

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

January 28, 2004

2:00 p.m.

MEMBERS PRESENT

Representative Lesil McGuire, Chair
Representative Tom Anderson, Vice Chair
Representative Jim Holm
Representative Dan Ogg
Representative Ralph Samuels
Representative Les Gara
Representative Max Gruenberg

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

CONFIRMATION HEARING

Select Committee on Legislative Ethics

H. Conner Thomas - Nome
Ann Rabinowitz - Juneau

- CONFIRMATION(S) ADVANCED [See 1:35 p.m. minutes for this date]

HOUSE BILL NO. 398

"An Act relating to domestic violence fatality review teams."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 398

SHORT TITLE: DOMESTIC VIOLENCE FATALITY REVIEW TEAM

REPRESENTATIVE(S): DAHLSTROM

01/23/04	(H)	READ THE FIRST TIME - REFERRALS
01/23/04	(H)	JUD
01/26/04	(H)	JUD AT 2:00 PM CAPITOL 120
01/26/04	(H)	Scheduled But Not Heard
01/28/04	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE NANCY DAHLSTROM

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Spoke as the sponsor of HB 398.

ALLEN STOREY, Lieutenant

Central Office

Division of Alaska State Troopers

Department of Public Safety (DPS)

Anchorage, Alaska

POSITION STATEMENT: During hearing on HB 398 related that DPS certainly supports the concept of victims' rights and anything that can be done to improve on mistakes.

TAMARA de LUCIA, Associate Victims' Rights Advocate

Office of Victims' Rights (OVR)

Alaska State Legislature

Anchorage, Alaska

POSITION STATEMENT: Testified that HB 398 does comport with what has worked in other states as long as one remembers that the best successes have come when localities are able to spearhead the team.

ACTION NARRATIVE

TAPE 04-6, SIDE A

Number 0001

CHAIR LESIL MCGUIRE called the House Judiciary Standing Committee meeting to order at 2:00 p.m. Representatives McGuire, Anderson, Holm, Ogg, Samuels, Gara, and Gruenberg were present at the call to order.

[For the confirmation hearing for the Select Committee on Legislative Ethics, see the 1:35 p.m. minutes for this date.]

HB 398-DOMESTIC VIOLENCE FATALITY REVIEW TEAM

CHAIR MCGUIRE announced that the only order of business would be HOUSE BILL NO. 398, "An Act relating to domestic violence fatality review teams."

Number 0091

REPRESENTATIVE NANCY DAHLSTROM, Alaska State Legislature, sponsor of HB 398, paraphrased the following sponsor statement [original punctuation provided]:

HB 398 is legislation empowering municipalities and cities throughout Alaska to create a Domestic Violence Fatality Review Team.

A growing number of homicides in Alaska are domestic violence related. In the year 2002 11 out of 18, or 61% of the homicides in Anchorage were a result of domestic violence.

This legislation authorizes the State of Alaska and its municipalities to [empower] teams to systematically review facts of escalating cases of domestic violence and protocols leading to the prevention of such crimes.

This legislation would provide state and local governments with additional tools to gather information on many aspects of domestic violence. This information could then be used to create legislation to combat domestic violence.

With the creation of such review teams the legislature will help stop devastating crimes.

Number 0245

ALLEN STOREY, Lieutenant, Central Office, Division of Alaska State Troopers, Department of Public Safety, informed the committee that DPS certainly supports the concept of victims' rights and anything that can be done to improve on mistakes. In reviewing HB 398, Lieutenant Storey pointed out that there really isn't a triggering mechanism with regard to how the teams would come together. Furthermore, on page 1, line 9, the language "has been terminated by law enforcement" should probably be worded as follows: "has been adjudicated by the court" because he didn't believe the intent was to have a review process before the case has been adjudicated through the court system.

Number 0419

REPRESENTATIVE GARA questioned whether [it would be appropriate] to delete the word "trooper" and insert "adjudicated". He asked

if there are cases that should be reviewed under this legislation that might be dismissed. He recalled when he practiced in the criminal area that sometimes in a domestic violence case one drops the prosecution due to some extenuating circumstance.

