

SENATE FILE 432
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 270)

Passed Senate, Date 3/22/95 (p.820) Passed House, Date 4/18/95 (p.1633)
Vote: Ayes 50 Nays 0 Vote: Ayes 98 Nays 0
Approved May 2, 1995

A BILL FOR

1 An Act relating to sexually violent predators, by providing that
2 the place of commitment shall be under the control of the
3 department of corrections, by requiring the state to pay the
4 costs incurred by a county for services in sexually violent
5 offender proceedings, and providing an effective date.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SENATE FILE 432

S-3170

- 1 Amend Senate File 432 as follows:
- 2 1. Page 2, line 17, by striking the word
- 3 "resources" and inserting the following: "services".

Adopted 3/22/95 By JOHNIE HAMMOND

S-3170 FILED MARCH 21, 1995 (p.820)

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S.F. 432

1 Section 1. NEW SECTION. 709C.2A NOTIFICATION OF RELEASE.
2 Within six months of the impending release of an inmate who
3 has been convicted of a sexually violent offense, the
4 department of corrections shall notify the attorney general of
5 the impending release.

6 Sec. 2. Section 709C.5, Code 1995, is amended to read as
7 follows:

8 709C.5 TRIAL -- RIGHTS OF PARTIES.

9 Not later than forty-five days after the filing of a
10 petition pursuant to section 709C.3, the court shall conduct a
11 trial in the county in which the person was convicted of a
12 sexually violent offense to determine whether the person is a
13 sexually violent predator. At all stages of the proceedings
14 under this chapter, any person subject to this chapter shall
15 be entitled to the assistance of counsel, and if the person is
16 indigent, the court shall appoint counsel to assist the
17 person. If a person is subjected to an examination under this
18 chapter, the person may retain experts or professional persons
19 to perform an examination on the person's behalf. The person
20 may be examined by a qualified expert or professional person
21 of the person's choosing, and the expert or professional shall
22 have reasonable access to the person for the purpose of the
23 examination, as well as to all relevant medical and
24 psychological records and reports. In the case of a person
25 who is indigent, the court shall, upon the person's request,
26 assist the person in obtaining an expert or professional
27 person to perform an examination or participate in the trial
28 on the person's behalf. The person, the county attorney or
29 the attorney general, or the judge shall have the right to
30 demand that the trial be before a jury, if the person is an
31 adult or a juvenile who has been waived to the district court.
32 If no demand is made, or if the person is a juvenile who has
33 not been waived to the district court, the trial shall be to
34 the court or the juvenile court as applicable.

35 Sec. 3. Section 709C.6, subsection 1, Code 1995, is

1 amended to read as follows:

2 1. The court or jury shall determine whether, beyond a
3 reasonable doubt, the person is a sexually violent predator.
4 If the state alleges that the prior sexually violent offense
5 that forms the basis for the petition for commitment was an
6 act that was sexually motivated, the state shall prove beyond
7 a reasonable doubt that the alleged sexually violent act was
8 sexually motivated. If the court or jury determines that the
9 person is a sexually violent predator, the person shall be
10 committed to the custody of the department of human-services
11 corrections in a secure facility for control, care, and
12 treatment until such time as the person's mental abnormality
13 or personality disorder has so changed that the person is safe
14 to be at large. This control, care, and treatment shall be
15 provided at a facility operated by the department of human
16 services corrections in coordination with the department of
17 human resources; however, adults and juveniles shall not be
18 sent to the same facility. If the court or jury does not find
19 beyond a reasonable doubt that the person is a sexually
20 violent predator, the court shall order the person to be
21 released in accordance with the terms of the person's
22 sentence.

23 Sec. 4. NEW SECTION. 709C.11 FUNDING.

24 All costs incurred by a county pursuant to sections 709C.1
25 through 709C.10, including, but not limited to, the cost of
26 filing a sexually violent predator petition under section
27 709C.3; the cost of an evaluation under section 709C.4; the
28 cost of participating in the sexually violent predator trial
29 on behalf of the petitioner under section 709C.5; the cost of
30 court-appointed counsel for indigents under section 709C.5;
31 the cost of qualified experts or professionals retained under
32 section 709C.5; the cost of control, care, and treatment at a
33 facility operated by the department of corrections under
34 section 709C.6; the cost of annual examinations under section
35 709C.7; the cost of representing the state in a petition for

1 release hearing under section 709C.8; and the cost of having
2 the petitioner examined by an expert or professional person
3 under section 709C.8, shall be paid by the state.

