ALASKA LEGISLATURE COMMITTEE FILES 8672

9241 HOUSE JUDICIARY

ANALYSIS (cont.):

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

6. This fiscal note assumes that API will have access to forensic experts for consultative purposes, assuming $250 per hour for up to 10 hours per month ($250 per hour X 10 hours X 12 months, equals $30.0)

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

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

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

FISCAL NOTE

..J. 4 **CORRECTED**

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	300 5	357 1	413.7	470 3	507 4	507 4
Travel	5.9	6 1	6.3	6 4	6 6	6 6
Contractual	142.6	107 0	119.3	127 7	130.9	130.9
Supplies	4 9	5 8	6.7	7 6	8 2	8 2
Equipment	26 0	6 5	0.0	13.0	6 5	0 0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**479.9**	**482.5**	**546.0**	**625.0**	**659.6**	**653.1**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	479 9	482.5	546.0	625.0	659 6	653 1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	**479.9**	**482.5**	**546.0**	**625.0**	**659.6**	**653.1**

Estimate of any current year (FY98) cost: _____

POSITIONS

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

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

CSSB 216 (JUD) Work Draft B provides a method for the civil commitment of sexually violent predators upon completion of their criminal sentence. The Department of Law would have the responsibility of seeking civil commitment through the courts.

The Department of Corrections estimates that approximately 160 sex offenders would likely be released each year. The Department of Law anticipates filing for civil commitment on approximately 2 to 3 percent in light of the narrow definition of "sexual predator" contained in this work draft. For the purposes of this fiscal analysis, the department assumes that it would seek civil commitment for 4 to 5 offenders a year. Further, all cases would go to trial, and 4 individuals would actually be committed.

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

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(Rev 9/97) 98fnform xls/OMB

The bill further provides each committed individual an opportunity to petition for release and the Department of Health and Social Services must conduct an examination of the person's mental condition annually. These petitions could result in a jury trial, if the court finds there is probable cause that the person's condition has so changed that they are safe to be released. The Department of Law assumes that in the first two years, all committed individuals would petition for release. Over time, the number of petitions requiring a hearing would decrease relative to the total population of committed sexually violent predators, as the bill further provides for denial of a petition without a hearing when it is a second or subsequent petition for release and a previous petition had been found to be frivolous or new facts are not presented showing the person's condition had so changed since the last petition that the person was safe to be a large. The number of petitions is assumed to level off at 10 to 12 per year.

Offenders committed under this bill would have the right to appeal the court's decision. The department again assumes that initially, all individuals committed would appeal their commitments and orders denying release. But as case law is established, the number of appeals would diminish relative to the growing population of committed individuals, to approximately 8 appeals per year.

TRIAL UNIT

In order to obtain an order for civil commitment of a sexually violent predator, the Department of Law would file a petition with the Superior Court. Upon the determination by the court, after a hearing that probable cause exists to believe the person named in the petition is a sexually violent predator, the case would proceed to trial. The court, or a unanimous jury, must find, beyond a reasonable doubt, that the person is a sexually violent predator.

Prosecution of these cases would involve a similar level of work to prosecuting a complex felony criminal case.

First, incoming cases must be screened by the department. It is likely that Corrections and Health and Social Services will take a conservative approach on the cases they refer to the Attorney General, and refer more than the Department of Law can successfully pursue. Each case must be examined, and a decision made on whether civil commitment will be sought.

Once a petition is filed, the next step will be the probable cause hearing. Ordinarily, this hearing is used by the defense as a discovery mechanism to hear from the state's witnesses and see the state's evidence in order to later rebut. The department assumes the same will be true in the civil commitment proceedings. The hearing will likely last an average of two days, and involve a week of preparation. Discovery, depositions, other pre-trial preparations and the

trial itself are assumed to require an average of two and one-half weeks per case of attorney time.

From the probable cause hearing through trial, approximately one month of attorney time will be required. One attorney is assumed to take five cases to trial per year, a caseload of half-time litigation in civil commitment, and in addition, participate in the on-going screening process of many more cases.

Paraprofessional resources would also be necessary for witness coordination, investigation, and records coordination. To prove some elements of these cases, the department may have to find the investigating officers and victims of the offense the person was convicted for criminally. The original case may be several years old. As with the attorneys, each case is assumed to take approximately one month of a paraprofessional's time.

Typically, each case would require the services of at least one expert witness. To the extent it could, the department would rely on experts employed by the State of Alaska, however, they may not be viewed as sufficiently objective, and outside experts would be retained. The experts would need time to review the background of the offender, their institutional record, and psychological history. The cost per case for experts is assumed to be $5.0, for all cases except the first one or two.

The first case in which civil commitment is sought will involve constitutional challenges. These cases are particularly expensive and experts will be needed to uphold the legislature's findings. The department assumes expert costs in the first case will reach $50.0.

Other direct case costs include witness travel and per diem at $1.0 per case, and deposition and court reporter costs at $1.0 per case.

As discussed in the previous section, this fiscal analysis assumes 5 cases per year will go to trial. One attorney and one paraprofessional position will be able to handle all the cases the first year, FY99. The department's standard cost schedule for FY98/99 is $133,500 per full-time equivalent attorney, and $88,500 per FTE paraprofessional. The cost schedule includes all normal overheads including copies, telecommunication, leases, and clerical support at a rate of one clerical position for each three professional positions. One-time new equipment costs are not included in the schedule, and are added separately in this fiscal analysis for all positions, including clerical support positions.

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

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

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

APPELLATE UNIT

In the first two years particularly, as discussed in the previous section, every civilly committed offender is assumed to appeal the commitment orders and denials of petitions for release. This will be 4 appeals in year 1, and 4 in year 2. After the first two years, the appellate caseload is assumed to decline relative to the total population of committed individuals. The department believes that between those newly committed each year, and those already committed, one attorney will have a half-time caseload. One attorney is added in FY99 with associated support costs.

There will be no expert fees in the appeals process, but transcripts costs are included at a rate of $1.0 per case.

Prisoners tend to be very litigious, and the department expects the same for those civilly committed. As the population of those civilly committed grows, the department would anticipate lawsuits over their right to treatment, failure to treat, conditions, etc. The appellate attorney will also handle these lawsuits.

The attached spreadsheet graphically illustrates the costs of both the Trial and Appellate units over the six year fiscal note period, and the caseload assumptions.

All positions are assumed to be located in Anchorage as that is where most of the offenders Corrections indicates are likely to be referred to the Attorney General for commitment are located. The Anchorage Criminal Division offices have no space available to put the new positions associated with this bill, and more space would need to be leased. As a practical matter, the space would need to be leased all at once, and not incrementally over the six year period of the fiscal note. To anticipate this need, the percentage of the attorney and paraprofessional rates that represent lease costs are moved into FY99 ($3,730 per half-attorney position, $3,186 per half-paraprofessional). To avoid double counting, the $14,400, which would be included as a base cost subsequent years, is reduced each year by the amount of lease overhead included in each new position's rate, until lease costs are fully recovered through the rate in FY03.

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

		FTE	COST	FY99	FY00	FY01	FY02	FY03	FY04
Trial Unit	# Cases to trial			5	5	5	5	5	5
	# Cases to petition				4	8	10	10	10
Yr 1	Attorney	1	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	Paraprofessional	1	88.5	88.5	88.5	88.5	88.5	88.5	88.5
	Legal Secretary	1							
Yr 2	Attorney	0.5	133.5		66.8	66.8	66.8	66.8	66.8
Yr 3	Attorney	0.5	133.5			66.8	66.8	66.8	66.8
Yr 4	Attorney	0.5	133.5				66.8	66.8	66.8
	Legal Secretary	1					0.0	0.0	0.0
Yr 5	Paraprofessional	0.5	88.5					44.2	44.2
	One-time equipment purchases			19.5	6.5		13.0	6.5	0.0
	All lease costs to FY99: base adjusted for rate recovery			14.4	10.6	6.9	3.2	0.0	0.0
Per Case costs									
Yr 1	Expert fees first case to trial		50.0	50.0					
Yrs 1-6	Expert fees per trial		5.0	20.0	25.0	25.0	25.0	25.0	25.0
	Witness travel & subsistence		1.0	5.0	5.0	5.0	5.0	5.0	5.0
	Depositions/court reporter		1.0	5.0	5.0	5.0	5.0	5.0	5.0
Yrs 2-6	Expert Fees per petition		1.0	0.0	4.0	8.0	10.0	10.0	10.0
Appellate Unit	# cases appealed			4	4	7	8	8	8
Yr 1	Attorney	1	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	One-time equipment purchases			6.5					
Per Case costs									
Yrs 1-6	Transcriptions		1.0	4.0	4.0	7.0	8.0	8.0	8.0
	TOTAL COSTS			**479.9**	**482.5**	**546.0**	**625.0**	**659.6**	**653.1**
Trial Unit									
	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
Appellate Unit									
	PFT attorney			1	1	1	1	1	1
	TOTAL PFT	7		4	5	5	6	6	6
	TOTAL PPT						1	2	2

FISCAL NOTE No. 3

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	154.7	154.7	154.7	154.7	154.7	154.7
Travel	8.0	8.0	8.0	8.0	8.0	8.0
Contractual	1.5	1.5	1.5	1.5	1.5	1.5
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	9.0	0.0	0.0	0.0	0.0	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	**174.7**	**165.7**	**165.7**	**165.7**	**165.7**	**165.7**
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost: 0.0

POSITIONS

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

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

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

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

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

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

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

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	162.9	235.9	296.7	333.6	355.2	355.2
TRAVEL	6.0	9.5	13.0	13.5	14.5	14.5
CONTRACTUAL	113.7	83.6	104.5	109.6	112.8	112.8
SUPPLIES	3.8	5.7	7.6	8.5	9.0	9.0
EQUIPMENT	19.5	6.5	6.5	6.5	6.5	2.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	305.9	341.2	428.3	471.7	498.0	493.5
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached sheet.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 4/22/98

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ANALYSIS: (continued)

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

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

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

SEXUAL PREDATOR COMMITMENT CASES

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

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

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

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

FISCAL IMPACT

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

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

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

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

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

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

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

Revision Date:
Title: "An Act providing for the civil commitment of sexually violent [illegible]edators."
Sponsor: Senator Halford
Requestor: (S) JUD

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

COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL	8.0	8.0	8.0	8.0	8.0	8.0
CONTRACTUAL	102.0	72.0	72.0	72.0	72.0	72.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	110.0	80.0	80.0	80.0	80.0	80.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

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

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

Prepared by: Brant McGee, Public Advocate
Division: Office of Public Advocacy
Phone: 269-3500
Date:

Approved by Commissioner: Mark Boyer Alison M. Elgee
Agency: Administration
Date: 4/16/98

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ANALYSIS: (continued)

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

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

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

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

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Sponsor Statement

Senate Bill 216

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

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

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

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

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

(FOR SB 216)

PHASE 1 -- SCREENING

STEP 1

DOC
Initial Screening
90 days before release
* * *
Review records of 160 sex offenders
* * *
Send materials to DHSS

STEP 2

DHSS
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

DOC
Document Preparation
* * *
Collect additional information on offenders DHSS concludes are sexual predators
* * *
Send information to DOL