LIEUTENANT STOREY related that he believes in such a case it would be considered to have been adjudicated at that point, although he said it would probably depend upon the circumstances under which the case was dropped.

REPRESENTATIVE GARA pointed out that once the statute is [passed] it is the policy. Therefore, he suggested that the following language: "when an investigation has been completed or adjudicated" in order to provide the department the flexibility to determine when the trigger [to form a team] would occur.

REPRESENTATIVE SAMUELS said that he would follow-up on Representative Gara's points regarding the trigger for convening the hearing.

REPRESENTATIVE OGG asked if the use of "adjudicated" refers to [hearing the case] through the final appeal process.

Number 0616

LIEUTENANT STOREY related his belief that the intent was for it to refer through the sentencing process not the full appeal process, which could last for years. Furthermore, the appeals process wouldn't necessarily impact the core adjudication of the case.

REPRESENTATIVE OGG remarked that his concern was that it could drag out for a number of years, and therefore he suggested that perhaps when the legislation discusses adjudication it should refer to sentencing.

REPRESENTATIVE GRUENBERG expressed hope that these comments could lead to a committee substitute (CS) that could be before the committee on Friday. Representative Gruenberg asked if the legislation specifies who convenes the team.

LIEUTENANT STOREY answered by pointing out that the language says, "The commissioner of public safety may establish" such a team.

Number 0707

REPRESENTATIVE GRUENBERG opined that the commissioner should have the ability to form a team at the close of the appeal because there may be an important legal point during an appeal. Furthermore, he related his belief that the commissioner should have the authority to promulgate regulations to carry this out. He suggested that regulations should be promulgated for the issue of privacy and defining what other agencies [as related to the language on page 2, lines 19-20] would be appropriate [to include]. Representative Gruenberg said he believes that defense organizations might be an appropriate group to include.

REPRESENTATIVE GRUENBERG turned attention to page 2, line 31, and informed the committee that "or" should be "and". On page 3, line 11, he suggested the need to change "damage" to "damages". He also suggested that on page 3, line 11, after "performance" the language "or nonperformance" should be inserted. Although the drafter may say that "or nonperformance" is implied, he expressed the need to raise the issue with the drafter.

Number 0903

LIEUTENANT STOREY noted that there has been some discussion with regard to having these teams involved with "near-fatal incidents" and whether it would be too broad and too large of an effort. The advocacy groups involved with this tend to agree that including "near-fatal incidents" would be too broad. Therefore, he questioned whether the committee would be interested in limiting that or having some flexibility with aggravated situations involving "near-fatal incidents".

LIEUTENANT STOREY, in response to Representative Holm, said that there isn't a clear definition of "near-fatal incidents" for legal purposes.

REPRESENTATIVE HOLM said that everyone has heard stories of women who have been beaten soundly and [no legal action] occurred, and ultimately the woman is killed. Perhaps there could be a pre-condition for understanding why this occurs. Therefore, he suggested reviewing the aforementioned or determining whether this "mechanism" could do that.

LIEUTENANT STOREY pointed out that the Office of Victims' Rights (OVR) already exists so that [victims] can approach for help in clarifying why things didn't work in certain situations and what

could be improved upon. He noted that there are often many variables in these situations that would be necessary to know in order to address what is wrong and what can be improved upon. Therefore, aggravated near-fatal incidents are worthy of review by these teams. However, the question as to how one defines a "near-fatal incident" remains.

LIEUTENANT STOREY turned attention to page 2, line 13, and related that there has been discussion of changing the reference to "the chief medical examiner" to "the chief medical examiner's office". The aforementioned change would allow another representative in the chief medical examiner's office to be involved in the process. There was also the recommendation to include the definition of domestic violence in this proposal. He noted that the definition of domestic violence found in AS 18.66.990 would be appropriate for this situation.

Number 1115

REPRESENTATIVE OGG pointed out that there seems to be the possibility for dual fatality review teams to operate in the same area. On page 1, lines 6-7, the language refers to the ability of the commissioner of the Department of Public Safety to establish domestic violence fatality review teams for areas in the state while also allowing a municipality the ability to establish such a team in a municipality. Representative Ogg expressed the need for there to be clarity with regard to which entity has dominance. He then turned to Representative Gruenberg's suggestion to change "or" to "and" on page 2, line 31, which he believes would require the addition of the language "of" before "its members".