4 Sec. 5. NEW SECTION. 709C.12 EFFECTIVE DATE.

5 This chapter takes effect July 1, 1996, and applies to
6 persons convicted of a sexually violent offense on or after
7 July 1, 1996.

8 Sec. 6. 1994 Iowa Acts, chapter 1172, section 74, is
9 amended to read as follows:

10 SEC. 74. EFFECTIVE DATES DATE. ~~Sections-43-through-52~~
11 ~~take-effect-July-17-1995.~~ Section 63 of this Act takes effect
12 June 30, 1994.

13 EXPLANATION

14 This bill changes provisions in the sexually violent
15 predator Act. The bill requires the department of corrections
16 to notify the attorney general within six months of the
17 impending release of an inmate who has been convicted of a
18 sexually violent offense. The bill provides that trials to
19 determine whether a person is a sexually violent predator
20 shall be held in the county in which the person was convicted.

21 This bill provides that a sexually violent predator is to
22 be held at a secure department of corrections facility,
23 instead of a secure department of human services facility.
24 Treatment and care of the sexually violent predator will be
25 coordinated with the department of human services.

26 This bill also requires the state to pay the costs incurred
27 by a county for services provided in sexually violent predator
28 cases. The costs paid will include, but are not limited to,
29 the cost of filing a sexually violent predator petition; the
30 cost of an evaluation; the cost of participating in the
31 sexually violent predator trial on behalf of the petitioner;
32 the cost of court-appointed counsel for indigents; the cost of
33 qualified experts or professionals who are retained; the cost
34 of control, care, and treatment at a facility operated by the
35 department of corrections; the cost of annual examinations;

1 the cost of representing the state in a petition for release
2 hearing; and the cost of having the petitioner examined by an
3 expert or professional person.

4 The bill further provides for a new effective date of July
5 1, 1996, for chapter 709C, the sexually violent predator Act.
6 Currently the Act takes effect on July 1, 1995.

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**SENATE FILE 432
FISCAL NOTE**

The estimate for Senate File 432 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 432 deals with sexually violent predators. It requires the Department of Corrections notify the Office of the Attorney General six months prior to the release of an offender convicted of a sexually violent offense to allow for a trial to determine whether the offender is a sexually violent predator. The Bill requires the offender to be held in a Department of Corrections facility rather than a Department of Human Services facility. It requires the State to pay the costs incurred by a county for a sexually violent predator. The Bill delays the effective date for the Sexually Violent Predator Act by one year.

Assumptions:

1. There will be two cases per year.
2. Sexually violent predators are likely to spend an extended time in confinement, possibly the remainder of their lives.
3. Psychiatric evaluations cost approximately \$1,000 each.
4. The court appointed attorney for an indigent offender costs approximately \$1,000. It is assumed the costs to the county prosecuting attorney will be the same.
5. Court costs are \$200 per case.
6. The budgeted marginal cost for keeping an individual in a Department of Corrections institution is \$10 per day.

Correctional Impact:

The Sexually Violent Predator Act becomes effective July 1, 1996. The prison population will increase by two inmates annually beginning in FY 1997.

Currently juvenile offenders are the responsibility of the Department of Human Services. The Department of Corrections has no separate facility to house juveniles, so it will need to develop facilities and procedures to deal with this population.

Fiscal Impact:

The annual costs to the Department of Corrections for housing and providing annual psychiatric evaluations for sexually violent predators will be as follows: (No adjustment is made for inflation.)

FY 1997	\$ 7,300
FY 1998	16,600

-2-

FY 2001	44,500
FY 2021	230,500

It has not been determined if sexually violent predators will require treatment programming that is different from current sexual offender programs. Therefore, no additional treatment costs are included.

For two cases per year, counties will be reimbursed approximately \$4,400 per year for attorney costs, psychiatric evaluations, and court costs.

Sources:

Criminal and Juvenile Justice Planning Division, Department of Human Rights
Judicial Branch
Department of Corrections (LSB 2480SV, MDF)