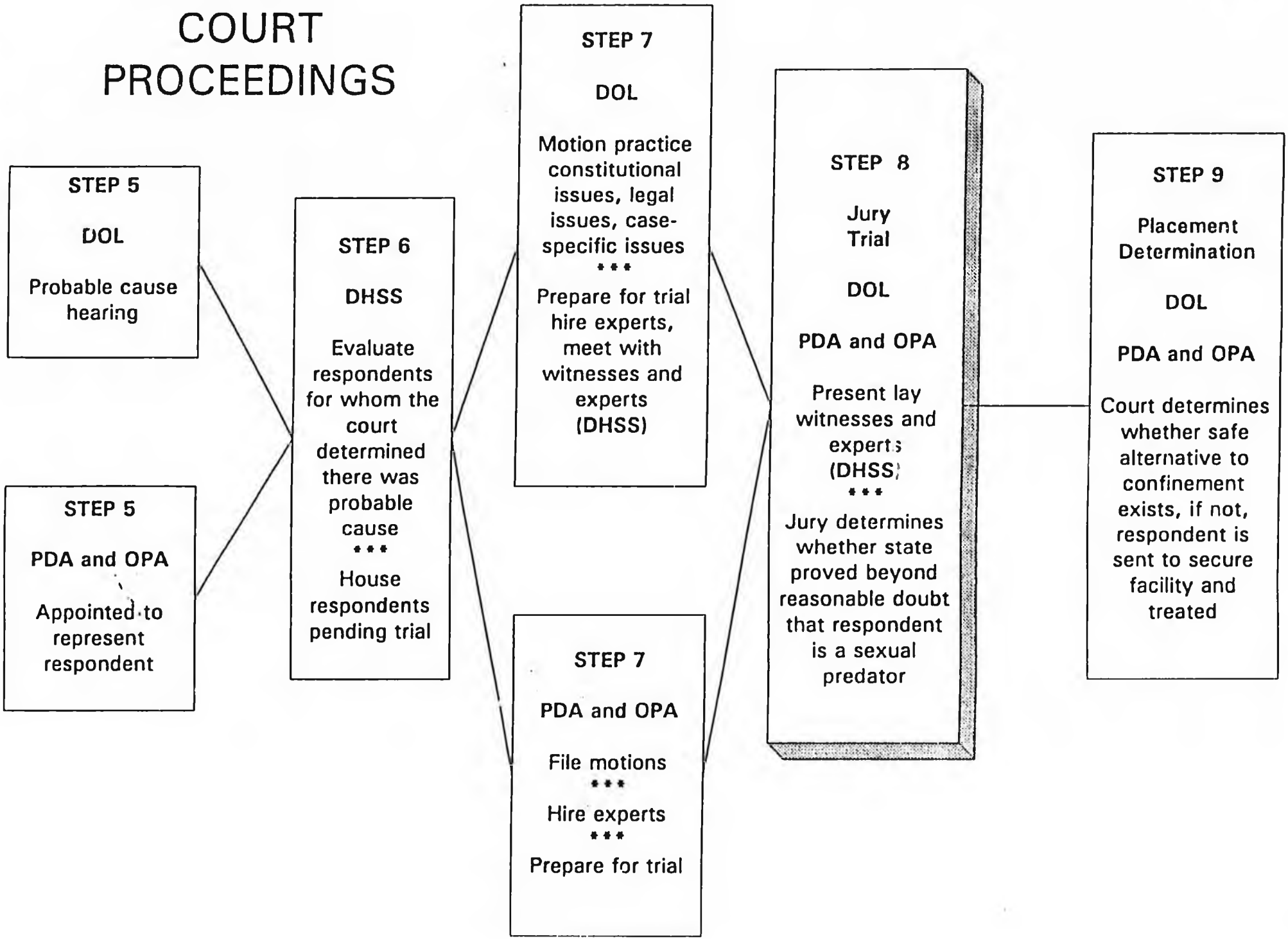
STEP 3

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

DOL
Draft petitions
* * *
File petitions
* * *
Prepare for probable cause hearing

PHASE 2 -- COURT PROCEEDINGS



PHASE 3 --
APPEAL and ANNUAL REVIEW

STEP 10

DOL

Defend commitment on appeal in state court and possibly United States Supreme Court

STEP 10

DHSS

Provide secure facility and treatment

STEP 10

PDA and OPA

Appeal commitment

STEP 11

DHSS

Conducts annual evalution

* * *

Commissioner authorizes filing of release petition if respondent no longer presents danger

* * *

If believe still a danger, respondent notified and may request hearing

STEP 12

RELEASE HEARING

DOL

PDA and OPA

Parties hire experts

* * *

Court determines whether state has proved beyond a reasonable doubt that respondent still a sexual predator

* * *

Court may deny second or successive petition for release by respondent without a hearing if it determines that petition is frivolous

STEP 13

DOL

Defend appeals of denial of petitions for release

STEP 13

PDA and OPA

Appeal denials of petitions for release

ONGOING RESPONSIBILITIES
DHSS and DOL

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

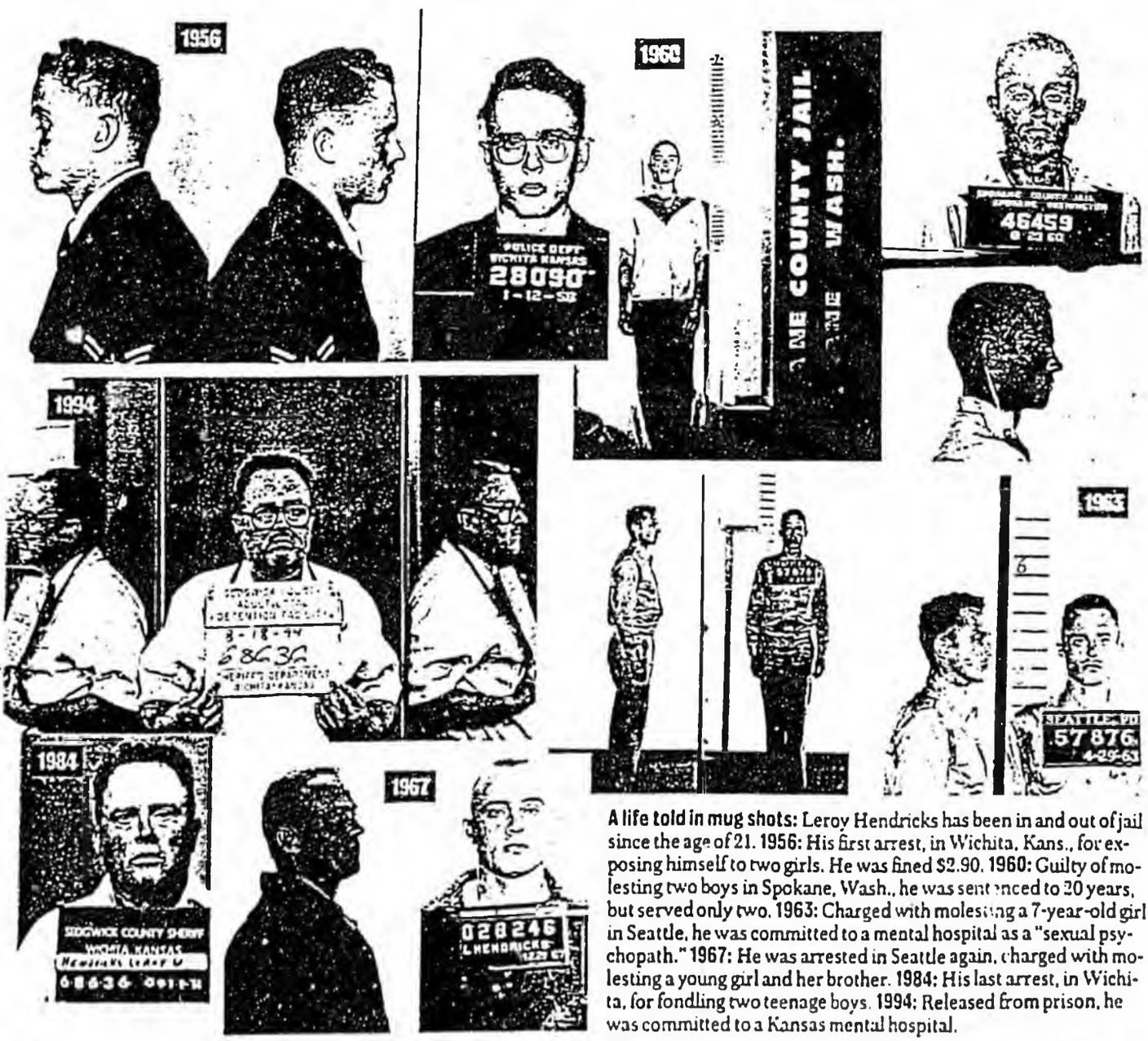
SUPREME COURT

Too Dangerous to Set Free?

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

BY JERRY ADLER AND PETER ANNIN

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



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

PHOTOS COURTESY DISTRICT ATTORNEY'S OFFICE, WICHITA, KANS.

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

So should he be locked up?

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

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

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

No state wants to be the home of the next Megan Kanka, the 7-year-old New Jersey girl whose murder, allegedly by a paroled sex offender living nearby, touched off the campaign for community-notification laws. Few crimes are as horrifying, as gratuitously evil, as hurting a child for one's own sexual pleasure. Most people, of course, would never think of doing it, but they also have an uneasy appreciation of the intensity of even normal sexual desire. The sheer persistence of some sex offenders—like Christopher Hubbart, a 46-year-old California man who once was arrested for raping a woman the same day he got out of prison—is one of the minor wonders of penology. Hubbart has been locked up under a California law similar to the one in Kansas. "He can't help himself from raping women," says Santa Clara County Deputy District Attorney Peter Waite. Earlier this year his incarceration was upheld by a California Superior Court judge, but Hubbart plans another appeal.

THE FUTILITY OF PUNISHMENTS that fall short of total incarceration is brought home with depressing regularity. Most recently this happened in Ft. Lauderdale, Fla., where a 7-year-old girl and her 11-year-old sister were found strangled last month—in the attic of a 30-year-old man who was under house arrest for a previous conviction on indecent assault. The suspect, Howard Ault, has confessed to the murders. Formally, he has pleaded innocent. His lawyer hopes to mount an insanity defense. Ault's "community control officer" had stopped by just a few hours after the girls had been killed—and noticed nothing amiss.

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

Keeping Track of Sex Offenders

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

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

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

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

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

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

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

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

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

Of course, implicit in Steiker's remarks is the admission that Hendricks may in fact be dangerous. He admitted as much himself, in saying that he couldn't "guarantee" that he'd never attack another child, a remark his lawyer says shows his candor and his honest effort to come to grips with his inner demons. Which, by the way, may have had their origins in a mother who he claims dressed him in girls' clothing, including a bra, and an older female cousin who he says abused him sexually when he was 5. Not that that excuses what he did to his own stepdaughter, Rose Loux, 33, who says Hendricks molested her twice a week for four years, starting when she was about 9, bribing her with treats and privileges. Asked what punishment *she* thinks is appropriate for Hendricks, she replies laconically, "Capital punishment."

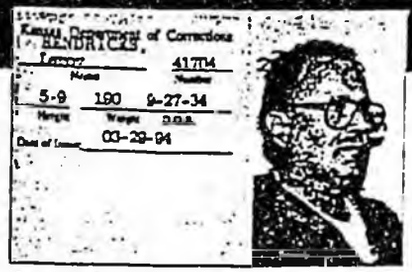
But she doesn't get to decide. The Supreme Court, standing in for all of society, has that privilege and duty.

Should Leroy Hendricks go free?

With PETER KATEL *in Miami and* JEANNE GORDON *in Los Angeles*

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

IWONA BIEDERMANN, COURTESY DISTRICT ATTORNEY'S OFFICE, WICHITA, KANS. (LOWER RIGHT)



A committed man: *Hendricks in 1994*

Making a monster:

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

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

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

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

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

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

Throwing Away the Key

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

LEROY HENDRICKS HAD DONE HIS TIME. In August 1994, after serving 10 years for taking "indecent liberties" with two 13-year-old boys, Hendricks walked out of prison in Hutchinson, Kans.—and was almost immediately transported to the Larned Correctional Mental Health Facility, where he has been locked up ever since. Under a 1994 state law called the Sexually Violent Predator Act, a judge ordered Hendricks confined indefinitely after ruling that his "mental abnormality" made him likely to attack again. Hendricks challenged the constitutionality of that law, but last week, in a 5-to-4 decision, the Supreme Court upheld it.

An excerpt from the majority opinion by Justice Clarence Thomas:

"It cannot be said that the involuntary civil confinement of a limited subclass of dangerous persons is contrary to our understanding of ordered liberty."

"POSTER BOY FOR PEDOPHILES": Mug shots from Hendricks' first arrest in 1956 and his last in 1984

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

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

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

Many legal experts are worried that the decision will allow states to lock up all sorts of people. "Today we're dealing with sexual predators," says Steven Shapiro, the legal director of the American Civil Liberties Union. "Who is it tomorrow that we're going to label as abnormal and potentially dangerous?" The dissenting Justices, however, agreed with Thomas that Kansas' criteria for committing someone were valid. Their objection, as expressed by Stephen Breyer in the minority opinion, was that Hendricks has received virtually no treatment even though the law requires it. To Breyer, the state's failure to live up to its promise makes Hendricks' confinement look a lot like punishment.