REPRESENTATIVE GRUENBERG returned to Lieutenant Storey's suggestion to limit [the formation of a team] to fatalities. If one is investigating and reviewing [the process] in order to improve response, then it seems that whether the incident was fatal or not might not be the best triggering mechanism because the fatality could be determined by whether the offender was a good shot. Therefore, Representative Gruenberg expressed the need for there to be the authority to convene a team for any domestic violence case.

REPRESENTATIVE GRUENBERG related that non-fatal incidents usually end up in family court. He mentioned that if the victim is dead, there may be a custodial fight between the parent, who was the perpetrator, and others in the family who would be potential custodians. Therefore, the convening authority who

deals with the systemic aspects of [the process] should also be able to deal with the judges, family lawyers, and others left to deal with the children.

CHAIR McGUIRE remarked that Representative Gruenberg's comments return to the question of how broad this should be made. The focus has been on the fatalities, which isn't to say that the other incidents aren't unfortunate.

REPRESENTATIVE GRUENBERG surmised that the [team] wouldn't focus on what would be done with the survivors, such as the children, who are also victims.

CHAIR McGUIRE related her belief that there are other ways and places to deal with [the surviving victims]. She noted that she didn't support making the legislation broader.

LIEUTENANT STOREY commented that his feeling is that the intent of the legislation is to simply examine situations that didn't go as they should have in order to determine what went wrong. Furthermore, [the legislation] would empower these teams to have access to information that they wouldn't normally such as police reports and information from women's shelters and other organizations. The aforementioned information would be used to improve the process related to domestic violence so that fewer people become victims of domestic violence.

Number 1398

REPRESENTATIVE SAMUELS pointed out that the fatalities [of domestic violence] don't happen often and thus these teams could focus on the issue. However, if the team is dealing with a daily occurrence, then [the team] becomes part of the bureaucracy. Therefore, he surmised that the sponsor intended for these teams to not meet on daily occurrences. Representative Samuels suggested that if this proposal works, then perhaps the line [regarding what to include in the team's purview] could be drawn lower.

REPRESENTATIVE GARA related his understanding that the fatality review concept is developing into almost a science at this point. Therefore, he suggested not including in this process new ideas that have not been tested. He noted his concern that by expanding the scope of the review too far that the team may not be able to achieve its original intent. The original intent, he specified, being how and why domestic violence fatalities are occurring. Although Representative Gara

expressed his desire to keep the scope of the review team narrow, he said he did like the notion of allowing law enforcement authorities the option of also [creating a review team] for near-fatal incidents. Representative Gara specified that [the committee] needs to be sure that using the language "fatal and near-fatal" [incidents] isn't interpreted to mean all near-fatal incidents or none. Therefore, he suggested including the following language: "at their discretion, near fatalities as well".

LIEUTENANT STOREY, in response to Representative Gara, informed the committee that there are a large number of other states that do have such review boards. Furthermore, the [division's] domestic violence coordinator does have a lesson plan with regard to how to create these teams and direct the focus of these teams. If this legislation passes, there are organized processes that can be followed. Lieutenant Storey agreed that these teams should have the ability to review near-fatal incidents as deemed appropriate.

Number 1620

TAMARA de LUCIA, Associate Victims' Rights Advocate, Office of Victims' Rights (OVR), Alaska State Legislature, [drew upon her experience in attending a national workshop that addressed what fatality review teams have tried in other states]. Ms. de Lucia informed the committee that 25 states have passed laws to authorize fatality review teams across the country. Generally, the most effective statutes have been those that were broad at the state level, and therefore allowed the localities to determine the specifics regarding how a team would be coordinated. These review teams provide the means for the collective development of additional ways of understanding the dynamics of domestic violence, why deaths [resulting from domestic violence] occur, and how these deaths can be prevented. Ms. de Lucia specified that the teams should focus on reviewing a case and examining the possible points of intervention prior to a fatal incident. Furthermore, these teams should focus on a public health approach to family violence while emphasizing prevention. She pointed out that a fatality review allows community practitioners and service providers to identify homicides resulting from domestic violence and to examine the events leading up to the death, specifically to identify gaps in service delivery and to improve preventative intervention. Fatality review can reveal trends, lead to changes in the system, and prevent future fatal incidents.

