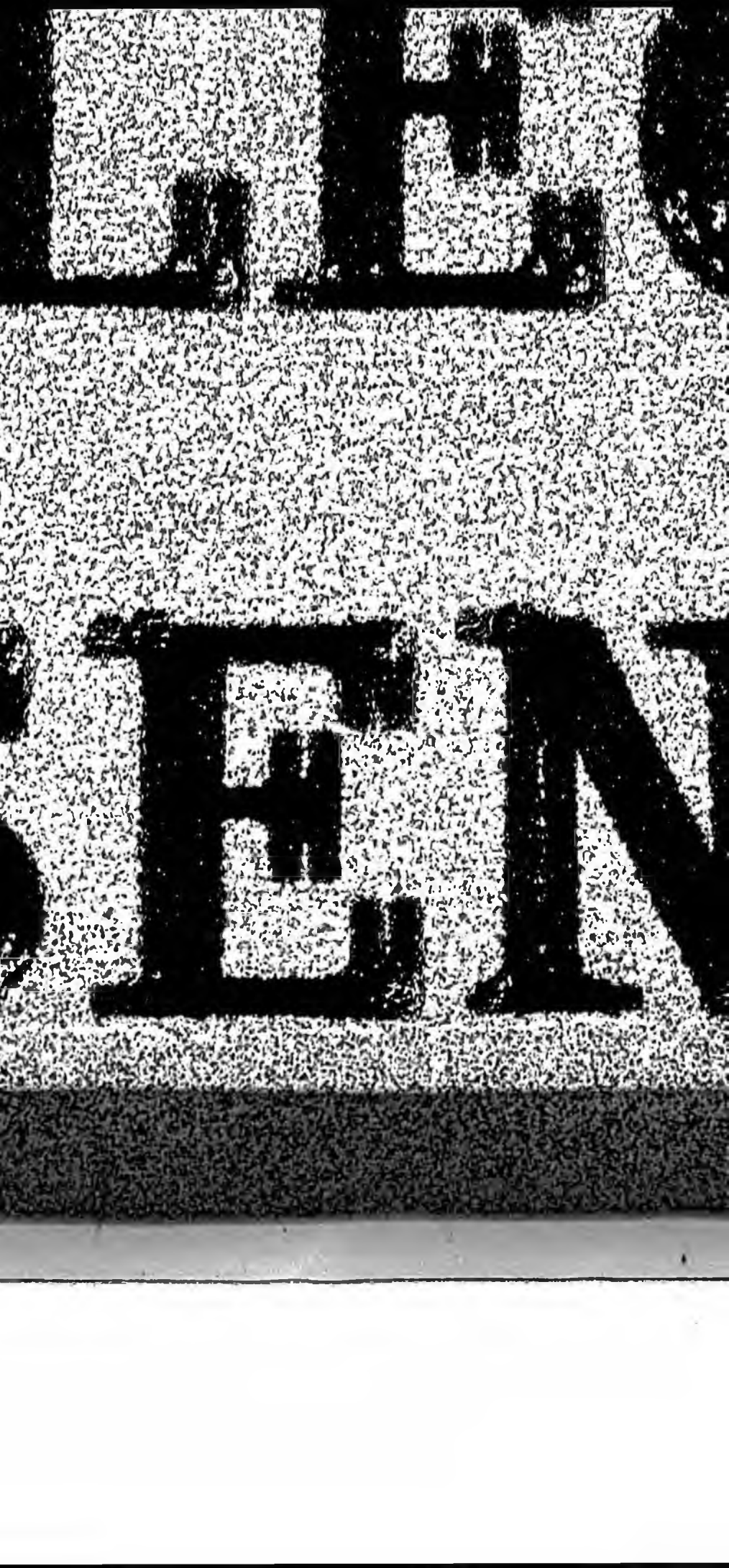


ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9573 SENATE JUDICIARY

210



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

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

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

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

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

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

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

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(A) strangers;

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

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

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

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

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

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

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

(A) has been

(i) convicted of a sexually violent offense;

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

(iii) charged with a sexually violent offense and who

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

(B) suffers from a mental illness that makes the person <sup>substantially</sup> likely

to commit a sexually violent predatory offense.

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

# FISCAL NOTE DRAFT

Workdraft F

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

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

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

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

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

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

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

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

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

Section 1 of CSSB 216 (FIN) Workdraft F requires the Department of Corrections to pre-screen offenders who might meet the criteria for a sexually violent predator. This will require 3 new full time positions; One (1) Mental Health Clinician III, one (1) Admin Clerk III, and one (1) Admin Clerk II. Through the screening process, offenders who appear to meet the definition of a Sexually Violent Predator will be referred to the Dept. of Health and Social Services for a thorough referral examination.

Prepared by <u>Bruce Richards</u>	Phone <u>465-3307</u>
Division <u>Commissioner's Office</u>	Date <u>4/20/98</u>
Approved by <u>Commissioner Margaret M. Pugh</u>	Date <u>4/20/98</u>
Agency <u>Department of Corrections</u>	

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. Workdraft F CSSB 216 (JUD)

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

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

COMPONENT SERIAL NO. 1631

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

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

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE:** (Thousands of Dollars)

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

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

**POSITIONS:**

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

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

See attached sheet.

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

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

Approved by Commissioner: Mark Boyer  
 Agency: Department of Administration

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

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## FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB.

### 1998 LEGISLATIVE SESSION

#### ANALYSIS: (continued)

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

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

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

#### SEXUAL PREDATOR COMMITMENT CASES

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

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

## FISCAL NOTE

STATE OF ALASKA

BILL NO. CSSB 216

### 1998 LEGISLATIVE SESSION

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

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

### FISCAL IMPACT

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

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

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

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

**FISCAL NOTE**

**STATE OF ALASKA**

**BILL NO. CSSB 216 (JUD)**

**1998 LEGISLATIVE SESSION**

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

# FISCAL NOTE

Work Draft F, dated 4/13/98

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

**BILL NO. CSSB 216 (JUD)**

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

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

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	57.9	84.7	73.9	73.9	73.9	73.9
TRAVEL						
CONTRACTUAL	26.3	26.3	26.3	26.3	26.3	26.3
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>84.2</b>	<b>91.0</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>	<b>100.2</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						

**Fund Source (Thousands of Dollars)**

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

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

**Positions**

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

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

See attached analysis.