FILED MARCH 22, 1995

BY DENNIS PROUTY, FISCAL DIRECTOR

1 Section 1. NEW SECTION. 709C.2A NOTIFICATION OF RELEASE.

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13 sexually violent predator. At all stages of the proceedings
14 under this chapter, any person subject to this chapter shall
15 be entitled to the assistance of counsel, and if the person is
16 indigent, the court shall appoint counsel to assist the
17 person. If a person is subjected to an examination under this
18 chapter, the person may retain experts or professional persons
19 to perform an examination on the person's behalf. The person
20 may be examined by a qualified expert or professional person
21 of the person's choosing, and the expert or professional shall
22 have reasonable access to the person for the purpose of the
23 examination, as well as to all relevant medical and
24 psychological records and reports. In the case of a person
25 who is indigent, the court shall, upon the person's request,
26 assist the person in obtaining an expert or professional
27 person to perform an examination or participate in the trial
28 on the person's behalf. The person, the county attorney or
29 the attorney general, or the judge shall have the right to
30 demand that the trial be before a jury, if the person is an
31 adult or a juvenile who has been waived to the district court.
32 If no demand is made, or if the person is a juvenile who has
33 not been waived to the district court, the trial shall be to
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5 that forms the basis for the petition for commitment was an
6 act that was sexually motivated, the state shall prove beyond
7 a reasonable doubt that the alleged sexually violent act was
8 sexually motivated. If the court or jury determines that the
9 person is a sexually violent predator, the person shall be
10 committed to the custody of the department of ~~human-services~~
11 corrections in a secure facility for control, care, and
12 treatment until such time as the person's mental abnormality
13 or personality disorder has so changed that the person is safe
14 to be at large. This control, care, and treatment shall be
15 provided at a facility operated by the department of ~~human~~
16 ~~services~~ corrections in coordination with the department of
17 human services; however, adults and juveniles shall not be
18 sent to the same facility. If the court or jury does not find
19 beyond a reasonable doubt that the person is a sexually
20 violent predator, the court shall order the person to be
21 released in accordance with the terms of the person's
22 sentence.

23 Sec. 4. NEW SECTION. 709C.11 FUNDING.

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25 through 709C.10, including, but not limited to, the cost of
26 filing a sexually violent predator petition under section
27 709C.3; the cost of an evaluation under section 709C.4; the
28 cost of participating in the sexually violent predator trial
29 on behalf of the petitioner under section 709C.5; the cost of
30 court-appointed counsel for indigents under section 709C.5;
31 the cost of qualified experts or professionals retained under
32 section 709C.5; the cost of control, care, and treatment at a
33 facility operated by the department of corrections under
34 section 709C.6; the cost of annual examinations under section
35 709C.7; the cost of representing the state in a petition for

1 release hearing under section 709C.8; and the cost of having
2 the petitioner examined by an expert or professional person
3 under section 709C.8, shall be paid by the state.

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7 July 1, 1996.

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11 ~~take-effect-July-17-1995.~~ Section 63 of this Act takes effect
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SENATE FILE 432

H-3843

- 1 Amend Senate File 432, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. By striking page 1, line 35 through page 2,
4 line 22.
5 2. Page 2, line 33, by striking the word
6 "corrections" and inserting the following: "human
7 services".
8 3. Title page, by striking lines 1 through 3 and
9 inserting the following: "An Act relating to sexually
10 violent predators, by providing notice of the petition
11 to the attorney general by specifying the location for
12 trial, by requiring the state to pay the".
13 4. By renumbering as necessary.

By COON of Warren

H-3843 FILED APRIL 10, 1995

Adopted 4/18/95 (p.1632)

SENATE FILE 432

H-3818

- 1 Amend Senate File 432, as amended, passed, and
2 reprinted by the Senate, as follows:
3 1. Page 1, line 4, by inserting after the words
4 "notify the" the following: "county attorney for the
5 county in which the person was convicted and the".

By COMMITTEE ON JUDICIARY

HURLEY of Fayette, Chairperson

H-3818 FILED APRIL 10, 1995

Adopted 4/18/95 (p.1632)

SENATE FILE 432

H-3961

1 Amend Senate File 432, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 3, by inserting after line 7 the
4 following:

5 "Sec. ____ . Section 910A.9A, Code 1995, is amended
6 to read as follows:

7 910A.9A NOTIFICATION BY DEPARTMENT OF HUMAN
8 SERVICES.

9 The department of human services shall notify a
10 victim registered with the department, regarding a
11 juvenile adjudicated delinquent for a violent crime,
12 committed to the custody of the department of human
13 services, and placed at the state training school at
14 Eldora or Toledo, or regarding a person determined to
15 be a sexually violent predator under chapter 709C, and
16 committed to the custody of the department of human
17 services, of the following:

18 1. The date on which the juvenile or sexually
19 violent predator is expected to be temporarily
20 released from the custody of the department of human
21 services, and whether the juvenile is expected to
22 return to the community where the registered victim
23 resides.

24 2. The juvenile's or the sexually violent
25 predator's escape from custody.