Six states have sexual-predator laws; similar statutes being considered in at least 30 others are likely to be enacted swiftly. To mark their days to freedom, people like Hendricks are going to need new calendars. *—By James Collins. Reported by Andrea Sachs/New York and Tim Miller/Lawrence*

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

(Bench Opinion)

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

SUPREME COURT OF THE UNITED STATES

Syllabus

KANSAS *v.* HENDRICKS

certiorari to the supreme court of kansas

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

[n.*]

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

Held:

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

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

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

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

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

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

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

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

Notes

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

June 24, 1997

Justices Uphold Hospital Confinement in Sex Cases

Related Articles
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Audio
- Carla Stovall, Kansas attorney general

By LINDA GREENHOUSE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Other Places of Interest on the Web

- Kansas vs. Hendricks Text

Home | Sections | Contents | Search | Forums | Help

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

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

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

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

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

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

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

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

The Clinton Administration and other supporters of the Brady Act had argued that the imposition on state officials was minimal, temporary, and meant to accomplish an important purpose. But such a "balancing" of federal and state interests was an inappropriate way to analyze the law, Scalia wrote. "It is the very *principle* of separate state sovereignty that such a law offends, and no comparative assessment of the various interests can overcome that fundamental defect."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Contrary to Hendicks' assertion, the term 'mental illness' is devoid of any talismanic significance," Justice Thomas wrote. "Not only do psychiatrists disagree widely and frequently on what constitutes mental illness, but the court itself has used a variety of expressions to describe the mental condition of those properly subject to civil confinement. Indeed, we have never required state legislatures to adopt any particular nomenclature in drafting civil commitment statutes. Rather, we have traditionally left to legislators the task of defining terms of a medical nature that have legal significance."

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

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

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

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

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

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

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

0-LS0920\E.1
Luckhaupt
1/27/98

AMENDMENT 1

OFFERED IN THE HOUSE BY REPRESENTATIVE DAVIS

TO: HB 261

Adopted

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

Insert "**to fines and**"

Page 2, following line 14:

Insert a new bill section to read:

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

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

Renumber the following bills sections accordingly.

0-LS0920\E.2
Luckhaupt
2/25/98

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE DAVIS

TO: HB 261

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

Insert "**a misdemeanor offense under**"

Page 2, line 20:

Following "**or a**":

Insert "**violation of a**"

Following "**comparable to**":

Insert "**a misdemeanor offense under**"

SB 218

FISCAL NOTE No. 3

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSSB 218 (JUD)
(S) Publish Date: 2-12-98

Revision Date (Note if correction) | Dept. Affected: Law
Title: An Act relating to the crime of murder and to murder of children. | BRU: Criminal Division | Component: 1st-4th Jud Dist, OSPA
Sponsor: Senator Halford
Requester: Senate Judiciary Committee | Component Serial No: 2198-99/2261/79/01/03

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

SB 218 increases the penalties for those people who kill children. These changes will have no fiscal impact on the Department of Law. The department already aggressively pursues criminal cases involving the murder of a child. Enactment of this legislation will increase the penalties for those charged, but will not increase the department's workload.

Prepared by: Joan M. Kasson | Phone: 465-5370
Division: Attorney General's Office | Date: 2/2/98
Approved by Commissioner: Bruce M. Botelho, Attorney General | Date: 2/2/98
Agency: Department of Law

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(Rev 9/97) 98fnform.xls/OMB

FISCAL NOTI No. 2

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSSB 218 (JUD)
(S) Publish Date: 2-12-98

Revision Date (Note if correction) _____ Dept. Affected Corrections
Title An Act relating to the crime of murder and to muder of children BRU Administration and Operations
Component ALL
Sponsor Senator Halford, Green, Donley
Requester Senate Judiciary Component Serial No. #0694

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

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

No Fiscal Impact

Prepared by Bruce Richards Phone 465-3307
Division Commissioner's Office Date 2/4/98
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 2/4/98
Agency Department of Corrections

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FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

No. 1
Bill Version: CSSB 218 (JUD)
(S) Publish Date: 2-12-98

Revision Date:
Title: "An Act relating to the crime of murder of children..."

Sponsor: Senator Halford
Requestor: (S) JUD

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

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**
CAPITAL EXPENDITURES	**	**	**	**	**	**
CHANGE IN REVENUES ( )	**	**	**	**	**	**

FUND SOURCE: (Thousands of Dollars)

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

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

POSITIONS:

FULL-TIME	**	**	**	**	**	**
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

This bill would increase the severity of child homicides. Some non-intentional homicides that are currently charged as criminally negligent homicide, manslaughter, and second degree murder could be charged as first or second degree murder under this legislation. Felony murders involving sex offenses would be raised from second degree to first degree murder. Penalties would be increased as well. This bill is similar to provisions included in the Governor's Child Protection Bill.

The Public Defender Agency (PDA) does not believe that this bill would necessarily result in more criminal cases being filed. However, the seriousness of the offenses will obviously be increased. PDA is not able to say exactly what fiscal impact this bill, standing alone, would have, but it is sure to increase the amount of time attorneys and staff will have to spend on child homicide cases. It will also increase the amount PDA will need to expend on expert witnesses and other litigation support.

Prepared by: Barbara K. Brink, Director
Division: Public Defender Agency
Phone: (907) 264-4414
Date:

Approved by Commissioner: Mark Boyer
Agency: Department of Administration
Date: 2/3/98

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FISCAL NOTE/S

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 April 29, 1998

SUBJECT: Sectional Summary of CSSB 218(FIN). (Work Order No. 20-LS1322/L)

TO: Senator Rick Halford
Attn: Bill Stoltz

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

Section 1 of the bill (1) amends AS 11.41.100(a)(2) by simplifying the language and expanding the range of conduct proscribed by this particular form of first degree murder of children under 16 years of age; and (2) also amends AS 11.41.100(a) by adding a new form of first degree murder which consists of making certain felony murders[1/] of children; these murders are currently, for the most part, proscribed under the felony murder provisions of AS 11.41.110(a)(3) as second degree murder.

Section 2 of the bill amends AS 11.41.110(a)(3) by making a conforming change to AS 11.41.110(a)(3) (p. 2, lines 16 - 17) to the recodification of certain felony murders of children as first degree murder and by expanding the application of the felony murder rule of AS 11.41.110(a)(3) to sexual abuse of a minor in the first and second degrees.

Section 3 of the bill increases the penalty for criminally negligent homicide from a class C felony to a class B felony.

Section 4 of the bill amends AS 11.41.320(a) by providing that a person commits the crime of interference with child custody if the person causes the victim to be kept out of state in addition to removing the victim from the state as provided under existing law.

Section 5 of the bill amends AS 12.55.125(b) by requiring a 20 year mandatory minimum sentence for a person convicted of murder in the second degree of a child under the age of 16 and the court finds by clear and convincing evidence that the person was the legal

---

[1/] When the death of a child results from the commission or attempted commission of a sexual offense or kidnapping of the child.

guardian of the child or occupied a position of authority in relation to the child or caused the death of the child during commission of an offense under AS 11.41.200 - 11.41.530.

Section 6 of the bill established a presumptive sentence of seven years for a first felony offender convicted of manslaughter in the death of a child under 16 years of age.

Section 7 of the bill amends AS 12.55.125(k) by instructing courts that a first felony offender convicted of criminally negligent homicide of a child under 16 years of age may be sentenced to a term of imprisonment that is greater than the presumptive term for a second or third felony offender.

Section 8 of the bill provides that the bill only applies to offenses committed after the effective date of the bill.

GPL:jdr
98-279.jdr

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355

Senator Rick Halford
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 11, 1998

Dear Senator Halford,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing SB 218 relating to the crime of murder and to the murder of children.

At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse SB 218. We feel that this legislation will eliminate convoluted language currently in AS 11 41.100. 100(a) and will provide easier prosecution for offenders violating this section of the Alaska Statutes.

We have spoken at length with law enforcement officers who investigate such crimes and have received much positive reaction to the intent of this bill. They feel that this legislation will assist them in their investigations.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

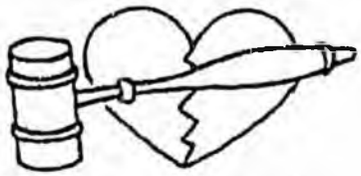
Once again, thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association

FEB 14 1998

VICTIMS



for Justice *619 East Fifth Avenue • Anchorage, AK 99501*
(907) 278-0977 • Fax: (907) 258-0740

February 4, 1998

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

Victims for Justice (VFJ) strongly supports the proposed Senate Bill 218, "an Act relating to the crime of murder and to murder of children."

The senseless death of a child is one of the greatest of all tragedies. It is time to ensure that those who would harm our children are dealt with in the strongest possible terms. The age of the victim should not deter or weaken this message.

Crimes of violence that jeopardize not only our personal safety, but destroy the tranquillity of our families, cannot be minimized or trivialized. If the most vulnerable of our society, our children, are murdered, those who are responsible must be held fully accountable. Those who value life so cheaply are entitled to no special consideration.

Sincerely,

Janice Lienhart
Executive Director

Cathy Satterfield
Administrative Director

Author: ruawaic@aonline.com (Administration) at CC2MHS1
Date: 1/26/98 4:58 PM
Priority: Normal
TO: Senator Rick Halford at LA_TRANS
Subject: LSB218

January 23, 1998

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

RE: SB218

Dear Senator Halford:

Thank you so much for sponsoring SB218, "An Act relating to the crime of murder and to murder of children." AWAIC provides shelter to children made homeless by domestic violence. In fact, at any given time, about sixty percent of our clients are children. As a long-time children's advocate, I certainly agree with your statement that children are the most vulnerable members of our society. They certainly deserve more protection than our society has afforded them. Your bill moves the system in the right direction. I appreciate your taking this initiative and will do whatever I can to provide support. Please let me know what I can do to be helpful.

Sincerely,

Jan MacClarence
Executive Director

c: Sen. Robin L. Taylor
Sen. Drue Pearce
Sen. Mike Miller
Sen. Sean Parnell
Sen. Johnny Ellis
Lauree Hugonen, Alaska Network on Domestic Violence and Sexual Assault

Alaska State Legislature

Senate

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

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

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

Official Business

Sponsor Statement
CS SB 218 (FIN)

"An Act relating to the crimes of murder, manslaughter, and criminally negligent homicide; to homicides of children and relating to the crime of interference with custody of a child or incompetent person."

All too often, when a child is killed, even when the killer is convicted, they do not receive punishment commensurate with the severity of their actions. Tragically, this has especially been the case when very young children are killed. I believe these children, who are the most vulnerable members of our society, are owed far more than our criminal justice system has afforded them. CS SB 218 (FIN) makes the following changes to our criminal statutes:

- *amends current law by adding a new form of first degree murder when the death of a child results from the commission or attempted commission of kidnapping, or of a sexual offense,*
- *expands the list of offenses constituting felony murder to include sexual abuse of a minor in the first and second degrees,*
- *elevates criminally negligent homicide from a class C to a class B felony,*
- *establishes a twenty year mandatory minimum sentence for a person convicted of a murder of a child under the age of sixteen,*
- *increases the mandatory minimum sentence (from five to seven years) for manslaughter, when the victim is a child under the age of sixteen,*
- *establishes a new sentencing provision, which allows for a term of unsuspended imprisonment that exceeds the presumptive term, for certain felony offenses if the victim is a child under the age of 16,*
- *establishes the crime of custodial interference in the first degree if a person violates AS 11.41.330 and causes a child or incompetent person to be removed or kept outside the state.*

Children deserve a responsible level of care when they are entrusted to an adult. CS SB 218 (FIN) will help accomplish both the goals of deterrence and establishing a punishment more fitting the crime. Passage of this bill will correct serious deficiencies in our legal system. I urge your support.

Alaska State Legislature

Senate

RICK
HALFORD
State Capitol
Juneau, Alaska
99801-1182
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- ***increases the mandatory minimum sentence (from five to seven years) for manslaughter, when the victim is a child under the age of sixteen,***
- ***establishes a new sentencing provision, which allows for a term of unsuspended imprisonment that exceeds the presumptive term, for certain felony offenses if the victim is a child under the age of 16,***
- ***establishes the crime of custodial interference in the first degree if a person violates AS 11.41.330 and causes a child or incompetent person to be removed or kept outside the state.***

Children deserve a responsible level of care when they are entrusted to an adult. CS SB 218 (FIN) will help accomplish both the goals of deterrence and establishing a punishment more fitting the crime. Passage of this bill will correct serious deficiencies in our legal system. I urge your support.

