predators
- Send information to DOL

#### AGENCY: DOL EVALUATE REFERRALS

- Review files, records and other relevant documents
- Determine what evidence would be admissible
- Determine whether there is sufficient proof to convince a jury that the offender is a sexual predator

### STEP 4 AGENCY: DOL DRAFT PETITIONS

- File petitions
- Prepare for probable cause hearing

## PHASE TWO: COURT PROCEEDINGS

### STEP 5:

**AGENCY: DOL**  
**PROBABLE CAUSE HEARING**

**AGENCIES: PDA & OPA**  
**APPOINTED TO REPRESENT RESPONDENT**

### STEP 6

**AGENCY: DHSS**

- Evaluate respondents for whom the court determined there was probable cause
- House respondents pending trial

### STEP 7

**PREPARE FOR TRIAL**

**AGENCY: DOL**

- Motion practice – constitutional issues, legal issues, case-specific issues
- Hire experts, meet with witnesses and experts, other preparations for trial

**AGENCIES: PDA & OPA**

- File motions
- Hire experts
- Other preparations for trial

### STEP 8

**AGENCIES: DOL, PDA & OPA**  
**JURY TRIAL**

- Present witnesses and experts
- Jury determines whether state has proved “beyond a reasonable doubt” that respondent is a sexual predator

### STEP 9

**AGENCIES: DOL, PDA & OPA**  
**PLACEMENT DETERMINATION**

- Court determines whether safe alternative to confinement exists. If not, respondent is sent to secure facility and treated

## PHASE THREE: APPEAL AND ANNUAL REVIEW

### ONGOING RESPONSIBILITIES: STEP 10:

**AGENCY: DOL**  
Defend Commitment on  
appeal in state court and  
possibly U.S. Supreme  
Court

**AGENCY: DHSS**  
Provide secure facility  
and treatment

**AGENCIES: PDA & OPA**  
Appeal commitment

### STEP 11

**AGENCY: DHSS**

#### CONDUCT ANNUAL EVALUATION

- Commissioner authorizes filing of release petition if respondent no longer presents danger
- If believe still a danger, respondent notified and may request hearing

### STEP 12

**AGENCIES: DOL, PDA & OPA**

#### RELEASE HEARING

- Parties hire experts
- Court determines whether state has proved beyond a reasonable doubt that respondent still a sexual predator
- Court may deny second or successive petition for release by respondent without a hearing if it determines that petition is frivolous

### ONGOING RESPONSIBILITIES:

**AGENCIES: PDA & OPA**

Appeal denials of petitions for release

**AGENCY: DOL**

Defend appeals of denial of petitions for  
release

BILL: SB 216      SHORT TITLE: CIVIL COMMITMENT OF SEXUAL PREDATORS  
BILL VERSION: HCS CSSB 216(JUD)  
SPONSOR(S): SENATOR(S) HALFORD, Green, Donley, Taylor, Wilken, Leman,  
Duncan, Lincoln, Ward, Mackie; REPRESENTATIVE(S) Ryan, Croft, Dyson

CURRENT STATUS: 3RD RDG,5/12 CAL(H)      STATUS DATE: 5/11/98

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

Jrn-Date	Jrn-Page	Action
1/12/98	2166	(S) PREFILE RELEASED - 1/9/98
1/12/98	2166	(S) READ THE FIRST TIME - REFERRAL(S)
1/12/98	2167	(S) JUD, FIN
4/22/98	3432	(S) JUD RPT CS 2DP 2NR    SAME TITLE
4/22/98	3432	(S) DP: TAYLOR, MILLER; NR: ELLIS, PEARCE
4/22/98	3432	(S) FNS TO SB & CS (ADM-2, COR, LAW,
4/22/98	3432	(S) DHSS, COURT)
4/23/98	3455	(S) CORRECTED FNS (NO. 2/ADM, NO. 4/LAW)
4/27/98	3514	(S) FIN RPT 2DP 3NR (JUD)CS
4/27/98	3514	(S) DP: PARNELL, PHILLIPS; NR: PEARCE,
4/27/98	3514	(S) SHARP, TORGERSON
4/27/98	3514	(S) PREVIOUS FNS (ADM-2, COR, LAW,
4/27/98	3514	(S) DHSS, COURT)
4/29/98	3596	(S) RULES TO CALENDAR 4/29/98
4/29/98	3599	(S) READ THE SECOND TIME
4/29/98	3599	(S) JUD CS ADOPTED UNAN CONSENT
4/29/98	3599	(S) ADVANCED TO THIRD READING UNAN CONSENT
4/29/98	3600	(S) READ THE THIRD TIME CSSB 216(JUD)
4/29/98	3600	(S) COSPONSOR(S): DUNCAN, LINCOLN, WARD,
4/29/98	3600	(S) MACKIE
4/29/98	3600	(S) PASSED Y20 N-
4/29/98	3608	(S) TRANSMITTED TO (H)
4/30/98	3354	(H) READ THE FIRST TIME - REFERRAL(S)
4/30/98	3354	(H) JUDICIARY, FINANCE
5/09/98	3676	(H) JUD RPT HCS(JUD) 1DP 3NR
5/09/98	3677	(H) DP: GREEN; NR: ROKEBERG, BUNDE, JAMES
5/09/98	3677	(H) 4 S FNS (ADM, COR, DHSS, COURTS) 4/22/98
5/09/98	3677	(H) 2 SENATE FNS (ADM, LAW) 4/23/98
5/09/98	3677	(H) REFERRED TO FINANCE
5/11/98	3844	(H) RULES TO 2ND SUPPLEMENTAL CAL 5/11/98
5/11/98	3844	(H) MOVED TO BOTTOM OF THE CALENDAR
5/11/98	3846	(H) FIN REFERRAL WAIVED
5/11/98	3847	(H) READ THE SECOND TIME
5/11/98	3847	(H) JUD HCS ADOPTED UNAN CONSENT
5/11/98	3847	(H) ADVANCED TO THIRD READING 5/12 CALENDAR
5/11/98	3849	(H) CROSS SPONSOR(S): RYAN, CROFT, DYSON
5/12/98	3940	(H) NOT TAKEN UP