MS. de LUCIA turned to Representative Gara's earlier question regarding whether the investigation would be completed or a case adjudicated [before the team is empanelled]. She highlighted the importance of allowing the commissioner to have discussions and defining adjudicated to not include a final appeal but rather just sentencing because sometimes the appeal process is lengthy. The focus of these teams should be to review how the social service process, not necessarily the judicial process, might have failed the victim in order to implement changes to prevent future problems. Ms. de Lucia agreed with Representative Gruenberg that the commissioner could be given the authority to promulgate regulations governing how the teams operate. With regard to the matter of fatal versus near-fatal incidents, Ms. de Lucia informed the committee that there is a definition of "serious physical injury" in AS 11.81.900, which could be helpful in defining a near-fatal incident. The definition of "serious physical injury" in AS 11.81.900 is the same used by the criminal code to define "serious physical injury" for purposes of felony level offenses.

MS. de LUCIA said that she has reviewed the statutes of the 25 states [with a similar provision]. She opined that Tennessee and Michigan have good laws. Ms. de Lucia informed the committee that Neil Wessdale (ph), the recognized authority on fatality review teams, is going to be in Anchorage in April. She mentioned that after speaking with Mr. Wessdale, she would say that this legislation does comport with what has worked in other states as long as one remembers that the best successes have come when localities are able to spearhead the team necessary to suit the particular community.

Number 1817

REPRESENTATIVE GARA asked whether, given the budget circumstances at the state and local levels, there would be the ability to convene many of these fatality review teams. In Anchorage, it's reported that most of the sexual assault cases aren't even investigated.

MS. de LUCIA informed the committee that one impetus for this legislation is the Anchorage Domestic Violence Caucus, an informal gathering of practitioners who meet monthly to address issues important in the domestic violence community. As part of one's regular duties [with OVR] one attends these meetings, which could be the case with these teams. Ms. de Lucia pointed out that police officers, prosecutors, and district attorneys are concerned about reducing crime and the incidence of domestic

violence, particularly fatal incidents. She opined that having an individual who was part of a domestic violence investigation participate in a meeting on the topic would be a productive use of the employee's time. Therefore, she believes this legislation would carry a zero fiscal note.

REPRESENTATIVE GARA agreed that the legislation should carry a zero fiscal note because it's discretionary whether a team will be formed in any case. However, he questioned whether money would ultimately be necessary to make this work. He related his understanding that a fatality review team performs a very substantial investigation that takes much more time than an hour.

MS. de LUCIA said that she didn't believe Representative Gara was wrong with regard to the intensiveness of the fatality review team. However, it is a question of degree. She related that when she attended the national conference on this she talked with groups that have been doing this on an informal ad hoc basis, without [enabling] legislation in the state. She also talked with groups that have been doing this with very formal legislative teams. She recalled the collective agreement to be that [tasks related to the fatality team] are a reasonable extension of the workday of those on the team. If a fatality team meets once a month, getting through only 10 fatalities a year would track trends and review policies that could change the way this issue is addressed in the state. Furthermore, the aforementioned could change the way crime prevention works to help stop domestic violence. However, Ms. de Lucia remarked that only time will tell the degree of time necessary. Still, this wouldn't need to be a financial drain, especially when there are very interested and dedicated practitioners who want this to succeed.

REPRESENTATIVE SAMUELS pointed out that according to Representative Dahlstrom's numbers, there were 11 fatalities in Anchorage in 2002. One of the worst things that can happen in a community is a murder, he commented. Although some of the suggestions from the fatality review team may need funding, he hoped that municipalities would prioritize this proposal, which he didn't believe to be that time cumbersome.