Prepared by: Doug Wooliver, Administrative Attorney Phone: 264-8285  
 Agency: Alaska Court System Date: 04/16/98  
 Approved by: Stephanie J. Cole, Administrative Director Date: 04/16/98  
 Agency: Alaska Court System

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Alaska Court SystemFiscal Analysis

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

<b>FY 99</b> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge Pro Tem, Anchorage, PPT, 4.25 months	\$ 20,719	\$ 10,089	\$ 30,818
In-Court Clerk, 12A, Anchorage, PPT 4.25 months	10,247	2,222	12,469
Law Clerk, 13D, Anchorage, PPT, 4.25 months	12,036	2,609	14,645
Total Personal Services			\$ 57,932
<u>Contractual Services</u>			
Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials			26,250
FY 99 Total Cost			84,182
<b>FY 00</b> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each) & 4 petitions to release (with probable cause hearings @ 2 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge Pro Tem, Anchorage, PPT, 4.75 months	\$ 23,156	\$ 11,287	\$ 34,443
In-Court Clerk, 12A, Anchorage, PPT 4.75 months	11,452	2,483	13,935
Law Clerk, 13D, Anchorage, PPT, 4.75 months	13,452	2,916	16,368
Total Personal Services			\$ 64,746
<u>Contractual Services</u>			
Jury fees for 14 person jury for 15 days at \$26 a day for 5 trials			26,250
FY 00 Total Cost			90,996
<b>FY 01 - FY 04</b> 5 new commitments (with probable cause hearings @ 2 days each & jury trials @ 16 days each) & 8 (10 in FY 02-04) petitions to release (with probable cause hearings @ 2 days each)			
<u>Personal Services</u>			
	<u>Salary</u>	<u>Benefits</u>	<u>Total</u>
Superior Court Judge Pro Tem, Anchorage, PPT, 5.25 months	\$ 25,594	\$ 12,475	\$ 38,069
In-Court Clerk, 12A, Anchorage, PPT 5.25 months	12,658	3,929	16,587
Law Clerk, 13D, Anchorage, PPT, 5.25 months	14,868	4,409	19,277
Total Personal Services			\$ 73,933
<u>Contractual Services</u>			
Jury fees for 14 person jury for 15 days at \$25 a day for 5 trials			26,250
FY 01 - FY 04 Total Cost			100,183

DRAFT

FISCAL NOTE

Workdraft F

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

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

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services	300.5	377.1	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	3.0	13.0	6.5	0.0
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>479.9</b>	<b>482.5</b>	<b>546.0</b>	<b>625.0</b>	<b>659.6</b>	<b>653.1</b>

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

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

Estimate of any current year (FY98) cost:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)

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

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

Prepared by	Joan M. Kasson	Phone	465-5370
Division	Attorney General's Office	Date	4/15/98
Approved by Commissioner	Bruce M. Botelho, Attorney General	Date	4/15/98
Agency	Department of Law		

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

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

**TRIAL UNIT**

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

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

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

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

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

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

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

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

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

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

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

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

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Work Draft F  
BILL NO. CSSB 216 (JUD)

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

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

## APPELLATE UNIT

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

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

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

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

All positions are assumed to be located in Anchorage as that is where most of the offenders Corrections indicates are likely to be referred to the Attorney General for commitment are located. The Anchorage Criminal Division offices have no space available to put the new positions associated with this bill, and more space would need to be leased. As a practical matter, the space would need to be leased all at once, and not incrementally over the six year period of the fiscal note. To anticipate this need, the percentage of the attorney and paraprofessional rates that represent lease costs are moved into FY99, and the subsequent years costs reduced as new positions are added to avoid double counting.

		FTE	COST	FY99	FY00	FY01	FY02	FY03	FY04
<u>Trial Unit</u>	# Cases to trial			5	5	5	5	5	5
	# Cases to petition				4	8	10	10	10
Yr 1	Attorney	1	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	Paraprofessional	1	88.5	88.5	88.5	88.5	88.5	88.5	88.5
	Legal Secretary	1							
Yr 2	Attorney	0.5	133.5		66.8	66.8	66.8	66.8	66.8
Yr 3	Attorney	0.5	133.5			66.8	66.8	66.8	66.8
Yr 4	Attorney	0.5	133.5				66.8	66.8	66.8
	Legal Secretary	1					0.0	0.0	0.0
Yr 5	Paraprofessional	0.5	88.5					44.2	44.2
	One-time equipment purchases			19.5	6.5		13.0	6.5	0.0
	All lease costs to FY99: base adjusted for rate recovery			14.4	10.6	6.9	3.2	0.0	0.0
<b>Per Case costs</b>									
Yr 1	Expert fees first case to trial		50.0	50.0					
Yrs 1-6	Expert fees per trial		5.0	20.0	25.0	25.0	25.0	25.0	25.0
	Witness travel & subsistence		1.0	5.0	5.0	5.0	5.0	5.0	5.0
	Depositions/court reporter		1.0	5.0	5.0	5.0	5.0	5.0	5.0
Yrs 2-6	Expert Fees per petition		1.0	0.0	4.0	8.0	10.0	10.0	10.0
<u>Appellate Unit</u>	# cases appealed			4	4	7	8	8	8
Yr 1	Attorney	1	133.5	133.5	133.5	133.5	133.5	133.5	133.5
	One-time equipment purchases			6.5					
<b>Per Case costs</b>									
Yrs 1-6	Transcriptions		1.0	4.0	4.0	7.0	8.0	8.0	8.0
<b>TOTAL COSTS</b>				<b>479.9</b>	<b>482.5</b>	<b>546.0</b>	<b>625.0</b>	<b>659.6</b>	<b>653.1</b>
<u>Trial Unit</u>	PFT attorney			1.0	1.5	2	2	2	2
	PPT attorney						1	1	1
	PFT paraprofessional			1	1	1	1	1	1
	PPT paraprofessional							1	1
	PFT legal secretary			1	1	1	2	2	2
<u>Appellate Unit</u>	PFT attorney			1	1	1	1	1	1
<b>TOTAL PFT</b>				<b>7</b>					
<b>TOTAL PPT</b>							<b>1</b>	<b>2</b>	<b>2</b>