SB

219

5/6/98

HOUSE JUDICIARY STANDING COMMITTEE

DATE: 5/6/98 ISSUE: fa SB219 - move

	YEA	NAY	PRESENT
Vice Chair Bunde			
Representative Berkowitz		✓	
Representative Croft			
Representative Rokeberg	✓		
Representative Porter			
Representative James	✓		
Chairman Green	✓		
TOTALS:	3	1	

PASSED ~~[illegible]~~ FAILED ✓

(not enough votes)

5/6/93

Alaska Court System

#3

AMENDMENT

TO: CSSB 219 (FIN) am

Page 6, line 19, insert following "state.":

or challenge

The victims' advocate may not investigate a complaint regarding a judicial act taken or decision rendered by a judicial officer or a jury.

5/6/98

0-LS1323\HA.1
Luckhaupt
5/6/98

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSSB 219(FIN) am

Page 6, line 13, following "**Jurisdiction.**":

Insert "(a)"

Page 6, following line 21:

Insert a new subsection to read:

"(b) The victims' advocate shall exercise

(1) the jurisdiction granted under this section in a manner that does not interfere with a criminal investigation or with a criminal prosecution;

(2) reasonable care to prevent crime victims and employees of the office of victims' rights from making extrajudicial statements that the victims' advocate is prohibited from making under the Alaska Rules of Professional Conduct."

Page 6, line 26:

Delete "Notwithstanding another provision of law, the"

Insert "The"

Page 6, line 27, following "state":

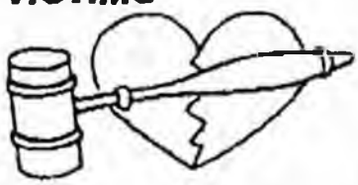
Insert "under art. I, sec. 24, Constitution of the State of Alaska, and AS 12.55.023,"

Page 7, following line 1:

Insert a new subsection to read:

"(d) Records obtained by the victims' advocate shall remain in the exclusive custody of the victims' advocate. The victims' advocate may not disclose confidential information to any person."

VICTIMS



for Justice *619 East Fifth Avenue • Anchorage, AK 99501*
(907) 278-0977 • Fax: (907) 258-0740

January 20, 1998

Senator Rick Halford
State Capitol
Juneau, AK 99801-1182

Dear Senator Halford:

Victims for Justice's (VFJ) lends our support of the proposed Senate Bill 219, "The Crime Victims' Rights and Advocacy Act of 1998", provided the attached provisions are given high priority.

For many years crime victim advocates have worked for expanded rights for victims. The State of Alaska provides for crime victims the right to be present and heard at all significant stages of the criminal justice process, and the right to have restitution ordered and collected by the courts. Yet, Alaska victims and their families continue to suffer twice, once at the hands of the criminal and again at the hands of our justice system. They are often treated as inconveniences, ignored throughout the trial proceedings, and if ignored during the trial, it will almost always guarantee the victim will be shut out of participating in the post sentencing processes.

Protecting the rights of crime victims will not weaken the rights of the accused, it will *restore* the *victim's* sense of safety and personal power, as well as create the possibility of financial recovery. Our *community* representatives in the justice system will make more fully informed decisions about the cases. The *offenders* may also be held more accountable by being exposed to information about the impact of the crime on the victim and ordered to pay, in a tangible sense, for the consequences of their acts.

Only when the rights of victims are given equal weight to the rights of the accused will there be guaranteed protection under the law. Restoring justice for victims must begin by our commitment to *observing* and *enforcing* the laws we have in place.

Sincerely,

Janice Lienhart

Janice Lienhart
Executive Director

Cathy Satterfield

Cathy Satterfield
Administrative Director

"Victims Rights Right for America"

enclosures

No. 7

FISCAL NOTE

Bill Version: CSSB219(FIN)
(S) Publish Date: 4/30/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected Corrections
Title An Act relating to establishing an office of victims' rights; relating to eligibility for a permanent fund ... BRU Administration and Operations
Component Data and Word Processing
Sponsor Senator Halford
Requester Senate Finance Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	43.0	43.0	43.0	43.0	43.0	43.0
Travel						
Contractual	0.5	0.5	0.5	0.5	0.5	0.5
Supplies	0.5	0.5	0.5	0.5	0.5	0.5
Equipment	2.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	46.5	44.0	44.0	44.0	44.0	44.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	46.5	44.0	44.0	44.0	44.0	44.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	46.5	44.0	44.0	44.0	44.0	44.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

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

Section 6 of this legislation denies PFD eligibility for people who were incarcerated for a felony or a third misdemeanant during all or part of the two calendar years preceding the dividend year. The Dept. of Corrections has previously asked for a Statistical Tech I position to deal with PFD appeals and requests for information. This section of SB 219 will increase the number of appeals and requests. The data and word processing unit will be unable to carry out their daily operations if more appeals and computer programming are added without a position.

Prepared by Bruce Richards Phone 465-3307
Division Commissioner's Office Date 4/27/98
Approved by Commissioner Margaret M. Pugh Margaret M. Pugh Date 4/27/98
Agency Department of Corrections

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Alaska Housing Finance Corporation

Sec 1 Governor

Subsection (a) transfers $50 million to the General Fund from unrestricted cash in the AHFC revolving fund, by the direction of the AHFC board.
Chapter 117, SLA 96 transferred $50 million; and
Chapter 98, SLA 97 transferred $70 million.
Subsection (b) appropriates earnings related to the AHFC, (loan interest payments, mortgage loan commitment fees, and income earned on assets of the corporation) to the AHFC as corporate receipts. Receipts are to be allocated among the AHFC revolving fund (AS 18.56.082), housing assistance loan fund (AS 18.56.420), and senior housing revolving fund (AS 18.56.710) in accordance with procedures adopted by the board of directors.
Subsection (c) identifies the amount of corporate receipts within the revolving loan fund to be used by the AHFC for housing loan programs not subsidized by AHFC corporate receipts $472 million and housing loan programs and projects that are subsidized by AHFC corporate receipts derived from arbitrage earnings $50 million. Same as Chapter 117, SLA 96 and Chapter 98, SLA 97.

Sec 1 House

Subsection (a) no change from Governor. Subsection (b) no change from Governor. Subsection (c) has been revised to incorporate the Governor's proposed amendment increasing the amount appropriated for unsubsidized housing loan programs from $350 million to $472 million.

Sec 1 Senate

Subsection (a) no change from Governor. Subsection (b) has been revised to prevent allocation of AHFC corporate receipts to the senior housing revolving loan fund. Subsection (c) has been revised to incorporate the Governor's proposed amendment increasing the amount appropriated for unsubsidized housing loan programs from $350 million to $472 million.

Alaska Industrial Development and Export Authority

Governor

The Governor's budget directly appropriates AIDEA corporate receipts for various capital projects.

House

The House version of the operating front section did not include a section authorizing transfer of AIDEA corporate receipts to the general fund.

Sec 2 Senate

The Senate version inserts a new section 2 authorizing transfer of $16 million in AIDEA corporate receipts to the general fund as directed by AIDEA **and renumbers the subsequent sections accordingly.**

#7

Alaska Seafood Marketing Institute (ASMI) Reapprop.

Sec 5 **Governor** **Gen Fund:** 0.0 **Non Gen Fund:** 0.0

Reappropriates any 6/30/98 balance of FY98 general fund receipts from the salmon marketing tax (AS 43.76.110) and from the seafood marketing assessment (AS 16.51.120) for FY99 ASMI expenditures. The FY97 and FY98 carryforward amounts were $300.0 and $200.0, respectively. FY99 amount unknown.

Sec 5 **House**

No change from Governor.

Sec 6 **Senate**

No change from Governor and House sections 5.

Budget Proposal Requiring Legislation - Longevity Bonus Grant Program

Sec 6 **Governor** **Gen Fund:** -8,000.0 **Non Gen Fund:** 0.0

If legislation introduced by the Governor (HB77/SB54) to place income limits on longevity bonus eligibility were approved by the legislature, operating appropriations would be reduced by:

Longevity Bonus Grants	<$6,000.0>
Old Age Assistance - ALB HH	<$2,000.0>

House

Section 6 of the Governors bill has been deleted in CSHB 325(FIN) and the subsequent sections renumbered accordingly. The deleted section dealt with the estimated savings from implementation of income limits for the longevity bonus program. There is no need for this section in the CS, as the fiscal notes associated with the income limit legislation would make the necessary adjustments in the affected appropriations should the legislation pass.

Senate

Section 6 of the Governors bill has been deleted in SCS CSHB 325(FIN) and the subsequent sections renumbered accordingly. The deleted section dealt with the estimated savings from implementation of income limits for the longevity bonus program. There is no need for this section in the Senate CS, as the fiscal notes associated with the income limit legislation would make the necessary adjustments in the affected appropriations should the legislation pass.

Constitutional Budget Reserve (CBR) Fund

Sec 7 **Governor** **Gen Fund:** 0.0 **Non Gen Fund:** 0.0

Subsection (a) provides for the GF repayment of the CBR and excludes "pure GF" [the "sweep" reversal language]. **Estimated at $95,900.0.**

Subsection (b) would allow the state to cover any shortfall in unrestricted state revenues available for appropriation in FY99 from the CBR per Article IX, section 17. The amount to balance GF revenues and appropriations would be appropriated to the general fund from the CBR [balancing language].

Subsection (c) stipulates that appropriations made by (a) and (b) of this section are made under Article IX, section 17(c) [approved by an affirmative vote of at least three-fourths of the members of each house of the legislature].

Sec 7 House

Subsection (a) has been revised to specifically identify the types of program receipts that are appropriated conditioned on compliance with the program review provisions of AS 37.07.080(h). (Those are federal, EVOSS Trust, designated program receipts, and test fishery receipts in CSHB325 and MHTAAR and MH admin receipts in CSHB326.)

Sec 9 Senate

The Senate version deletes the language in the Governor's subsection (a) that makes contingent appropriations of federal and other program receipts conditioned on compliance with the LB&A program review process and/or the 45 day rule.

Fish and Game Enforcement

Sec 10 Governor **Gen Fund:** 685.6 **Non Gen Fund:** 0.0

Subsection (a) appropriates to the Fish and Game Fund the amount of criminal fines, penalties and forfeitures imposed and collected under AS 16.05.195 from the General Fund.

Department	FY98Auth	Gov	GovAmd	House	Senate
Public Safety	560.0	560.0	560.0	560.0	560.0
Law	132.1	125.6	175.6	125.6	125.6
Total	692.1	685.6	735.6	685.6	685.6

Subsection (b) the Public Safety and Law amounts are for increased enforcement, investigation, and prosecution of state fish and game laws. If the receipts are less than the amount appropriated, the appropriations are reduced proportionately.

Sec 8 House **Gen Fund:** 685.6 **Non Gen Fund:** 0.0

Subsection (a) Governor's amendment to increase Law funding by $50.0 denied, as shown above.
Subsection (b) no change from Governor section 10(b).

Sec 10 Senate **Gen Fund:** 685.6 **Non Gen Fund:** 0.0

Subsection (a) Governor's amendment to increase Law funding by $50.0 denied, as shown above.
Subsection (b) no change from Governor section 10(b).

Four Dam Pool (4DP) Transfer Fund

Sec 11 Governor

This section makes the necessary appropriation from the 4DP Transfer Fund to the Southeast Energy Fund, the Power Cost Equalization & Rural Electric Capitalization Fund, and the Power Project Fund. The amount transferred in FY97 was zero, and in FY98 $5,177.8 was transferred, less than the full amount due to the 4DP utilities' retention of funds under the self-help clause of the 1985 power sales agreement. The estimated amount available for transfer from the 4DP in FY99 is $5 million.

Sec 9 House

No change from Governor section 11.

Sec 11 Senate

No change from Governor section 11.

Motor Fuel Tax

Sec 16 Governor

Estimated amounts of operating funding from the following sources:

Highway fuel tax account	$25,100,000
Aviation fuel tax account	5,400,000

Sec 14 House

No change from Governor section 16.

Sec 16 Senate

No change from Governor section 16.

Occupational Licensing Reapprop.

Sec 17 Governor

Reappropriates any 6/30/98 balance of FY98 occupational licensing fees general fund receipts for FY99 Occupational Licensing expenditures. The FY97 and FY98 carryforward amounts were $1,386.4 and $1,480.0, respectively.