26 3. The recommendation by the department to
27 consider the juvenile or sexually violent predator for
28 release or placement.

29 4. The date on which the juvenile or sexually
30 violent predator is expected to be released from a
31 facility pursuant to a plan of placement."

32 2. Title page, line 5, by inserting after the
33 word "proceedings," the following: "providing for
34 notification of victims,".

35 3. By numbering and renumbering as necessary.

By COON of Warren

H-3961 FILED APRIL 17, 1995

Adopted 4/18/95 (p.1633)

HOUSE AMENDMENT TO
SENATE FILE 432

S-3468

- 1 Amend Senate File 432, as amended, passed, and
2 reprinted by the Senate, as follows:
- 3 1. Page 1, line 4, by inserting after the words
4 "notify the" the following: "county attorney for the
5 county in which the person was convicted and the".
- 6 2. By striking page 1, line 35 through page 2,
7 line 22.
- 8 3. Page 2, line 33, by striking the word
9 "corrections" and inserting the following: "human
10 services".
- 11 4. Page 3, by inserting after line 7 the
12 following:
- 13 "Sec. ____ . Section 910A.9A, Code 1995, is amended
14 to read as follows:
- 15 910A.9A NOTIFICATION BY DEPARTMENT OF HUMAN
16 SERVICES.
- 17 The department of human services shall notify a
18 victim registered with the department, regarding a
19 juvenile adjudicated delinquent for a violent crime,
20 committed to the custody of the department of human
21 services, and placed at the state training school at
22 Eldora or Toledo, or regarding a person determined to
23 be a sexually violent predator under chapter 709C, and
24 committed to the custody of the department of human
25 services, of the following:
- 26 1. The date on which the juvenile or sexually
27 violent predator is expected to be temporarily
28 released from the custody of the department of human
29 services, and whether the juvenile is expected to
30 return to the community where the registered victim
31 resides.
- 32 2. The juvenile's or the sexually violent
33 predator's escape from custody.
- 34 3. The recommendation by the department to
35 consider the juvenile or sexually violent predator for
36 release or placement.
- 37 4. The date on which the juvenile or sexually
38 violent predator is expected to be released from a
39 facility pursuant to a plan of placement."
- 40 5. Title page, by striking lines 1 through 3 and
41 inserting the following: "An Act relating to sexually
42 violent predators, by providing notice of the petition
43 to the attorney general by specifying the location for
44 trial, by requiring the state to pay the".
- 45 6. Title page, line 5, by inserting after the
46 word "proceedings," the following: "providing for
47 notification of victims,".
- 48 7. By renumbering, relettering, or redesignating
49 and correcting internal references as necessary.

RECEIVED FROM THE HOUSE

S-3468 FILED APRIL 18, 1995

Senate concurred in as amended
4/19/95 (p. 1311)

SENATE FILE 432

S-3490

1 Amend the House amendment, S-3468, to Senate File
2 432, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 10 the
5 following:

6 "____. Page 3, line 7, by striking the figure
7 "1996" and inserting the following: "1997"."

8 2. Page 1, by inserting after line 39 the
9 following:

10 "____. Page 3, by inserting after line 12 the
11 following:

12 "Sec. ____ . DEPARTMENTAL STUDY. The department of
13 justice, in consultation with the department of human
14 services, shall conduct a study of the issues involved
15 in the implementation of chapter 709C, including, but
16 not limited to, the costs associated with the current
17 hearing process, the costs of and security problems
18 related to the confinement of sexually violent
19 predators, legal issues surrounding the commitment and
20 confinement of sexually violent predators, and
21 potential alternatives to commitment and confinement
22 of sexually violent predators. In conducting the
23 study, the department shall also consult with an
24 association of county attorneys and the department of
25 corrections. The department of justice shall submit
26 its findings and any recommendations in a report to
27 the general assembly by January 1, 1996."

28 3. Page 1, line 47, by inserting after the word
29 "victims," the following: "providing for a
30 departmental study,".

31 4. By numbering and renumbering as necessary.

By JOHNIE HAMMOND

S-3490 FILED APRIL 19, 1995

ADOPTED (p. 1311)

SENATE AMENDMENT TO HOUSE AMENDMENT TO SENATE FILE 432
H-3987

1 Amend the House amendment, S-3468, to Senate File
2 432, as amended, passed, and reprinted by the Senate,
3 as follows:

4 1. Page 1, by inserting after line 10 the
5 following:

6 "_____. Page 3, line 7, by striking the figure
7 "1996" and inserting the following: "1997"."