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB216 (JUD)

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

**Expenditures/Revenues:**

(Thousands of Dollars)

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

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

(Thousands of Dollars)

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

**POSITIONS:**

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

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

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

**Fiscal Assumptions:**

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

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

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

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

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

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DRAFT

ANALYSIS (cont.):

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

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

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

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

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

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

DRAFT

## ANALYSIS (cont.):

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

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

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

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

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

DRAFT

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB 216 (JUD)

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

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

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

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

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

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

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

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

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

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

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB216 (JUD)

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

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

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

CAPITAL EXPENDITURES			Placeholder			
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CHANGES IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

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

**POSITIONS:**

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

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

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

**Fiscal Assumptions:**

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

Prepared by: Karl R. Burns, Director API Phone: 907-269-7103  
 Division: Mental Health and DD Date: 04/21/98  
 Approved by Commissioner: Karen Perdue, Commissioner Date: 4/21/98  
 Agency: Department of Health & Social Services

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ANALYSIS (cont.):

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

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

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

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

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

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

**ANALYSIS (cont.):**

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

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

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

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

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

**S B**

**218**

0-LS1322\K  
Luckhaupt  
2/10/98

**CS FOR SENATE BILL NO. 218(JUD)**

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

**TWENTIETH LEGISLATURE - SECOND SESSION**

**BY THE SENATE JUDICIARY COMMITTEE**

Offered:  
Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the crimes of murder, manslaughter, and criminally negligent  
2 homicide and to homicides of children."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 \* Section 1. AS 11.41.100(a) is amended to read:

5 (a) A person commits the crime of murder in the first degree if  
6 (1) with intent to cause the death of another person, the person  
7 (A) causes the death of any person; or  
8 (B) compels or induces any person to commit suicide through  
9 duress or deception; [OR]

10 (2) the person knowingly engages in conduct directed toward [,  
11 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE  
12 VALUE OF HUMAN LIFE, IN A PATTERN OR PRACTICE OF ASSAULT OR  
13 TORTURE OF] a child under the age of 16 and the person with criminal negligence  
14 [, AND ONE OF THE ACTS OF ASSAULT OR TORTURE RESULTS IN THE

1 DEATH OF THE CHILD; FOR PURPOSES OF THIS PARAGRAPH, A PERSON  
2 "ENGAGES IN A PATTERN OR PRACTICE OF ASSAULT OR TORTURE" IF  
3 THE PERSON] inflicts serious physical injury on the [A] child by at least two  
4 separate acts, and one of the acts results in the death of the child; or

5 (3) acting alone or with one or more persons, the person commits  
6 or attempts to commit a sexual offense or kidnapping against a child under 16  
7 years of age and, in the course of or in furtherance of the offense or in immediate  
8 flight from that offense, any person causes the death of the child; in this  
9 paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470.

10 \* Sec. 2. AS 11.41.110(a) is amended to read:

11 (a) A person commits the crime of murder in the second degree if

12 (1) with intent to cause serious physical injury to another person or  
13 knowing that the conduct is substantially certain to cause death or serious physical  
14 injury to another person, the person causes the death of any person;

15 (2) the person knowingly engages in conduct that results in the death  
16 of another person under circumstances manifesting an extreme indifference to the value  
17 of human life;

18 (3) under circumstances not amounting to murder in the first  
19 degree under AS 11.41.110(a)(3), while acting either alone or with one or more  
20 persons, the person commits or attempts to commit arson in the first degree,  
21 kidnapping, sexual assault in the first degree, sexual assault in the second degree,  
22 sexual abuse of a minor in the first degree, sexual abuse of a minor in the second  
23 degree, burglary in the first degree, escape in the first or second degree, robbery in  
24 any degree, or misconduct involving a controlled substance under AS 11.71.010(a),  
25 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or  
26 in furtherance of that crime [,] or in immediate flight from that crime, any person  
27 causes the death of a person other than one of the participants; [OR]

28 (4) acting with a criminal street gang, the person commits or attempts  
29 to commit a crime that is a felony and, in the course of or in furtherance of that crime  
30 or in immediate flight from that crime, any person causes the death of a person other  
31 than one of the participants; or

1                   (5) the person with criminal negligence causes the death of a child  
2                   under the age of 16, and the person has been previously convicted of a crime  
3                   involving a child under the age of 16 that was

4                   (A) in violation of AS 11.41;

5                   (B) in violation of a law or ordinance in another jurisdiction  
6                   with elements similar to a crime under AS 11.41; or

7                   (C) an attempt, a solicitation, or a conspiracy to commit a  
8                   crime listed in (A) or (B) of this paragraph.

9 \* Sec. 3. AS 11.41.13C(b) is amended to read:

10                   (b) Criminally negligent homicide is a class B [C] felony.

11 \* Sec. 4. AS 12.55.125(b) is amended to read:

12                   (b) A defendant convicted of murder in the second degree, attempted murder  
13                   in the first degree, conspiracy to commit murder in the first degree, kidnapping, or  
14                   misconduct involving a controlled substance in the first degree shall be sentenced to  
15                   a definite term of imprisonment of at least five years but not more than 99 years. A  
16                   defendant convicted of murder in the second degree shall be sentenced to a  
17                   definite term of imprisonment of at least 20 years but not more than 99 years  
18                   when the defendant is convicted of the murder of a child under 16 years of age  
19                   and the court finds by clear and convincing evidence that the defendant (1) was  
20                   a legal guardian or a person occupying a position of authority in relation to the  
21                   child; or (2) caused the death of the child by committing a crime against a person  
22                   under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and  
23                   "position of authority" have the meanings given in AS 11.41.470.