Sec 15 House

No change from Governor section 17.

Sec 17 Senate

No change from Governor section 17.

Oil and Hazardous Substance Release Prevention Account

Sec 18 Governor **Gen Fund:** 13,800.0 **Non Gen Fund:** 0.0

Subsection (1) provides for the balance of the prevention mitigation account on July 1, 1998, not otherwise appropriated to be deposited in the OHSRPR/prevention account.

The OHSRPR/prevention mitigation account is a sub-account of the general fund. The prevention mitigation account receives money recovered from parties responsible for containment and cleanup of oil or other hazardous substances, as well as fines, penalties or damages.

FY97Actuals	FY98 Auth	Gov
$1,344.5	$4,376.4	$1,500.0

Subsection (2) provides for the amount derived from the 3 cent surcharge collected during FY98 to be deposited into the OHSRPR/prevention account in the OHSRPR Fund.

The OHSRPR/prevention account contains appropriations from the general fund to the OHSRPR fund from the 3 cent surcharge collected in the general fund during the prior year (FY98 deposits appropriated for FY99).

FY97Actuals	FY98 Auth	Gov
$13,689.9	$12,931.9	$12,300.0

Sec 16 House **Gen Fund:** 13,800.0 **Non Gen Fund:** 0.0

Subsection (1) no change from Governor section 18(1).
Subsection (2) no change from Governor section 18(2).

Sec 18 Senate **Gen Fund:** 13,800.0 **Non Gen Fund:** 0.0

Subsection (1) no change from Governor section 18(1).
Subsection (2) no change from Governor section 18(2).

Salary and Benefit Adjustments

Sec 22 Governor **Gen Fund:** 3,133.1 **Non Gen Fund:** 2,108.8

FY99 Pay Increases for State Employees. The amounts shown are the net amounts for three items: salary adjustments, health benefit adjustments and changes in contribution rates for the Public Employees Retirement System.

Sec 20 House **Gen Fund:** 1,469.7 **Non Gen Fund:** 3,163.7

This section deals with salary and benefit adjustments for state employees and has been revised to incorporate that portion of the governors amendment reducing the amount requested as the result of a lower than anticipated increase in the Anchorage consumer price index (from 1.1% to 0.6%) and correcting the health benefit amount for the Labor, Trades and Crafts bargaining unit (from $575 per month per employee to $550). The portion of the Governor's amendment transferring funding from the back to front section of the bill for the salary and benefit adjustment costs for the University was not adopted by the House, see the next paragraph for further explanation.

Section 21 has been amended to recognize the agreements reached between the University and its bargaining units and exempt employees in subsection (c). The $684,500 that had been included in the Governor's Section 22, consisting of $627,400 in general fund and $57,100 in other funds, has been transferred to the appropriation made to the University in section 31 (the back section) of the bill. The House also added $1 million in general fund to the University budget for salary adjustments. Thus, $1,627,400 in general fund, or about 45% of the University's estimate of $3,583,700 in general fund salary adjustment costs has been appropriated in the House bill.

Subsection (d) was added to recognize the agreement between the State and the Confidential Employees Association and to add $76,000 in general funds to pay for a portion of the costs of the agreement. The full cost of the Confidential agreement, as calculated by OMB, is $76,900 in general funds and $41,000 in other funds. Note that the House short funded the general fund by $900 and included none of the $41,000 in other funds needed to pay the full cost of the agreement.

Finally, Section 21 has been amended to include $1,112,000 from the Investment Loss Trust Fund as a funding source for the salary and benefit increases.

Sec 22 Senate **Gen Fund:** 1,470.6 **Non Gen Fund:** 3,204.7

The Senate section, like the House, reduces the amount requested due to the lower increase in the Anchorage consumer price index and to the corrected health benefit amount for the Labor, Trades and Crafts bargaining unit.

The Senate section includes all funding requested for the Confidential Employees bargaining unit ($117,900 total funds, $76,900 general funds). This differs from the House where $76,000 in general funds was provided.

The Senate moves all funding for University salary increases into the back section of the operating budget bill. The amount required to fund the collective bargaining agreements, $2,003,100 of general funds ($2,060,200 of total funds), is included for this purpose. The House also moves all funding for salaries to the back section where it provided $1,627,400 of general funds ($1,684,500 of total funds).

The full request for each bargaining unit (Alaska Community College Federation of Teachers, Classified Employees Assn., and United Academics) as well as non-covered employees are shown in the back section. The Unallocated reduction is increased by $1,580,600 GF to balance the difference between the full request and the provided funding. Again, this is similar to the House where the unallocated reduction was increased by $1,956,300 GF.

Sec 23 House **Gen Fund:** 46,029.0 **Non Gen Fund:** 91,478.9

This section has been revised to increase the amount appropriated from the school fund (AS 43.50.140) for school debt reimbursement by $18 million and to make a corresponding reduction in the amount of general fund and debt retirement fund appropriated to the Department of Education for that purpose.

Sec 25 Senate **Gen Fund:** 46,029.0 **Non Gen Fund:** 91,478.9

This section has been revised to increase the amount appropriated from the school fund (AS 43.50.140) for school debt reimbursement by $18 million and to make a corresponding reduction in the amount of general fund and debt retirement fund appropriated to the Department of Education for that purpose.

State Training and Employment Program

Sec 26 Governor

The State Training and Employment Program is funded from the Employment and Training Program Account (ETPA). The ETPA is created through a contribution of one-half of one percent from each employees' wages. Unspent balances must be lapsed from this account into the unemployment compensation fund. This section makes that appropriation.

Sec 24 House

No change from Governor section 26.

Sec 26 Senate

No change from Governor section 26.

Statutory Budget Reserve Fund

Sec 27 Governor

In the event that unrestricted revenues are less than necessary for FY99 appropriations, the amount necessary to balance revenue and general fund appropriations is appropriated to the general fund from any balance that may be available from the Statutory Budget Reserve Fund.

Sec 25 House

No change from Governor section 27.

Sec 27 Senate

No change from Governor section 27.

Storage Tank Assistance Fund

Sec 28 Governor **Gen Fund:** 200.0 **Non Gen Fund:** 4,164.8

Alaska Statute 47.03.385 allows the legislature to capitalize the storage tank assistance fund with any general fund registration fees collected on underground petroleum storage tanks or tank systems.

Subsection (a) appropriates tank registraion fees from the general fund to the Storage Tank Assistance Fund.

Subsection (a) appropriates from the OHSRPR Fund/prevention account (non-general fund) to the Storage Tank Assistance Fund.

STATE OF ALASKA
1998 LEGISLATIVE SESSION

FISCAL NOTE

No. 6
Bill Version: CSSB 219 (FIN)
(S) Publish Date: 4-24-98

Revision Date:
Dept. Affected: Revenue
Title: Office of Victims' Advocacy
BRU: Permanent Fund Dividend Division
Component: Permanent Fund Dividend Division
Sponsor: Senator Halford
Requestor: (S) FIN
COMPONENT SERIAL NO. 981

Expenditures/Revenues: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1001 CBRF						
1048 University of AK receipts						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year cost $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

This legislation would deny a Permanent Fund Dividend to certain criminals for an additional year beyond the denials under current law. It will have the effect of denying a dividend to these criminals in the year after they were incarcerated. We understand that it is intended that the funds that would have been paid to these individuals would be used to fund the Office of Victims' Rights created by this bill.

Since the funds made available under the bill would otherwise be paid to the individuals made ineligible, there is no fiscal impact either on the department or on other Permanent Fund Dividend recipients.

Prepared by: Nanci Jones, Director
Phone: 465.2323
Division: Permanent Fund Dividend Division
Date: April 23, 1998
Approved by Commissioner: Wilson L. Condon
Date: April 23, 1998
Agency: Revenue

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cssb219fn.xls

FISCAL NOT

No. 5

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Bill Version: CSSB219(FIN)
(S) Publish Date: 4/23/98

Revision Date:
Title: "An Act relating to establishing an office of crime victims' rights; and amending Rule 16, Alaska...
Sponsor: Senator Halford
Requestor: Senate Finance

Department Affected: Legislative Affairs Agency
BRU: Legislative Council
Component: Council & Subcommittees

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	429.6	429.6	429.6	429.6	429.6	429.6
TRAVEL	4.2	4.2	4.2	4.2	4.2	4.2
CONTRACTUAL	28.6	28.6	28.6	28.6	28.6	28.6
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	44.2	0.0	0.0	0.0	0.0	0.0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	508.6	464.4	464.4	464.4	464.4	464.4
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND							
FEDERAL FUNDS							
OTHER FUND SOURCE	1050	508.6	464.4	464.4	464.4	464.4	464.4
TOTAL		508.6	464.4	464.4	464.4	464.4	464.4

POSITIONS:

FULL-TIME	6	6	6	6	6	6
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary) CSSB 219(JUD) establishes an Office of Victims' Rights in the Legislative Branch of Government. The Victims' Advocate will be appointed for 5 years and be compensated at Range 26A. For the purposes of this fiscal note, staff for the Victims' Advocate will be 2 attorney's, 1 paralegal, and 3 clerical personnel. Office Space will be acquired and furniture and equipment will be purchased to set up the office. If the office were staffed with 1 attorney, 1 paralegal, and 1 clerical position the cost for the initial year would be $337.7 and $307.5 thereafter. LAA will process payroll, provide accounting and teleconference assistance and DP support at no cost to the Office of Victims' Rights.

Prepared By: Karla Schofield, Deputy Director — Karla Schofield — Phone: 465-3852
Division: Administrative Services — Date: 4/22/98

Approved By: Pamela A. Varni, Executive Director — Pamela A. Varni
Agency: Legislative Affairs Agency — Date: 4/22/98

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

SB219
#5

CONTINUATION OF FISCAL NOTE: CSSB 219(JUD)

		Monthly Salary	#	Annual Salary	Benefits	Health Insurance	Total	
Victims Advo	26A	5815	1	69780	88348	5700	94048	
2 Attorney's	23A	4889	2	117336	148559	11400	159959	
1 Paralegal	16A	3031	1	36372	46051	5700	51751	
1Secretary	14A	2640	1	31680	40110	5700	45810	
1Secretary	12A	2324	1	27888	35309	5700	41009	
1Secretary	10A	2059	1	24708	31283	5700	36983	
							429,560	429,560

Travel

It is anticipated that the victims' advocate will make 3 trips to attend in state meetings and 1 trip to meet with victims' rights organizations in other states.

	Travel	Per Diem		
3 trips in state	1110	1629	2739	
1 trip out of st	780	680	1460	
			4199	4,199

Contractual

It is anticipated that the Office of the Victims' Rights will install phones, incurr phone bills, and use postage and need maintenance on their copier machine.

Phones	3600	
Postage	3000	
Copier Maintenance	600	
Membership Dues	500	
Subscriptions	500	
Office Space 1,000 Sq. Ft.	20400	
	28600	**28,600**

Supplies

It is anticipated that the Office of the Victims' Rights will need office supplies.

Office Supplies	2,000	**2,000**

Equipment

It anticipated that the Office of Victims' Rights will need equipment.

7 Phones	3500	
1 Fax Machine	650	
3 Executive Desks	4500	
4 Secretarial Desks	4000	
7 Chairs	1400	
7 File Cabinets	2800	
7 Computers	14000	
3 Printers	5400	
1 Copy Machine	8000	
	44250	**44,250**

Grand Total **508,609**

FISCAL NOTE

No. 3

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO: —

Bill Version: SB 219
(S) Publish Date: 1-30-98

Revision Date:
Title: Crime Victims' Rights and Advocacy Act of 1998
Sponsor: Senator Halford
Requestor: (S) JUD

Dept. Affected: Public Safety
BRU: Violent Crimes Compensation Board
Component:
COMPONENT SERIAL NO.

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( ) Revenue Code						

FUNDING: (Thousands of Dollars)

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

Estimate of current year (FY 98) impact: $ 0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No Fiscal Impact

Prepared By: Susan L. Browne, Administrator
Division: Violent Crimes Compensation Board
Phone: 465-5525
Date: 1/17/98

Approved by Commissioner: Ronald L. Otte
Agency: Dept. of Public Safety
Date: 1/21/98

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FISCAL NOTE

No. 2
Bill Version: SB 219
(S) Publish Date: 1-30-98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction)
Title ...establishing an office of crime victims' advocacy;
amending . Rules of Criminal Procedure ..Delinquency Rules...
Sponsor Senator Halford
Requester Senate Judiciary Committee

Dept. Affected Law
BRU Criminal Division/Civil Division
Component 1st-4th Jud Dist, OSPA
Human Services
Component Serial No 2198-01, 2203, 2208

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	********	********	********	********	********	********
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill establishes in the legislative branch the Office of the Victims' Advocate. The victims' advocate will advocate on behalf of crime victims in felony cases in the courts of the state and investigate complaints of crime victims in felony cases that they have been denied their rights under the constitution and laws of the state.