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29 "victims," the following: "providing for a
30 departmental study,".

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RECEIVED FROM THE SENATE

H-3987 FILED APRIL 20, 1995

House concurred 4/24/95 (p.1821)

Hammond
Giannetto
Vilsack
Bartz
Redfern

SSB 270
Judiciary

Succeeded By
SENATE/FILE 432
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON GIANNETTO)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to sexually violent predators, by providing that
2 the place of commitment shall be under the control of the
3 department of corrections, by requiring the state to pay the
4 costs incurred by a county for services in sexually violent
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6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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22 released in accordance with the terms of the person's
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32 1, 1996, for chapter 709C, the sexually violent predator Act.
33 Currently the Act takes effect on July 1, 1995.

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SENATE FILE 432

AN ACT

RELATING TO SEXUALLY VIOLENT PREDATORS, BY PROVIDING NOTICE OF THE PETITION TO THE ATTORNEY GENERAL BY SPECIFYING THE LOCATION FOR TRIAL, BY REQUIRING THE STATE TO PAY THE COSTS INCURRED BY A COUNTY FOR SERVICES IN SEXUALLY VIOLENT OFFENDER PROCEEDINGS, PROVIDING FOR NOTIFICATION OF VICTIMS, PROVIDING FOR A DEPARTMENTAL STUDY, AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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have reasonable access to the person for the purpose of the examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf. The person, the county attorney or the attorney general, or the judge shall have the right to demand that the trial be before a jury, if the person is an adult or a juvenile who has been waived to the district court. If no demand is made, or if the person is a juvenile who has not been waived to the district court, the trial shall be to the court or the juvenile court as applicable.

Sec. 3. NEW SECTION. 709C.11 FUNDING.

All costs incurred by a county pursuant to sections 709C.1 through 709C.10, including, but not limited to, the cost of filing a sexually violent predator petition under section 709C.3; the cost of an evaluation under section 709C.4; the cost of participating in the sexually violent predator trial on behalf of the petitioner under section 709C.5; the cost of court-appointed counsel for indigents under section 709C.5; the cost of qualified experts or professionals retained under section 709C.5; the cost of control, care, and treatment at a facility operated by the department of human services under section 709C.6; the cost of annual examinations under section 709C.7; the cost of representing the state in a petition for release hearing under section 709C.8; and the cost of having the petitioner examined by an expert or professional person under section 709C.8, shall be paid by the state.

Sec. 4. NEW SECTION. 709C.12 EFFECTIVE DATE.

This chapter takes effect July 1, 1996, and applies to persons convicted of a sexually violent offense on or after July 1, 1997.

Sec. 5. Section 910A.9A, Code 1995, is amended to read as follows:

910A.9A NOTIFICATION BY DEPARTMENT OF HUMAN SERVICES.

The department of human services shall notify a victim registered with the department, regarding a juvenile adjudicated delinquent for a violent crime, committed to the custody of the department of human services, and placed at the state training school at Eldora or Toledo, or regarding a person determined to be a sexually violent predator under chapter 709C, and committed to the custody of the department of human services, of the following:

1. The date on which the juvenile or sexually violent predator is expected to be temporarily released from the custody of the department of human services, and whether the juvenile is expected to return to the community where the registered victim resides.

2. The juvenile's or the sexually violent predator's escape from custody.

3. The recommendation by the department to consider the juvenile or sexually violent predator for release or placement.

4. The date on which the juvenile or sexually violent predator is expected to be released from a facility pursuant to a plan of placement.

Sec. 6. 1994 Iowa Acts, chapter 1172, section 74, is amended to read as follows:

SEC. 74. EFFECTIVE DATES DATE. ~~Sections-43-through-52 take-effect-July-17-1995.~~ Section 63 of this Act takes effect June 30, 1994.

Sec. 7. DEPARTMENTAL STUDY. The department of justice, in consultation with the department of human services, shall conduct a study of the issues involved in the implementation of chapter 709C, including, but not limited to, the costs associated with the current hearing process, the costs of and security problems related to the confinement of sexually violent predators, legal issues surrounding the commitment and confinement of sexually violent predators, and potential alternatives to commitment and confinement of sexually violent

predators. In conducting the study, the department shall also consult with an association of county attorneys and the department of corrections. The department of justice shall submit its findings and any recommendations in a report to the general assembly by January 1, 1996.

LEONARD L. BOSWELL
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 432, Seventy-sixth General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 2, 1995

TERRY E. BRANSTAD
Governor