24 \* Sec. 5. AS 12.55.125(c) is amended to read:

25                   (c) A defendant convicted of a class A felony may be sentenced to a definite  
26                   term of imprisonment of not more than 20 years, and shall be sentenced to the  
27                   following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
28                   12.55.175:

29                   (1) if the offense is a first felony conviction and does not involve  
30                   circumstances described in (2) of this subsection, five years;

31                   (2) if the offense is a first felony conviction

1           (A) [,] other than for manslaughter [,] and the defendant  
2           possessed a firearm, used a dangerous instrument, or caused serious physical  
3           injury during the commission of the offense, or knowingly directed the conduct  
4           constituting the offense at a uniformed or otherwise clearly identified peace  
5           officer, fire fighter, correctional employee, emergency medical technician,  
6           paramedic, ambulance attendant, or other emergency responder who was  
7           engaged in the performance of official duties at the time of the offense, seven  
8           years;

9                           (B) for manslaughter and the victim is a child under the age  
10                          of 16, seven years;

11                          (3) if the offense is a second felony conviction, 10 years;

12                          (4) if the offense is a third felony conviction and the defendant is not  
13           subject to sentencing under (l) of this section, 15 years.

14   \* Sec. 6. AS 12.55.125(k) is amended to read:

15                          (k) A first felony offender convicted of an offense for which a presumptive  
16           term of imprisonment is not specified under this section

17                           (1) may be sentenced to a term of unsuspended imprisonment that  
18                          exceeds the presumptive term for a second or third felony offender convicted of  
19                          the same crime if the offender is convicted of criminally negligent homicide and  
20                          the victim is a child under the age of 16;

21                           (2) except as provided in (1) of this subsection, may not be sentenced  
22           to a term of unsuspended imprisonment that exceeds the presumptive term for a second  
23           felony offender convicted of the same crime unless the court finds by clear and  
24           convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or  
25           that circumstances exist that would warrant a referral to the three-judge panel under  
26           AS 12.55.165.

27   \* Sec. 7. This Act applies to offenses committed on or after the effective date of this Act.  
28   However, previous convictions refer to convictions occurring before, on, or after the effective  
29   date of this Act.

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 218

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

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 218

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title An Act relating to the crime of murder and to BRU Criminal Division  
murder of children. 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner *Bruce M. Botelho* Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 2/2/98  
 Date 2/2/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. SB 218 | \_\_\_\_\_

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Corrections  
 Title An Act relating to the crime of murder and to BRU Administration and Operations  
muder of children 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

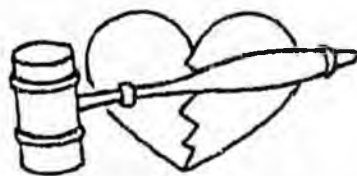
No Fiscal Impact

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

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**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*  
Janice Lienhart  
Executive Director

*Cathy Satterfield*  
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 LAA\_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

cc: 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



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

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

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

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

### SPONSOR STATEMENT

#### SB 218

#### "An Act relating to the crime of murder and to murder of children"

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.

SB 218 expands the range of conduct proscribed by this particular form of first degree murder of children. It also 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. Additionally, SB 218 expands the list of offenses constituting felony murder to include sexual abuse of minors in the first and second degrees. This legislation also amends current statutes by requiring a 20 year mandatory minimum sentence for a person convicted of a murder of a child under the age of sixteen.

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

# LEGAL SERVICES

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

(907) 465-3367 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101


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

## MEMORANDUM

January 12, 1998

**SUBJECT:** Sectional Summary of SB 218. (Work Order No. 20-LS1322/B)

**TO:** Senator Rick Halford  
Attn: Brett Huber

**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<sup>1</sup> 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 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 caused the death of the child by the neglect of a duty of care the person owed the child or by an assault the person committed against the child.

Section 4 of the bill provides that the bill only applies to offenses committed after the effective date of the bill.

GPL:pl:glc  
98-003.plm

---

<sup>1</sup>When the death of a child results from the commission or attempted commission of a sexual offense or kidnapping of the child.

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 2/11/98

FURTHER: Finance

Date of 5-Day Notice: 1/29/98  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 2-11-98

Judiciary Committee considered

SENATE BILL NO. 218

"An Act relating to the crime of murder and to murder of children."

and recommends:

- be replaced with CS FOR SB 218 ( JUD )
- adopt previous CS (          )
- attached amendment(s)
- adopt Letter of Intent by          Committee
- further referral to the          Committee

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

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Mate Miller</i>	<input checked="" type="checkbox"/>				
<i>Tracy K. ...</i>	<input checked="" type="checkbox"/>				
CHAIR: <i>Adrian I. Taylor</i>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<i>DOA</i>	<i>2/3/98</i>		<i>XX</i>
<i>DOC</i>	<i>2/4/98</i>	<i>0</i>	
<i>DOLaw</i>	<i>2/3/98</i>	<i>0</i>	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

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..."

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

Sponsor: Senator Halford  
Requestor: (S) JUD

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	**	**	**	**	**	**
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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

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
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 BRU Administration and Operations  
murder of children 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

No. 3

Bill Version: CSB 218 (JUD)

(S) Publish Date: 2-12-98

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Revision Date (Note if correction) _____	Dept. Affected <u>Law</u>
Title <u>An Act relating to the crime of murder and to</u>	BRU <u>Criminal Division</u>
<u>murder of children.</u>	Component <u>1st-4th Jud Dist; OSPA</u>
Sponsor <u>Senator Halford</u>	
Requester <u>Senate Judiciary Committee</u>	Component Serial No. <u>2198-99/2261779/01/03</u>

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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CS FOR SENATE BILL NO. 218(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:  
Referred:

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

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the crimes of murder, manslaughter, and criminally negligent  
2 homicide and to homicides of children."