The potential fiscal impact from enactment of this law on the Department of Law is dependent on the philosophy and depth of involvement of the victims' advocate. At a minimum, the length of time required for cases in which the victims' advocate participates will increase, simply by virtue of having an additional attorney involved. The potential that the victims' advocate will be at odds with the prosecutor over matters involving trial strategy, tactics, and plea negotiations would add additional time and expense. These costs are speculative, and the department cannot assign a cost without additional experience.

Prepared by Joan M. Kasson — Phone 465-5370
Division Attorney General's Office — Date 1/20/98
Approved by Commissioner Bruce M. Botelho, Attorney General — Date 1/20/98
Agency Department of Law

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CSSB 219(FIN) - Office of Victims Rights

Sectional Analysis

Section 1 of the bill provides a short title.

Section 2 of the bill allows advocate to make statement at time of sentencing.

Section 3 of the bill brings the victims' advocate under legislative ethics.

Section 4 of the bill amends AS 24 by creating a new chapter dealing with the Office of the Victims' Advocate which is created in the legislative branch. The following sections are created:

AS 24.65.010 - creates the office of victims' advocate
AS 24.65.020 - provides appointment procedures
AS 24.65.030 - establishes qualifications
AS 24.65.040 - provides term of office
AS 24.65.050 - provides for removal of the victims' advocate
AS 24.65.060 - lists the salary for the victims' advocate
AS 24.65.070 - allows employment of staff and establishes their duties
AS 24.65.080 - office space and administration for OVA
AS 24.65.090 - requires advocate to adopt regulations
AS 24.65.100 - establishes when the victims' advocate's jurisdiction
AS 24.65.110 - sets forth advocates duties and powers
AS 24.65.120 - lists how and when the advocate may conduct investigations of denial of crime victims rights
AS 24.65.130 - provides subpoena power to victims' advocate
AS 24.65.140 - requires consultation with justice agency prior to report
AS 24.65.150 - advocate's duties upon completion of investigation
AS 24.65.160 - permits advocate to publish opinions and recommendations
AS 24.65.170 - requires advocate to publish annual report
AS 24.65.180 - limits judicial challenge of advocate's actions
AS 24.65.190 - provides immunity to advocate
AS 24.65.200 - provides evidentiary privilege against being compelled to testify to advocate
AS 24.65.210 - sets out criminal penalty for obstruction of victims' advocates duties
AS 24.65.250 - provides definitions

Section 5 of the bill provides option of adopting longevity pay provisions to the advocate.

Section 6 of the bill extends the period for PFD ineligibility from one to two years.

Section 7 of the bill provides that the proceeds of the PFD forfiture may be used to fund the office of victims' rights

Section 8 of the bill exempts regulations promulgated by the OVR from gubernatorial review.

Section 9 of the bill exempts victims' advocate from record keeping requirements.

Section 10 of the bill provides that sunset review of agencies consider interaction with OVA.

Section 11 of the bill names OVA as state agency for purposes of state publications.

Section 12 & 13 of the bill provides court rule change notice.

Alaska State Legislature

Senate

Official Business

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

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Chugiak, Alaska 99567
Phone (907) 694-4958

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

Sponsor Statement

Senate Bill 219

"The Crime Victims' Rights and Advocacy Act of 1998"

On November 8, 1994, the voters of Alaska ratified an amendment to the Constitution of the State of Alaska which provides specific rights to victims of crime. The overwhelming approval rate -- 86.6% in favor -- was clear testament of Alaskans' belief that:

> ***"Crime victims, as defined by law, shall have the following rights as provided by law: the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to confer with the prosecution; the right to be treated with dignity, respect, and fairness during all phases of the criminal or juvenile justice process, the right to timely disposition of the case following the arrest of the accused, the right to obtain information about and be allowed to be present at all criminal or juvenile proceedings where the accused has the right to be present; the right to be allowed to be heard, upon request, at sentencing, before or after conviction or juvenile adjudication, and at any proceeding where the accused's release from custody is considered; the right to restitution from the accused; and the right to be informed, upon request, of the accused's escape or release from custody before or after conviction or juvenile adjudication."***
>
> — ARTICLE I, SECTION 24, ALASKA CONSTITUTION

Passage of this legislation will put in place a mechanism to guarantee the practical application of this very important Constitutional Amendment. It is time for victims to have advocacy when dealing with a judicial system so heavily weighted to the benefit of criminals, and based on a process replete with technicalities and legal jargon, rendering it virtually indecipherable to anyone other than the attorneys.

JAN 2 8 1998

WASILLA POLICE DEPARTMENT

250 N. KNIK STREET
WASILLA, AK 99654-7014
(907) 373-9077
(907) 373-9051 FAX

January 21, 1998

Senator Rick Halford
State Capitol
Juneau, Alaska 99801-1182

Attn: Brett

Thank you for the opportunity to comment on SB219. I support this bill and I know from sixteen years of dealing with victims that it is long overdue.

The only suggestions I have are that your people review Section 24.65.030. In paragraph (2), please consider changing it to: "Unless the person has been engaged in an activity for the preceding five years where they have had extensive contact with victims of crime".

Paragraph (4); please consider striking this due to the fact that it gives preference to attorneys. I believe that retired magistrates, police administrators and other professions would be more qualified than attorneys to perform as victims advocates.

Also, there should be a qualification section mandating administrative experience since this position will direct a department.

Good luck on this bill.

Sincerely,

Charlie Fannon

Charlie Fannon
Chief of Police

January 19, 1998

TO: Senator Robin Taylor, Chairman
Senate Judiciary Committee

Members of the Senate Judiciary Committee

FROM: Karen L. Johnston
Victim of a Violent Crime
5040 E. 98th
Anchorage, AK 99516

Dear Sir,

As a victim of violent crime, I wish to respond to the creation of Senate Bill 219, "The Crime Victims' Rights and Advocacy Act of 1998". On Oct.4, 1994 my former husband, Dr. Thomas F. Johnston, along with two University of Alaska students, were brutally murdered with a carpenter's hammer in the home we shared for 14 years in Fairbanks. Thomas was a music professor at the University, and an international expert in Eskimo and Indian music. This crime was of a senseless, demonic and random nature, adding enormously to the chaos we experienced as a family following this murder. In the next few months, our family staggered against wave upon wave of grief, loss, and lack of information which is vital to reassembling a sense of order. The Justice system which should have provided basic information and assistance, turned its attention to the defense of the criminal and his "rights". We waited in the shadow of their silence for some small ray of understanding as to why this killing happened. Our grief was an appalling wound which could only begin to heal with information, and a sense that order and justice would prevail. Our rights according to the Constitutional Amendment ratified Nov.8, 1994 were repeatedly ignored, and often met with outright disrespect. The following are examples of our experience:

1. My sister in Fairbanks was rudely rebuffed by the DA's staff and told "you are not a victim" when the law states she had "the right to be treated with dignity, respect, and fairness during all phases of the criminal justice process".

2. Over a period of 6 months I made phone calls to the DA's office requesting information about the murder. I was consistently told we would have to wait until the case closed before any information was available to the public. We were not invited to confer with the prosecuting attorney before sentencing as stated in the new law. I eventually succeeded in obtaining this access through the help of Victims for Justice who contacted Deputy Attorney General Laurie Otto.

3. On April 13, 1995 there was a plea change. I had talked with the witness coordinator in the DA's office, but she didn't tell me it was a public event or that I could attend. My sister phoned crying late that night because she saw a news broadcast with excerpts of this hearing, and had not been notified so that she could be present. When I phoned the office, they were surprised and defensive, stating that "I should have known that it was a public event". She assumed all people know these things. She tried to lay the responsibility upon us when it was their legal obligation to explain how the system works.

4. On April 24, 1995 I sent a letter outlining my complaints to this Fairbanks office. Laurie Otto also sent a memo or phoned. I do not know what the content of their conversation was, but I received a prompt reply dated May 3, 1995. It was defensive of their policies, and included a copy of the Alaska statues regarding victims rights and the fact that I had no legal recourse if they chose not to apply the duties of the prosecution, etc. It also contained an invitation to meet with the DA. So, after 7 months I was finally granted "access of information" and made a step toward healing which the victim of homicide so desperately needs.

It is my personal opinion that the newly drafted legislation is another step toward restoring "freedom and justice for all" including innocent victims. I like the fact that it creates a legal advocate for victims rights, and creates a "mechanism to guarantee the practical application of this very important Constitutional Amendment". I'm not sure that the word "guarantee" is accurate though because there still seems a need for clear, specific, stronger consequences when an office is in non-compliance. How can the law "guarantee" vicitms rights with immunity clauses present both in the Alaska Statues as well as the new Advocacy Act:Bill 219? But in general I support it as a great step forward, and would offer a few considerations:

1. Sec.24.65.020. **Appointment of the victims' advocate.** In addition to the legislatively appointed members of the nominating committee, I think there should be prese.t a small advisory group of victims or qualified persons from the private sector. The non-legislative community has much to offer from personal experience with this issue. The success of this proposed program is dependent upon getting the right attorney and staff who are **truly committed to victims rights.**

2. Sec.24.65.080. **Office facilities and administration.** The legislative budget should not take away from monies approved to fund private agencies such as Victims for Justice.

3. Sec.24.65.090. **Procedure.** It would be good to establish a time line for completion of the investigative process. Keeping victims informed regularly of progress after the complaint has been filed is of utmost importance as they work through their grief. Homicide grief is more complex and overwhelming than most grief. Communication and information help victims restore a sense of order, and provides some relief from intense rage and confusion.

4. Sec.24.65.150, 160, 170, 180, 190. **Procedure after investigation...** These sections deal with consequences for non-compliance in administering victims rights. We would like to see more specific, defined consequences such as "removal from job position" or some such thing. The immunity clause really baffles me because it leaves victims **no legal recourse** if a justice agency refuses to comply with the law.

Rights without recourse is rhetoric!

Respectfully,

Karen L. Johnston

SB

232

FISCAL NOTE

No. 1
Bill Version: SB 232
(S) Publish Date: 4/1/98

STATE OF ALASKA
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____ Dept. Affected All state agencies
Title An Act relating to electronic records and signatures. BRU _____ Component _____
Sponsor Sen. Pamell
Requester Sen. Labor and Commerce Component Serial No. _____

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

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

This bill would not have a significant fiscal impact on any state agency.

Prepared by Jack Kreinheder Phone 465-4676
Division Office of Management and Budget Date 3/27/98
Approved by Commissioner Jim Ayers, Chief of Staff Date _____
Agency Office of the Governor

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Portage
Rabbit Creek

SENATOR SEAN PARNELL

716 WEST 4TH AVENUE, SUITE 530
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While in Session:
STATE CAPITOL
JUNEAU, ALASKA 99801-1182
(907) 465-2995 1-800-365-2995

MEMORANDUM

DATE: April 27, 1998

TO: Representative Joe Green
Chair of House Judiciary

FROM: Senator Sean Parnell

RE: Request to schedule a hearing for SB 232

I respectfully request that SB 232 be scheduled for House Judiciary at your earliest possible convenience. If you have any questions or need further information, please contact me or my aide, Richard Vitale. Thank you.

Alaska State Legislature

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Sponsor Statement SB 232

"An Act relating to electronic signatures, electronic records, requirements for records, and the production of public records."

At the request of the Lieutenant Governor, Chair of the Telecommunications Information Council, I have introduced SB 232 to allow both the public and private sectors of Alaska to operate quickly, securely and efficiently in the electronic age. Electronic signatures are increasingly used as this new technology is quickly adapted into the ever-changing world of electronic commerce. Currently two states, Utah and Washington, have adopted statutes to standardize the practice of electronic signatures and legislation is pending in most other states. SB 232 will help continue Alaska's interstate, intrastate and global economic growth, by providing legal framework for use of electronic signatures commerce.