Number 2074

DENISE HENDERSON, Executive Director, Council on Domestic Violence & Sexual Assault, Department of Public Safety, announced support for HB 398. With regard to the financial

aspect of this discussion, Ms. Henderson related that if there is any need for funding, some of the federal funding received by the council could be used for these [fatality review teams]. The council and its staff will be more than willing to work with the commissioner to generate any reports that are required.

REPRESENTATIVE GARA noted his appreciation for the offer. Assuming this legislation passes, he expressed the hope that the legislature would be made aware if there are any needs for funding from the legislature. Representative Gara noted that one can't ignore the reality that the team members will be people who have other jobs for the state or city. He posed an example in which a prosecutor who is already working 60 hours a week is asked to join a fatality review team. He suggested that the prosecutor may actually shift 10 hours of work to someone else. At some point that extra 10 hours of volunteer time might not be available and thus funding may be required.

CHAIR MCGUIRE, upon determining no one else wished to testify, closed public testimony.

The committee took an at-ease from 2:43 p.m. to 2:48 p.m.

Number 2178

REPRESENTATIVE GARA moved that the committee adopt Amendment 1, which read as follows:

Page 1, line 9,
Delete "terminated"
Insert "completed or adjudicated"
Insert after "enforcement," the words "or
earlier"

There being no objection, Amendment 1 was adopted.

REPRESENTATIVE GRUENBERG requested that the committee ask the bill drafter whether the word "damage" on page 3, line 11, should be "damages", which could be corrected for the forthcoming CS. Similarly, Representative Gruenberg requested that the bill drafter be asked whether the word "or" on page 2, line 31, should be "and".

Number 2262

REPRESENTATIVE GRUENBERG recalled earlier testimony suggesting the need to define domestic violence as it is in AS 18.66.990.

Therefore, he [moved that the committee adopt Amendment 2, which would insert a definitions section that specified that domestic violence is defined as under AS 18.66.990]. There being no objection, Amendment 2 was adopted.

Number 2289

REPRESENTATIVE DAHLSTROM, in response to Representative Gruenberg, noted her agreement in defining "near-fatal incident" [as a serious physical injury as defined in AS 11.81.900] as a friendly amendment.

REPRESENTATIVE SAMUELS expressed concern with regard to [how many cases would be involved] if the definition of "serious physical injury" is used because he didn't want to expand [the purview of these teams] such that there would be so many cases as to cause a fiscal note.

REPRESENTATIVE GRUENBERG requested that the committee be provided with a copy of the definition of "serious physical injury."

CHAIR McGUIRE related her understanding that the adoption of Amendment 3 would change the scope of the legislation.

REPRESENTATIVE GRUENBERG withdrew Amendment 3.

Number 2386

REPRESENTATIVE GRUENBERG moved that the committee adopt new Amendment 3, which would provide the commissioner of DPS the authority to promulgate regulations to carry out this new Article 4A.

TAPE 04-6, SIDE B

REPRESENTATIVE HOLM objected. Representative Holm said that he has a real problem with passing laws that don't carry the regulations that will make them work.

REPRESENTATIVE GRUENBERG said that he had envisioned two areas, one of which would allow the commissioner to promulgate, as necessary, regulations concerning the methods of preserving the confidentiality of the records. He specified that the aforementioned can be found on page 2, line 6. The second area was to list the other organizations on page 2, lines 19-20, that could participate. Representative Gruenberg explained that he

had wanted to do the aforementioned things in regulation so that it would be a formalized process with public notice.

CHAIR MCGUIRE, recalling her time chairing the Joint Committee on Administrative Regulation Review, informed the committee that the commissioner of DPS already has the authority to promulgate regulations on this matter whether the legislation specifies it or not.

REPRESENTATIVE GRUENBERG returned to the definition of "serious physical injury" in AS 11.81.900[(b)](55) and related his belief that using that term would probably necessitate changing the term "near-fatal incident" on page 1, line 8, to "serious physical injury".

REPRESENTATIVE GRUENBERG, upon Representative Ogg's questioning, clarified that he had withdrawn new Amendment 3.