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

4 \* Section 1. AS 11.41.100(a) is amended to read:

5 (a) A person commits the crime of murder in the first degree if

6 (1) with intent to cause the death of another person, the person

7 (A) causes the death of any person; or

8 (B) compels or induces any person to commit suicide through

9 duress or deception; [OR]

10 (2) the person knowingly engages in conduct directed toward [,  
11 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE  
12 VALUE OF HUMAN LIFE, IN A PATTERN OR PRACTICE OF ASSAULT OR  
13 TORTURE OF] a child under the age of 16 and the person with criminal negligence  
14 [, AND ONE OF THE ACTS OF ASSAULT OR TORTURE RESULTS IN THE

1 DEATH OF THE CHILD; FOR PURPOSES OF THIS PARAGRAPH, A PERSON  
 2 "ENGAGES IN A PATTERN OR PRACTICE OF ASSAULT OR TORTURE" IF  
 3 THE PERSON] inflicts serious physical injury on the [A] child by at least two  
 4 separate acts, and one of the acts results in the death of the child; or

5 (3) acting alone or with one or more persons, the person commits  
 6 or attempts to commit a sexual offense or kidnapping against a child under 16  
 7 years of age and, in the course of or in furtherance of the offense or in immediate  
 8 flight from that offense, any person causes the death of the child; in this  
 9 paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470.

10 \* Sec. 2. AS 11.41.110(a) is amended to read:

11 (a) A person commits the crime of murder in the second degree if

12 (1) with intent to cause serious physical injury to another person or  
 13 knowing that the conduct is substantially certain to cause death or serious physical  
 14 injury to another person, the person causes the death of any person;

15 (2) the person knowingly engages in conduct that results in the death  
 16 of another person under circumstances manifesting an extreme indifference to the value  
 17 of human life;

18 (3) under circumstances not amounting to murder in the first  
 19 degree under AS 11.41.110(a)(3), while acting either alone or with one or more  
 20 persons, the person commits or attempts to commit arson in the first degree,  
 21 kidnapping, sexual assault in the first degree, sexual assault in the second degree,  
 22 sexual abuse of a minor in the first degree, sexual abuse of a minor in the second  
 23 degree, burglary in the first degree, escape in the first or second degree, robbery in  
 24 any degree, or misconduct involving a controlled substance under AS 11.71.010(a),  
 25 11.71.020(a), 11.71.030(a)(1) or (2), or 11.71.040(a)(1) or (2) and, in the course of or  
 26 in furtherance of that crime [,] or in immediate flight from that crime, any person  
 27 causes the death of a person other than one of the participants; [OR]

28 (4) acting with a criminal street gang, the person commits or attempts  
 29 to commit a crime that is a felony and, in the course of or in furtherance of that crime  
 30 or in immediate flight from that crime, any person causes the death of a person other  
 31 than one of the participants; or

1                   (5) the person with criminal negligence causes the death of a child  
 2                   under the age of 16, and the person has been previously convicted of a crime  
 3                   involving a child under the age of 16 that was

4                               (A) in violation of AS 11.41;

5                               (B) in violation of a law or ordinance in another jurisdiction  
 6                   with elements similar to a crime under AS 11.41; or

7                               (C) an attempt, a solicitation, or a conspiracy to commit a  
 8                   crime listed in (A) or (B) of this paragraph.

9 \* Sec. 3. AS 11.41.130(b) is amended to read:

10                   (b) Criminally negligent homicide is a class B [C] felony.

11 \* Sec. 4. AS 12.55.125(b) is amended to read:

12                   (b) A defendant convicted of murder in the second degree, attempted murder  
 13                   in the first degree, conspiracy to commit murder in the first degree, kidnapping, or  
 14                   misconduct involving a controlled substance in the first degree shall be sentenced to  
 15                   a definite term of imprisonment of at least five years but not more than 99 years. A  
 16                   defendant convicted of murder in the second degree shall be sentenced to a  
 17                   definite term of imprisonment of at least 20 years but not more than 99 years  
 18                   when the defendant is convicted of the murder of a child under 16 years of age  
 19                   and the court finds by clear and convincing evidence that the defendant (1) was  
 20                   a legal guardian or a person occupying a position of authority in relation to the  
 21                   child; or (2) caused the death of the child by committing a crime against a person  
 22                   under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and  
 23                   "position of authority" have the meanings given in AS 11.41.470.

24 \* Sec. 5. AS 12.55.125(c) is amended to read:

25                   (c) A defendant convicted of a class A felony may be sentenced to a definite  
 26                   term of imprisonment of not more than 20 years, and shall be sentenced to the  
 27                   following presumptive terms, subject to adjustment as provided in AS 12.55.155 -  
 28                   12.55.175:

29                               (1) if the offense is a first felony conviction and does not involve  
 30                   circumstances described in (2) of this subsection, five years;

31                               (2) if the offense is a first felony conviction

1           (A) [,] other than for manslaughter [,] and the defendant  
 2           possessed a firearm, used a dangerous instrument, or caused serious physical  
 3           injury during the commission of the offense, or knowingly directed the conduct  
 4           constituting the offense at a uniformed or otherwise clearly identified peace  
 5           officer, fire fighter, correctional employee, emergency medical technician,  
 6           paramedic, ambulance attendant, or other emergency responder who was  
 7           engaged in the performance of official duties at the time of the offense, seven  
 8           years;

9           (B) for manslaughter and the victim is a child under the age  
 10          of 16. seven years;

11           (3) if the offense is a second felony conviction, 10 years;

12           (4) if the offense is a third felony conviction and the defendant is not  
 13          subject to sentencing under (l) of this section, 15 years.

14          \* Sec. 6. AS 12.55.125(k) is amended to read:

15           (k) A first felony offender convicted of an offense for which a presumptive  
 16          term of imprisonment is not specified under this section

17           (1) may be sentenced to a term of unsuspended imprisonment that  
 18          exceeds the presumptive term for a second or third felony offender convicted of  
 19          the same crime if the offender is convicted of criminally negligent homicide and  
 20          the victim is a child under the age of 16;

21           (2) except as provided in (1) of this subsection, may not be sentenced  
 22          to a term of unsuspended imprisonment that exceeds the presumptive term for a second  
 23          felony offender convicted of the same crime unless the court finds by clear and  
 24          convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or  
 25          that circumstances exist that would warrant a referral to the three-judge panel under  
 26          AS 12.55.165.