Specifically, SB 232 establishes electronic signatures as a legal practice with the same standing as a standard signature. This act allows the Lt. Governors office or other state agencies to develop regulations for using electronic signatures by private or public entities and establishes criteria for electronic signature regulations. Lastly, this act repeals some state agencies' selected notarization requirements to better utilize the efficiencies of electronic signatures.

SB 232 is an important component in keeping Alaska competitive and efficient in both public and private business practices. I appreciate your support of this act.

Frequently Asked Questions Regarding Digital Signatures

What are Digital Signatures?

A reliable electronic means of signing electronic documents that provides sender authentication, message integrity and non-repudiation. A digital signature is a convenient, time-saving, and secure way of signing electronic documents.

What is an electronic document?

An electronic document is any document that is generated or stored on a computer, such as a letter, a contract, or a will. In addition, an electronic document can be an image, such as a blueprint, a survey plat, a drawing, or even a photograph. A digital signature can be used to sign all these documents

What does a digital signature look like?

A signature looks like a random series of numbers, letters and symbols. Each signature is unique and by using the appropriate public key, each signsature can be linked back to the sender of the message.

----------BEGIN SIGNATURE----------

ivb1aWubmvsIa5qycUmFGnyJAQFAKgL/ZkBfbeNEsbthba4BIrcnjaqbckgNv+a5kr4537y8
Rcd+RDv56yYh5ttieufljlk4kjlj3ojljkjljlkj67NSjliujoj6AAcjawuJLKdk21Vkm+qymC2hRbh+Rb2h5WI

----------END SIGNATURE---------

How do they work?

In simplest terms, the digital signature software does all the work for you. The software will prompt you to follow the commands and will automatically generate a key pair for you. Once your key pair is generated you simply identify the electronic document you want digitally signed and you simply hit the sign prompt. The new file that is created is the digitally signed electronic document that you can then send to anyone. The receiver of the electronic document then can verify your signature using interoperable digital signature software. If the electronic document was altered in any manner in transmission, it will not verify.

How are they used?

Digital signatures are used for any electronic document that requires sender authenticity, messag · integrity, and non-repudiation (can't say you never sent the document or its contents). It is a secure form of transacting. Contracts, images, letters, etc., may be digitally signed and sent electronically in seconds. Examples of specific applications in Utah: Court Filings, Corporate Filings, UCC Filings, Procurement, Grant Applications, Motor Vehicle Titling, Real Estate Transactions, and etc.

Where do I get one? How do I register with a Certifying Authority?

You can purchase digital signature software at your local computer and software retailer. Once you have generated your key pairs via your digital signature software, you need to link your corresponding key pairs with your identity. To do this you need to contact a licensed certification authority who will verify your corresponding key pairs and your identity. Thereafter, certification authority will issue you a certificate certifying that you are who you say you are and that the correspond key pairs belong to you. This certificate will then be publish at the certification authorities on-line repository for relying parties to verify your digital signature.

The approved Certifying Authorities are:

Utah Digital Signature Trust, One So. Main, Salt Lake City, Utah 84111 (801) 524-8671

How am I identified as the signer?

When you use your digital signature software, you create a matched pair of keys. One is the private key, which is used only by you and is required during the signing process.

The second key is the public key, which is available for use by anyone wanting to authenticate the electronic documents you sign. The public key will read the digital signature created by the private key and verify the authenticity of the electronic documents created with it.

What will this cost me?

Depending on what type of digital signature software you decide to purchase, it will cost approximately $150. However, if an individual chooses not to purchase the digital signature software to generate their own key pairs, then your local licensed certification authority can provide that service at a nominal fee ranging anywhere from $10-$30. To obtain a certificate from a certification authority will also be a nominal fee ranging anywhere from $20-$50. Normally, the certificate will be valid for a period of one year. Thereafter, an individual could use their digitally signature to sign an infinite number of electronic documents during the validity period of the certificate.

Do I have to register with a CA?

No. However, it is recommended. In Utah, in order for your digital signature to be self-authenticating and obtain the benefits of the Utah Digital Signature Act, a digital signature must be verified through a valid certificate issued by a Utah licensed certification authority. However, this does not preclude a digital signature that has not been verified through a valid certificate issued by a Utah licensed certification authority, from satisfying the signature requirement. In those circumstances, the burden of proof in a court of law is very similar to that required for a handwritten signature. Consequently, a digital signature verified through a valid certificate issued by a Utah licensed certification authority will be self-authenticating and much easier to prove in a court of law.

Digital Signature Tutorial

The authentication of computer-based business information interrelates both technology and the law, and calls for cooperation between people of different professional backgrounds and areas of expertise. Each field of expertise brings to the topic of authentication a different repertoire of concepts. Often the concepts from the information security field correspond only loosely to concepts from the legal field, even though both fields apply the same term to their differing concepts.

This interdisciplinary contrast exists even for basic, central concepts such as "authentication" or "digital signature". From a technical point of view, "digital signature" means the result of applying to specific information the technical processes described below. From a legal point of view, handwriting one's name on paper has been the principal means of signature for centuries. In addition, the legal concept of signature recognizes, in many cases, not only a handwritten name but any mark made with the intention of authenticating the marked document.fn.1 In an electronic setting, today's broad legal concept of "signature" may well include markings such as digitized images of paper signatures, typed notations such as "s/John Smith", or even addressing notations such as letterheads, electronic mail origination headers, and the like. From an information security viewpoint, these simple electronic signatures are entirely different from the "digital signatures" described in this tutorial and in technical documents, although "digital signature" is sometimes used colloquially or in some legal writing to mean another or any form of computer-based signature. To avoid confusion, this publication uses "digital signature" only in the sense in which the term is used in information security terminology, as meaning the result of applying the technical processes described in this tutorial.

The differences between digital signatures and other electronic signatures are significant, not only in terms of process and result, but also because those differences make digital signatures more serviceable for legal purposes. However, some electronic signatures, though perhaps legally recognizable as signatures, may not be as secure as digital signatures, and may lead to uncertainty and disputes.

To understand why digital signatures serve well in legal applications, this tutorial begins with an overview of the significance of signatures in legal transactions. It then explains digital signature technology in simple terms, and examines how, with some legal and institutional infrastructure, digital signature technology can be applied as a computer-based alternative to traditional signatures.

Signatures and the Law

A signature is not part of the substance of a transaction, but rather of its representation or form. Parties often represent their transactions in signed writings. Signing writings and other formalistic legal processes or customs serve the following general purposes: fn.2

- **Evidence**: A signature identifies the signer with the signed document; by signing, the signer marks the text in her own unique way and makes it attributable to her. fn.3
- **Ceremony**: Signing calls to the signer's attention the legal significance of his act, and thereby helps prevent "inconsiderate engagements". fn.4 The act of signing may satisfy a human desire to mark an event. fn.5
- **Approval**: In certain contexts defined by law or custom, a signature expresses the signer's approval or authorization of the writing, or the signer's intention that it have legal effect. fn.6
- **Efficiency and logistics**: A signature on a written memorandum often imparts a sense of clarity and finality to the transaction, especially if the signature is used to indicate approval or authorization. Because of this apparent clarity and finality, signatures may lessen the need to inquire beyond the face of a document, fn.7 and, at face value, a document may be processed more efficiently and with less risk than a document beneath which traps for the unwary may lie. Negotiable instruments, for example, attain their ability to change hands with ease, rapidity, and minimal interruption through legal rules triggered by compliance with certain formal requirements including a signature. fn.8 Furthermore, the finality of signing makes it useful as a decisive point

in staging how a transaction takes effect.

Although achieving these purposes is salutary, legal systems vary, both among themselves and over time, in the degree to which a particular form, including one or more signatures, is required for a legal transaction. If a particular form is required, legal systems also vary in prescribing consequences for failure to cast the transaction in the required form. The statute of frauds of the common law tradition, for example, requires a signature, but does not render a transaction invalid for lack of one. Rather, it makes it unenforceable in court, fn.9 and the persistent notion that the underlying transaction remained valid led case law to greatly limit the practical application of the statute.

In general, the trend in most legal systems for at least this century has been toward reducing formal requirements in law, fn.10 or toward minimizing the consequences of failure to satisfy formal requirements. Nevertheless, sound practice remains to formalize a transaction in a manner that best assures the parties of its validity and enforceability. fn.11 In current practice, that formalization usually entails documenting the transaction and signing or authenticating the documentation.

However, the centuries-old means of documenting transactions and creating signatures are changing fundamentally. Documents continue to be written on paper, but sometimes merely to satisfy the need for a legally recognized form. In many instances, the information exchanged to effect a transaction never takes paper form. It also no longer moves as paper does; it is not physically carried from place to place but rather streams along digital conduits at a speed impossible for paper. The computer-based information is also utilized differently than its paper counterpart. Paper documents can be read efficiently only by human eyes, but computers can also read digital information and take programmable actions based on the information.

The law has only begun to adapt to the new technological forms. The basic nature of the transaction has not changed; however, the transaction's form, the means by which it is represented and effected, is changing. Formal requirements in law need to be updated accordingly. The legal and business communities need to develop and adopt rules and practices which recognize in the new, computer-based technology the effects achieved or desired from the paper forms.

To achieve the basic purposes of signatures outlined above, the following effects are needed: fn.12

- **Signer authentication**: To provide good evidence of who participated in a transaction, a signature should indicate by whom a document or message is signed and be difficult for any other person to produce without authorization.
- **Document authentication**: To provide good evidence of the substance of the transaction, a signature should identify what is signed, fn.13 and make it impracticable to falsify or alter, without detection, either the signed matter or the signature. fn.14
- **Affirmative act**: To serve the ceremonial and approval functions of a signature, a person should be able to create a signature to mark an event, indicate approval and authorization, and establish the sense of having legally consummated a transaction.
- **Efficiency**: Optimally, a signature and its creation and verification processes should provide the greatest possible assurance of authenticity and validity with the least possible expenditure of resources.

The concepts of signer authentication and document authentication comprise what is often called "nonrepudiation service" in technical documents. The nonrepudiation service of information security "provides proof of the origin or delivery of data in order to protect the sender against false denial by the recipient that the data has been received, or to protect the recipient against false denial by the sender that the data has been sent." fn.15 In other words, a nonrepudiation service provides evidence fn.16 to prevent a person from unilaterally modifying or terminating her legal obligations arising out of a transaction effected by computer-based means.

Digital signature technology generally surpasses paper technology in yielding these desired effects. fn.17 To understand why, one must first understand how digital signature technology works.

How Digital Signature Technology Works

Digital signatures are created and verified by means of cryptography, the branch of applied mathematics that concerns itself with transforming messages into seemingly unintelligible forms and back again. For digital signatures, two different keys are generally used, one for creating a digital signature or transforming data into a seemingly unintelligible form, and another key for verifying a digital signature or returning the message to its original form. fn.18 Computer equipment and software utilizing two such keys is often termed an "**asymmetric cryptosystem**".

The keys of an asymmetric cryptosystem for digital signatures are termed the **private key**, which is known only to the signer fn.19 and used to create the digital signature, and the **public key**, which is ordinarily more widely known and is used to verify the digital signature. A recipient must have the corresponding public key in order to verify that a digital signature is the signer's. If many people need to verify the signer's digital signatures, the public key must be distributed to all of them, perhaps by publication in an on-line repository or directory where they can easily obtain it.

Although the keys fn.20 of the pair are mathematically related, it is XE "Computational infeasibility:deriving private key from public"computationally infeasible fn.21 to derive one key from the other, if the asymmetric cryptosystem has been designed and implemented securely for digital signatures. fn.22 Although many people will know the public key of a given signer and use it to verify that signer's signatures, they cannot discover that signer's private key and use it to forge digital signatures.

Use of digital signatures is comprised of two processes, one performed by the signer and the other by the receiver of the digital signature:

- **Digital signature creation** is the process of the computing a code derived from and unique to both the signed message and a given private key. For that code or digital signature to be secure, there must be at most only a negligible chance that the same digital signature could be created by any other message or private key. fn.23
- **Digital signature verification** is the process of checking the digital signature by reference to the original message and a public key, and thereby determining whether the digital signature was created for that same message using the private key that corresponds to the referenced public key.

A more fundamental process, termed a "**hash function**" fn.24 in computer jargon, is used in both creating and verifying a digital signature. A hash function creates in effect a digital freeze frame of the message, a code usually much smaller than the message but nevertheless unique to it. fn.25 If the message changes, the hash result of the message will invariably fn.26 be different. Hash functions enable the software for creating digital signatures to operate on smaller and predictable amounts of data, while still providing a strong evidentiary correlation to the original message content.