REPRESENTATIVE GRUENBERG moved that the committee adopt Amendment 4, which would on page 1, line 8, change the language "near-fatal incidents" to "serious physical injury" and add the definition of "serious physical injury", as specified under AS 11.81.900, to the new definition section created by the adoption of Amendment 1.

Number 2218

REPRESENTATIVE GARA objected, noting that he didn't necessarily disagree. However, he said he wasn't sure that there is enough knowledge to change the entire fatality review concept to make it broader. He noted his desire to hear from someone with more familiarity with the fatality review team concept before broadening it such.

MS. de LUCIA said that limiting the scope to fatal incidents of domestic violence would address the fear that there would be too many meetings and too many reasons to call the teams to order as well as reduce the fear that there would be the need to define an unknown. Of the 25 states, the majority of them confined the review to fatal incidents. However, Ms. de Lucia said she did see merit in reviewing near-fatal incidents because domestic violence can result in maiming or almost killing someone.

CHAIR MCGUIRE highlighted that on page 1, line 6, the [verb] is "may" and thus none of this is mandatory. Chair McGuire emphasized that she liked including the "near-fatal incidents" language because there may be a time when the situation is so

egregious that the municipality or state wants the ability to form these teams. She said she didn't see any harm in including the "near-fatal incidents" language.

MS. de LUCIA agreed.

Number 2075

REPRESENTATIVE ANDERSON concurred with earlier comments regarding not locking in the commissioner or law enforcement to have to form the teams, and therefore he liked the "may" language. He noted his further agreement with including the "near-fatal incidents" language, which would allow more latitude in the investigation should the fatality review team be implemented.

REPRESENTATIVE GARA reiterated the need to have some expert advice on this to be sure that the committee is doing the right thing. He inquired as to Ms. de Lucia's opinion regarding the adoption of the "serious physical injury" concept, which would also allow the departments and the municipalities to decide which cases warrant forming a team. Although Representative Gara said he didn't know whether it's a good idea to expand it further, he said he didn't understand why an expansion [to include near-fatal incidents] wouldn't also include serious physical injury because he didn't see a logical dividing point.

CHAIR McGUIRE clarified that the motion before the committee is to keep the concept of "near-fatal incidents" in the legislation, but to change it to "serious physical injury."

REPRESENTATIVE GRUENBERG clarified that with the adoption of Amendment 4, the language on page 1, line 8, would read as follows: "The investigation of fatal incidents and incidents involving serious physical injury."

Number 1950

MS. de LUCIA agreed that "near-fatal incidents" isn't defined in the statutes whereas "serious physical injury" is already defined in the criminal code. Furthermore, "serious physical injury" already has criminal repercussions associated with that definition.

REPRESENTATIVE GARA withdrew his objection to Amendment 4.

CHAIR MCGUIRE, upon determining there was no further objection, announced that Amendment 4 was adopted.

Number 1890

REPRESENTATIVE OGG recalled the testimony that these fatality review teams in other states were more effective at the municipal or local level. Therefore, he requested that the sponsor clarify that municipalities have precedent if the municipality had a domestic violence fatality review team.

REPRESENTATIVE SAMUELS suggested inserting the word "unorganized" on page 1, line 7, before "areas", which would place the commissioner of DPS in the unorganized areas and the municipalities in the organized areas.

REPRESENTATIVE OGG mentioned the existence of second class cities.

REPRESENTATIVE GRUENBERG posed a situation in which the individual [victim] is in Anchorage and DPS wants to convene a fatality review team. He said he didn't see why that couldn't occur. Representative Gruenberg agreed that it's already implied.

Number 1809

REPRESENTATIVE GARA expressed the hope that someone let the committee know if later it's determined that a different tact than "serious physical injury" should've been taken.

REPRESENTATIVE DAHLSTROM agreed to work on that.

Number 1772

REPRESENTATIVE SAMUELS moved that the committee adopt Amendment 5, as follows:

Page 2, line 13, after "the"
Insert "office of the"

There being no objection, Amendment 5 was adopted.

CHAIR MCGUIRE announced that HB 398 would be set aside, awaiting the CS.

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:09 p.m.