27          \* Sec. 7. This Act applies to offenses committed on or after the effective date of this Act.  
 28          However, previous convictions refer to convictions occurring before, on, or after the effective  
 29          date of this Act.

# FISCAL NOTE

No. 3

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

Bill Version: CSB 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 BRU Criminal Division  
murder of children. 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ( )						

**FUND SOURCE (Thousands of Dollars)**

FUND SOURCE	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner Bruce M. Botelho, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 2/2/98  
 Date 2/2/98

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# FISCAL NOTI

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 2  
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 BRU Administration and Operations  
muder of children 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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..."  
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)

*002 Federal Receipts	**	**	**	**	**	**
103 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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**SB**

**219**

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
BILL VERSION: CS SB219(JUD)  
PUBLISH DATE: \_\_\_\_\_

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						
<b>TOTAL OPERATING</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	508.6	464.4	464.4	464.4	464.4	464.4
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
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: 2/2/98

Approved By: Pamela A. Varni, Executive Director *Pamela Varni*  
Agency: Legislative Affairs Agency Date: 2/2/98

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

**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
1 Secretary 14A	2640	1	31680	40110	5700	45810
1 Secretary 12A	2324	1	27888	35309	5700	41009
1 Secretary 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, incur 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

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

**BILL NO. SB 219**

Revision Date (Note if correction) \_\_\_\_\_ Dept. Affected Law  
 Title ...establishing an office of crime victims' advocacy; BRU Criminal Division/Civil Division  
amending... Rules of Criminal Procedure... Delinquency Rules... Component 1st-4th Jud Dist, OSPA  
 Sponsor Senator Halford Human Services  
 Requester Senate Judiciary Committee 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						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

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

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<sup>of</sup> 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 *Joan M. Kasson*  
 Division Attorney General's Office  
 Approved by Commissioner James M. Grubbs, Attorney General  
 Agency Department of Law

Phone 465-5370  
 Date 1/20/98  
 Date 1/20/98

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# FISCAL NOTE

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

**BILL NO: SB 219**

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Crime Victims' Rights and Advocacy Act BRU: Violent Crimes Compensation Board  
of 1998 Component: \_\_\_\_\_  
 Sponsor: Senator Halford  
 Requestor: (S) JUD 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>						
Revenue Code						

**FUNDING: (Thousands of Dollars)**

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

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 Phone: 465-5525  
 Division: Violent Crimes Compensation Board Date: 1/17/98  
 Approved by Commissioner: Ronald L. Otte Date: 1/21/98  
 Agency: Dept. of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

NO. \_\_\_\_\_  
BILL VERSION: SB 219  
PUBLISH DATE: \_\_\_\_\_

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

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						
<b>TOTAL OPERATING</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	508.6	464.4	464.4	464.4	464.4	464.4
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
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)  
SB 219 establishes an Office of Crime Victims' Advocacy in the Legislative Branch of Government. The Victim's Advocate will be appointed for 5 years and be compensated a Range 26A. For the purposes of this fiscal note staff for the Victim's 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 & teleconference assistance and DP support at no cost to the Advocate office.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852  
Division: Administrative Services Date: 1/21/98  
Approved By: Pamela A. Varni, Executive Director *Karla Schofield for:*  
Agency: Legislative Affairs Agency Date: 1/21/98

**CONTINUATION OF FISCAL NOTE: SB 219**

	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	
1 Secretary 14A	2640	1	31680	40110	5700	45810	
1 Secretary 12A	2324	1	27888	35309	5700	41009	
1 Secretary 10A	2059	1	24708	31283	5700	36983	
						429,560	429,560

**Travel**

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

	Travel	Per Diem		
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			4199	4,199

**Contractual**

It is anticipated that the Office of the Victim's Advocate will install phones, incur phone bills, and use postage and need maintenance on their copier machine.

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

**Supplies**

It is anticipated that the Office of the Victim's Advocate will need office supplies.

Office Supplies	2,000	2,000
-----------------	-------	-------

**Equipment**

It anticipated that the Office of Victim's Advocacy 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	44250

**Grand Total**                      508,609



# 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.

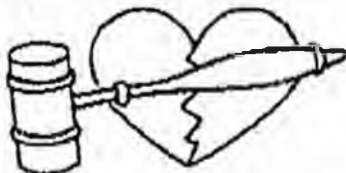
Also, there should be a qualification section mandating administrative experience since this position will direct a department.

Good luck on this bill.

Sincerely,

A handwritten signature in cursive script that reads "Charlie Fannon".

Charlie Fannon  
Chief of Police

**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  
 Executive Director

Cathy Satterfield  
 Administrative Director

**"Victims Rights Right for America"**

enclosures

**Senate Bill 219**  
**"The Crime Victims' Rights and Advocacy Act of 1998"**

**Sec. 2 AS 12.55.023(b) line 11**

*the court may limit the number of victims who may give sworn testimony or make an unsworn oral presentation during the hearing.*

Victims for Justice contends the number of victims who come forward to participate in a case is solely based on their *unique* relationship to the murdered victim or to the crime. They are not there to waste the time of the court, but to *restore* part of the loss they so violently suffered at the hands of another. They attempt to restore some sense of safety and control back in their lives. The court must actively work to assure that *all* of the victims of that case, who choose to participate, are not denied their constitutional right to be heard.

**Sec 24.65.020. (line 13) Appointment of the victims' advocate.**

*A candidate for the appointment as the victims' advocate shall be nominated by the victims' advocate selection committee compose of three members of the senate and three members of the house of representatives.*

In addition to the legislative committee a small advisory group consisting of crime victims and community-based victim service organizations should participate in selecting the most qualified candidate. Significant steps must be taken to bring crime victims closer to the center of the criminal justice process.

**Sec 24.65.060. (line 3) Compensation.**

*The victims' advocate is entitled to receive an annual salary equal to Step a, Range 26 on the salary schedule set out in AS39.27.011 for Juneau.*

The position should be staffed in Anchorage where the office is more easily assessable for the vast majority of the crime victims.