As illustrated in figure 1, to sign a document or any other item of information, the signer first delimits precisely what is to be signed. The delimited information to be signed is termed the "**message**" in the ABA Guidelines and Utah Act. Then a hash function in the signer's software computes a hash result, a code unique to the message. The signer's software then transforms the hash result into a digital signature by reference to the signer's private key. This transformation is sometimes described as "encryption". The resulting digital signature is thus unique to both the message and the private key used to create it.

Typically, a digital signature is attached to its message and stored or transmitted with its message. However, it may also be sent or stored as a separate data element, so long as it maintains a reliable association with its message. Since a digital signature is unique to its message, it is useless if wholly dissociated from its message.

Verification of a digital signature, as illustrated in Figure 2, is accomplished by computing a new hash result of the original message by means of the same hash function used in creating the digital signature.

Then, using the public key, the verifier checks whether the digital signature was created using the corresponding private key, and whether the newly computed hash result matches the hash result derived from the digital signature. If the signer's private key was used and the hash results are identical, then the digital signature is verified. Verification thus indicates (1) that the digital signature was created using the signer's private key, because only the signer's public key will verify a digital signature created with the signer's private key, fn.27 and (2) that the message was not altered since it was signed, because the hash result computed in verification matches the hash result from the digital signature, which was computed when the message was digitally signed.

Various asymmetric cryptosystems create and verify digital signatures using different mathematical formulas and procedures, but all share this overall operational pattern.

The processes of creating a digital signature and verifying it accomplish the essential effects desired of a signature:

- **Signer authentication**: If a public and private key pair is associated with an identified signer as described below, a digital signature by the private key effectively identifies the signer with the message. The digital signature cannot be forged by a person other than the proper signer, unless the proper signer loses control of the private key, such as by divulging it or losing a computer-readable card and its associated personal identification number (PIN) or pass phrase.fn.28
- **Message authentication**: The process of digitally signing also identifies the matter to be signed, typically with far greater certainty and precision than paper signatures. Verification also reveals any tampering with the message, since processing the hash results (one made at signing and the other made at verifying) discloses whether the message is the same as when signed.
- **Affirmative act**: Creating a digital signature requires the signer to provide her private key and invoke a software function to create a digital signature. This act can be the basis of a ceremony and can be used in staging the completion of a transaction. fn.29
- **Efficiency**: The processes of creating and verifying a digital signature provide a high level of assurance that the digital signature is genuinely the signer's and are almost entirely automated or capable of automation. They can be set up to run with great speed and accuracy, with human interaction only for non-routine processing decisions. Compared to paper methods such as checking bank signature cards, methods so impracticable that they are rarely actually used, digital signatures yield a high degree of assurance without adding greatly to the resources required for processing.

The core of the programs used for digital signatures have undergone thorough peer review, and an extensive scientific and technical literature underlies them. Digital signatures have been accepted in several national and international standards developed in cooperation with and accepted by many corporations, banks, and government agencies. The likelihood of malfunction or a security problem in a digital signature cryptosystem designed and implemented as prescribed in the industry standards is extremely remote, and far less than the risk of undetected forgery or alteration on paper or of using other less secure electronic signature techniques.

Public Key Certificates

To verify a digital signature, the verifier must obtain a public key and have assurance that that public key corresponds to the signer's private key. However, a public and private key pair has no intrinsic association with any person; it is simply a pair of numbers. The association between a particular person and key pair must be made by people using the fact-finding capabilities of their senses.

In a transaction involving two parties, for example, the parties could bilaterally identify each other with the key pair each party will use, but making such an identification is no small task, especially when the parties are geographically distant from each other, communicate over an open, insecure information

network, are not natural persons but rather corporations or similar artificial entities, and act through agents whose authority must be ascertained. Since reliably identifying a remote party involves considerable effort, establishing a remote party's digital signature capability specially for each of many transactions is inefficient. Instead, a prospective digital signer will often wish to identify itself with a key pair and reuse that identification in multiple transactions over a period of time.

To that end, a prospective signer could issue a statement such as: "Signatures verifiable by the following public key are mine". However, others doing business with the signer may well be unwilling to take the signer's own purported word for its identification with the key pair. Especially for electronic transactions made over worldwide information networks rather than face to face, a party would run a great risk of dealing with a phantom or an impostor, or of facing a disavowal of a digital signature by claiming it to be the work of an impostor, particularly if a transaction proves disadvantageous for the purported signer. To assure that each party is indeed identified with a particular key pair, one or more third parties trusted by both of the others must associate an identified person on one end of the transaction with the key pair creating the digital signature received at the other end, and vice versa. That trusted third party is termed a "**certification authority**" in the ABA Guidelines, the Utah Act, and most technical standards.

To associate a key pair with a prospective signer, a certification authority issues a certificate, an electronic record that sets forth a public key and represents that the prospective signer identified in the certificate holds the corresponding private key. That prospective signer is termed the "subscriber". Thus, a certificate's principal function is to identify a key pair with a subscriber, so that a person verifying a digital signature by the public key listed in the certificate can have assurance that the corresponding private key is held by the subscriber also listed in the certificate.

To assure the authenticity and inviolability of the certificate, the certification authority digitally signs it. The issuing certification authority's digital signature on the certificate can be verified using the public key listed in another certificate, and that other certificate can be verified by the public key listed in yet another certificate, and so on, until the person relying on the digital signature is adequately assured of its genuineness.

To make a public key and its identification with a specific subscriber readily available for use in verification, the certificate may be published in a repository. Repositories are on-line databases of certificates available for retrieval and use in verifying digital signatures. Often, retrieval is accomplished automatically by having the verification program inquire of the repository to obtain certificates as needed.

Once issued, a certificate may prove to be unreliable, such as in situations where the subscriber misrepresents his identity to the certification authority. In other situations, a certificate may be reliable enough when issued but come to be unreliable sometime thereafter. For example, if the subscriber loses control of the private key, the certificate becomes unreliable, since digital signatures created by the lost private key would appear to be the subscriber's according to the certificate. In such situations where the certificate has become unreliable, the certification authority, perhaps at the subscriber's request, may suspend (temporarily invalidate) or revoke (permanently invalidate) the certificate. Immediately upon suspending or revoking a certificate, the certification authority must publish notice of the revocation or suspension, or at least notify persons who inquire or who are known to have received a digital signature verifiable by reference to the unreliable certificate.

Challenges and Opportunities

The prospect of fully implementing digital signatures in general commerce presents both advantages and disadvantages, or benefits and costs. The costs or disadvantages consist mainly of:

- **Institutional overhead**: The cost of establishing and utilizing certification authorities, repositories, and other important services, as well as assuring quality in the performance of their

functions through means such as professional accreditation, oversight by another, superior certification authority, fn.30 licensing and governmental regulation, periodic auditing, or legal and financial responsibility for errors and omissions.

- **Product cost**: A digital signer will require software that may well be more expensive than a simple pen, and may probably also have to pay a certification authority to issue a certificate. Equipment to secure one's private key may also be advisable. Recipients of digital signatures will incur expenses for verification software and perhaps for access to certificates in a repository.

On the plus side, the principal advantage to be gained is more reliable authentication of messages. Digital signatures, if properly implemented and utilized:

- **Impostors**: Minimize the risk of dealing with impostors or persons who can escape responsibility by claiming to have been impersonated.
- **Message corruption**: Minimize the risk of tampering with messages, altering the terms of a transaction and covering up the traces of the alteration, or false claims that a message was altered after it was sent.
- **Formal legal requirements**: Strengthen the support for concluding that legal requirements of form, such as writing, signature, and an original document, are satisfied, since digital signatures are functionally on a par with or superior to paper forms.
- **Open systems**: Retain a high degree of information security, even for information sent over open, insecure, but inexpensive and widely used communication channels.

Considering the alternatives, such as paper signatures, computerized images of handwritten signatures, or typed signatures such as "s/John Smith", the benefits of digital signatures outweigh their burdens. The ABA Guidelines and Utah Act are intended to advance legal recognition of digital signatures and establish an institutional infrastructure to support digital authentication.

Notes

Note 1

See, e.g., Uniform Commercial Code § 1-201(39) (1992).

Note 2

This list is not exhaustive. For example, Restatement (Second) of Contracts notes another function, termed the "deterrent function", which seeks to "discourage transactions of doubtful utility. Restatement (Second) of Contracts § 72 comment c (1981). Professor Perillo also notes, in an especially comprehensive list, earmarking of intent, clarification, managerial efficiency, publicity, education, as well as taxation and regulation as functions as served by the statute of frauds. Joseph M. Perillo, The Statute of Frauds in the Light of the Functions and Dysfunctions of Form, 43 Fordham L. Rev. 39, 48-64 (1974) (hereinafter "Perillo").

Note 3

Restatement (Second) of Contracts, statutory note preceding § 110 (1982) (purpose of the statute of frauds, which includes a signature requirement); Lon L. Fuller, Consideration and Form, 41 Colum. L. Rev. 799, 800 (1941) (hereinafter "Fuller"); Jeremy Bentham, The Works of Jeremy Bentham 508-85 (Bowring ed. 1839) (Bentham called forms serving evidentiary functions "preappointed [i.e., made in advance] evidence"). A handwritten signature creates probative evidence in part because of the chemical properties of ink that make it adhere to paper, and because handwriting style is quite unique to the signer; Perillo at 64-69.

Note 4

2 John Austin, Lectures on Jurisprudence 939-44 (4th ed. 1873); Restatement (Second) of Contracts § 72 comment c (1982) and statutory note preceding § 110 (1982) (what is here termed a "ceremonial" function is termed a "cautionary" function in the Restatement); Perillo at 53-56; Fuller at 800; Rudolf von Jhering, Geist des römischen Rechts § 45 at 494-98 (8th ed. 1883) (hereinafter "Jhering").

Note 5

SB 232
Bill Summary/Sectional Analysis

Bill Summary:

This bill makes electronic signatures legal in our state. It will help bring the state of Alaska and the businesses that operate here into the electronic age - allowing business and government to conduct business electronically with counterparts in Alaska, other states and other countries.

The various sections accomplish the following:

1. Declare that the use of electronic signatures in Alaska between consenting parties is legal. Electronic signatures would have the same legal standing as a standard signature from an individual.
2. Allow state agencies to promulgate regulations for using electronic signatures in their interactions with the public.
3. Define various terms relating to electronic signatures.
4. Repeals for some state agencies selected notarization requirements that could hinder an agency's ability to implement the use of electronic signatures.

By making electronic signatures legal, the bill provides an opportunity for state agencies to better serve the public "online." State government will be able to serve citizens participating in the new world of electronic commerce.

This bill has the support of the Telecommunications Information Council. It is modeled on the Georgia State Act, which is considered one of the foremost electronic signature laws in the United States.

Sectional Analysis

Section 1: Removes the requirement that reports filed by banks with the Department of Commerce and Economic Development be verified by a notary and replaces it with a requirement for signature under penalty of unsworn falsification.

Section 2: Specifies that information in state records that would compromise the security of an electronic signature is an "exception" from the state public records statute.

Section 3: Accomplishes the following:

1. Articulates the purposes of electronic signatures, such as facilitating government business and private commerce and promoting electronic government and commerce.

2. Establishes that the use of electronic signatures between consenting parties is legal in Alaska. An electronic signature would have the same legal standing as a handwritten signature.

3. Specifies that the Lt. Governor's Office or other state agencies can adopt regulations for the use of electronic signatures in conducting state business or for use of electronic signatures by businesses and individuals.

4. Defines electronic signatures and records.

Sections 5 – 44: Open the door for the state Department of Commerce and Economic Development to allow businesses and corporations to file reports electronically and verifying them with electronic signatures. These sections revise statutes in the corporations and partnership codes to remove notary requirements on various documents filed with the DCED.

Sections 45 – 48: Revise statutes in AS 34.45 to remove the requirement that signatures on reports or other forms filed with the state regarding unclaimed property be notarized and replace it with the requirement that signatures be made under penalty of unsworn falsification.

Sections 49 - 50: Revise statutes relating to the state archives system to allow the archives to accept electronic records.

Sections 51 – 55: Revise various statutes in AS 45.50 relating to regulation of trademarks to remove the requirement that signatures on certain forms filed with the state be notarized.