**Sec 24.65.080. (line 29) Office facilities and administration.**

*The victims' advocate shall submit a budget for each fiscal year to the Alaska Legislative Council and the council shall annually submit an estimated budget to the governor for information purposes in the preparation of the executive budget.*

Funding for the office of the victim's advocate *should not* impact the continued funding of the community-based victim service organizations, such as Victims for Justice. Each private organization or government agency charged with helping crime victims has separate and important functions and those diverse and unique roles bring value to the joint effort. The collaboration of these entities will benefit the crime victim and the community as a whole.

**Sec 24.65.090. (line 4) Procedure.**

*The victims' advocate shall, by regulations adopted under AS 44.62 (Administrative Procedure Act) establish procedures for advocacy on behalf of crime victims, receiving and processing complaints, conducting investigations, reporting findings and ensuring that confidential information obtained by the victims' advocate in the course of advocacy on behalf of a crime victims or in the course of an investigation will not be improperly disclosed.*

Critical to the success of this office in its mission to advocate on behalf of crime victims is establishing well defined timelines for completing the investigations and reporting the findings. For the most part, the complaints received by this office will be initiated because of the lack of notification and participation. It is paramount this office respond promptly to the complaint, as well as keeping the crime victim fully informed throughout the process.

*... the shadow of fear is fed by silence.*

**Sec 24.65.150 (line 10) Procedure after investigation.**

*The victims' advocate may request the justice agency to notify the victims' advocate, within a specified time, of any action taken on the recommendations.*

The consequences for violating the crime victims constitutional rights must be of such significance as to deter further non-compliance. Non-compliance behavior should lead to progressive discipline and/or termination of the violator.



Official Business

# Alaska State Legislature

## Senate

**RICK  
HALFORD**

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

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

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

## Sponsor Statement

### Senate Bill 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.

# LEGAL SERVICES

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

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


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

### MEMORANDUM

January 15, 1998

**SUBJECT:** Sectional Summary of SB 219. (Work Order No. 20-LS1323/E)

**TO:** Senator Rick Halford  
Attn: Brett Huber

**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 provides a short title.

Section 2 of the bill allows the victims' advocate to make a statement at a sentencing hearing on behalf of a crime victim when requested by the crime victim.

Section 3 of the bill provides that the victims' advocate is a legislative director for purposes of 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 of Alaska state government.

The following sections are created:

- AS 24.65.010 - creates the office of victims' advocate;
- AS 24.65.020 - provides procedures for the appointment of the victims' advocate;
- AS 24.65.030 - establishes the qualifications for the victims' advocate;
- AS 24.65.040 - provides the term of office for the victims' advocate;
- AS 24.65.050 - provides for the removal of the victims' advocate;
- AS 24.65.060 - lists the salary for the victims' advocate;
- AS 24.65.070 - allows the victims' advocate to employ necessary staff and establishes their duties;
- AS 24.65.080 - provides for office space and administration of the office of victims' advocacy;
- AS 24.65.090 - requires the victims' advocate to adopt regulations establishing procedures for the office to follow when advocating on behalf of crime victims;
- AS 24.65.100 - establishes when the victims' advocate can act;
- AS 24.65.110 - sets forth the victims' advocate's duties and powers with regard to advocacy on behalf of crime victims;

AS 24.65.120 - lists when and how the victims' advocate may conduct investigations of denials of rights to crime victims;

AS 24.65.130 - provides the victims' advocate to compel by subpoena testimony and production of documents when conducting investigations;

AS 24.65.140 - requires the victims' advocate to first consult with a justice agency before issuing an opinion or recommendation critical of the agency as a result of an investigation;

AS 24.65.150 - sets forth the victims' advocate's duties upon completion of an investigation;

AS 24.65.160 - permits the victims' advocate to publish the advocate's opinions and recommendations;

AS 24.65.170 - requires the victims' advocate to publish an annual report;

AS 24.65.180 - limits the availability of judicial review to challenge the actions of the victims' advocate;

AS 24.65.190 - provides immunity to the victims' advocate;

AS 24.65.200 - provides the victims' advocate with a evidentiary privilege against being compelled to testify concerning matters coming to the attention of the advocate;

AS 24.65.210 - provides a criminal penalty for those who obstruct the duties of the victims' advocate;

AS 24.65.250 - provides definitions.

Section 5 of the bill provides that longevity pay provisions of AS 39.27.022 apply to the office of victims' advocate if the victims' advocate adopts the provisions.

Section 6 of the bill exempts the regulations adopted by the victims' advocate from gubernatorial review.

Section 7 of the bill exempts the victims' advocate from the record keeping requirements of AS 44.62.215.

Section 8 of the bill provides that sunset reviews of agencies and their programs should consider whether complaints filed with the victims' advocate have been efficiently resolved.

Section 9 of the bill provides that the victims' advocate is a state agency for purposes of the statutes addressing state publications.

Section 10 of the bill provides a notice provision concerning a court rules change necessitated by the enactment of AS 24.65.110 and 24.65.120. Court rules changes require a two-thirds vote for adoption.

Section 11 of the bill provides a notice provision concerning a court rules change necessitated by the enactment of AS 24.65.200. Court rules changes require a two-thirds vote for adoption.

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. 98<sup>th</sup>  
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 statutes 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" victims rights with immunity clauses present both in the Alaska Statutes 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 present 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*

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 1/12/98

FURTHER: Finance

Date of 5-Day Notice: 1/15/98  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 1-30-98

Judiciary Committee considered SENATE BILL NO. 219

"An Act relating to establishing an office of crime victims' advocacy; and amending Rule 16, Alaska Rules of Criminal Procedure, Rule 9, Alaska Delinquency Rules, and Rule 501, Alaska Rules of Evidence."

and recommends:

- be replaced with \_\_\_\_\_ CS SB 219 (Jud)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:
- same title
  - new title
- House Bill:
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<u>Mike Miller</u>	<input checked="" type="checkbox"/>	<u>Peace</u>	<input checked="" type="checkbox"/>		
CHAIR: <u>Chris Taylor</u>	<input checked="" type="checkbox"/>	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal
<u>LAA</u>	<u>1/21/98</u>		<u>508.6</u>
<u>DOLaw</u>	<u>1/20/98</u>		<u>***</u>
<u>DPS</u>	<u>1/21/98</u>	<u>0</u>	

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

NO. 1  
BILL VERS SB 219  
PUBLISH (S) Publish Date: 1-30-98

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

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						
<b>TOTAL OPERATING</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	508.6	464.4	464.4	464.4	464.4	464.4
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	<b>508.6</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>	<b>464.4</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
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)**

SB 219 establishes an Office of Crime Victims' Advocacy in the Legislative Branch of Government. The Victim's Advocate will be appointed for 5 years and be compensated a Range 26A. For the purposes of this fiscal note staff for the Victim's 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 & teleconference assistance and DP support at no cost to the Advocate office.

Prepared By: Karla Schofield, Deputy Director *Karla Schofield* Phone: 465-3852  
Division: Administrative Services Date: 1/21/98

Approved By: Pamela A. Varni, Executive Director *Karla Schofield for:*  
Agency: Legislative Affairs Agency Date: 1/21/98

#2

CONTINUATION OF FISCAL NOTE: SB 219

	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
1 Secretary 14A	2640	1	31680	40110	5700	45810
1 Secretary 12A	2324	1	27888	35309	5700	41009
1 Secretary 10A	2059	1	24708	31283	5700	36983
						429,560
						429,560

Travel

It is anticipated that the victim's advocate will make 3 trips to attend in state meetings and 1 trip to meet with victim's advocate 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 Victim's Advocate will install phones, incur 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	23600

Supplies

It is anticipated that the Office of the Victim's Advocate will need office supplies.

Office Supplies	2,000	2,000
-----------------	-------	-------

Equipment

It anticipated that the Office of Victim's Advocacy 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	3000	
	44250	44250

Grand Total 508,609

# 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) \_\_\_\_\_ Dept. Affected Law  
 Title ...establishing an office of crime victims' advocacy; BRU Criminal Division/Civil Division  
 amending Rules of Criminal Procedure... Delinquency Rules... Component 1st-4th Jud Dist, OSPA  
 Sponsor Senator Halford Human Services  
 Requester Senate Judiciary Committee 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						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

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)						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

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 *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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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

No. 3  
BILL NO: Bill Version: SB 219  
(S) Publish Date: 1-30-98

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
Title: Crime Victims' Rights and Advocacy Act BRU: Violent Crimes Compensation Board  
of 1998 \_\_\_\_\_ Component: \_\_\_\_\_  
Sponsor: Senator Halford  
Requestor: (S) JUD 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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 Phone: 465-5525  
Division: Violent Crimes Compensation Board Date: 1/17/98  
Approved by Commissioner: Ronald L. Otte *[Signature]* Date: 1/21/98  
Agency: Dept. of Public Safety

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# FISCAL NOTE

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

**BILL NO. CSSB232 (JUD)**

Revision Date: \_\_\_\_\_  
 Title: Electronic Records, Record Requirements

Department: Commerce and Economic Development  
 BRU: Banking, Securities and Corporations  
 Component: Banking, Securities and Corporations

Sponsor: Sen. Pamell  
 Requestor: House Judiciary

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Wills F. Kirkpatrick, Director  
 Division: Banking, Securities and Corporations  
 Approved by Commissioner: Deborah B. Sedwick  
 Agency: Commerce and Economic Development

Phone: 465-2521  
 Date: \_\_\_\_\_  
 Date: 5/5/98

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# FISCAL NOTE

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

BILL NO. CSSB232 (JUD)

Revision Date: \_\_\_\_\_  
Title: Electronic Records, Record Requirements

Department: Commerce and Economic Development  
BRU: Banking, Securities and Corporations  
Component: Banking, Securities and Corporations

Sponsor: Sen. Parnell  
Requestor: House Judiciary

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	-----	-----	-----	-----	-----	-----

<b>CHANGE IN REVENUES</b>	0.0	0.0	0.0	0.0	0.0	0.0
---------------------------	-----	-----	-----	-----	-----	-----

**FUND SOURCE**

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Willis F. Kirkpatrick, Director  
Division: Banking, Securities and Corporations  
Approved by Commissioner: Deborah B. Sedwick  
Agency: Commerce and Economic Development

Phone: 465-2521  
Date: \_\_\_\_\_  
Date: 5/5/98

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**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.

# 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.<sup>fn.1</sup> 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: <sup>fn.2</sup>

- **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. <sup>fn.3</sup>
- **Ceremony:** Signing calls to the signer's attention the legal significance of his act, and thereby helps prevent "inconsiderate engagements". <sup>fn.4</sup> The act of signing may satisfy a human desire to mark an event. <sup>fn.5</sup>
- **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. <sup>fn.6</sup>
- **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, <sup>fn.7</sup> 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. <sup>fn.8</sup> 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 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.

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## 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.

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## 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

## 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 signature can be linked back to the sender of the message.

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

ivb1aWubmvsIa5qycUmFGnyJAQFAKgL/ZkBfbcNEsbthba4BlrcnjqabckgNv+a5kr4537y8  
Rcd+RDv56yYh5ttieufjlk4kjlj3ojljkjlkj67NSjliujoj6AAcjawuJLKdk2lVkm+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, message 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.

# SENATE COMMITTEE REPORT

DATE: 4/1/98

FURTHER:

DATE TURNED IN TO OFFICE: 4-21-98

Judiciary Committee considered

SENATE BILL NO. 232

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

and recommends:

- be replaced with \_\_\_\_\_ CS FOR SENATE BILL ( JUD )
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ ( \_\_\_\_\_ )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

- same title
- new title
- House Bill:**
- same title
- technical title
- new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Sean P. Russell</i>	✓				
<i>Mike Miller</i>	✓				
<i>George</i>	✓				
CHAIR: <i>Adrian L. Taylor</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department                      Date      Zero      Fiscal


**PREVIOUS FISCAL NOTE(S):\***

Department                      Date      Zero      Fiscal

<i>ALL STATE AGENCIES</i>	<i>4-1-98</i>	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill