

HB

463

# STATE OF ALASKA THE LEGISLATURE

## LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jearie Henry

House Judiciary	2/19/86	1:30 pm
" "	3/18/86	7 - 10 PM

**HOUSE  
COMMITTEE REPORT**

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: \_\_\_\_\_

The JUDICIARY Committee has considered HB 463

"An Act relating to criminal trials and restitution."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with CSHB 46.3 (JUD)  same title  
 new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

SIGNING DO PASS:

\_\_\_\_\_  
*W. L. Miller*  
\_\_\_\_\_  
*W. Lockman*  
\_\_\_\_\_  
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SIGNING OTHER RECOMMENDATIONS:

\_\_\_\_\_  
*W. L. Miller*  
\_\_\_\_\_  
*W. St. Germain* No Rec  
\_\_\_\_\_  
*Charles L. Taylor* Do NOT Pass  
\_\_\_\_\_  
*Bill* No Rec  
\_\_\_\_\_  
*Ralph E. ...* No Rec  
\_\_\_\_\_  
\_\_\_\_\_

*W. L. Miller*  
\_\_\_\_\_  
Chairman

Original sponsors: Thompson, Jenkins,  
Gentling, et al

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 463 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

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

Section 1. AS 12.45.120 is amended to read:

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge, or magistrate while in the execution of the duties of that office;

(2) riotously;

(3) with an intent to commit a felony;

(4) by assault against

(A) the spouse of the defendant, unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued;

(B) a former spouse of the defendant;

(C) a parent, grandparent, child, or grandchild of the defendant;

(D) a member of the social unit comprised of those living together in the same dwelling as the defendant; or

14                   (E) a person who is not a spouse or former spouse of  
15                   the defendant but who previously lived in a spousal relationship  
16                   with the defendant [LARCENOUSLY].

17 \* Sec. 2. AS 12.55.045(a) is amended to read:

18           (a) The court may order a defendant convicted of an offense to  
19           make restitution as provided in this section, including restitution to  
20           a public or private nonprofit organization that has provided counsel-  
21           ing, medical, or shelter services to the victim or as otherwise au-  
22           thorized by law. In determining the amount and method of payment of  
23           restitution, the court shall take into account the financial resources  
24           of the defendant and the nature of the burden its payment will impose.

Ford  
3/11/86

Gruenberg

Original sponsors: Thompson, Jenkins,  
Uehling, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 463 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority to compromise  
7 certain misdemeanors and to the payment of fines and  
8 restitution."

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

10 \* Section 1. AS 12.45.120 is amended to read:

11 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
12 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a  
13 charge of misdemeanor for which the person injured by the act consti-  
14 tuting the crime has a remedy by a civil action, the crime may be  
15 compromised except when it was committed

16 (1) by or upon a peace officer, judge, or magistrate while  
17 in the execution of the duties of that office;

18 (2) riotously;

19 (3) with an intent to commit a felony;

20 (4) by assault against

21 (A) the spouse of the defendant, unless the court  
22 finds that a divorce is pending between the individuals and a  
23 restraining order against further assaultive behavior has been  
24 issued;

25 (B) a former spouse of the defendant;

26 (C) a parent, grandparent, child, or grandchild of the  
27 defendant;

28 (D) a member of the social unit comprised of those  
29 living together in the same dwelling as the defendant; or

1                   (E) a person who is not a spouse or former spouse of  
2                   the defendant but who previously lived in a spousal relationship  
3                   with the defendant [LARCENOUSLY].

4 \* Sec. 2. AS 12.55.045(a) is amended to read:

5           (a) The court may order a defendant convicted of an offense to  
6           make restitution as provided in this section, including restitution to  
7           a public or private nonprofit organization that has provided counseling,  
8           medical, or shelter services to the victim or as otherwise authorized  
9           by law. Before an order of restitution is entered, upon the  
10           request, the defendant may have an opportunity to establish by a  
11           preponderance of the evidence the inability to pay restitution during  
12           the term of the sentence. [IN DETERMINING THE AMOUNT AND METHOD OF  
13           PAYMENT OF RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL  
14           RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN OF  
15           PAYMENT WILL IMPOSE.]

16 \* Sec. 3. AS 12.55.051(a) is amended to read:

17           (a) If the defendant defaults in the payment of a fine or an  
18           installment or of restitution or any installment, the court may order  
19           the defendant to show cause why the defendant should not be sentenced  
20           to imprisonment for nonpayment. If the defendant fails to establish  
21           [COURT FINDS] by a preponderance of the evidence that the defendant  
22           did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO  
23           INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the  
24           fine or restitution, the court may order the defendant imprisoned  
25           until the order of the court is satisfied. A term of imprisonment  
26           imposed under this section may not exceed one day for each \$50 of the  
27           unpaid portion of the fine or restitution or one year, whichever is  
28           shorter. Credit shall be given toward satisfaction of the order  
29           of the court for every day a person is incarcerated for nonpayment of

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fine or restitution.

**DRAFT**

# \_\_\_\_\_

DATE: \_\_\_\_\_

BOOKPROOFED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 463 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority to compromise  
7 certain misdemeanors and to the payment of fines and  
8 restitution."

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

10 \* Section 1. AS 12.45.120 is amended to read:

11 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
12 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a  
13 charge of misdemeanor for which the person injured by the act con-  
14 stituting the crime has a remedy by a civil action, the crime may be  
15 compromised except when it was committed

16 (1) by or upon a peace officer, judge, or magistrate while  
17 in the execution of the duties of that office;

18 (2) riotously;

19 (3) with an intent to commit a felony;

20 (4) larcenously;

21 (5) by assault against22 (A) a spouse or a former spouse of the defendant;23 (B) a parent, grandparent, child, or grandchild of the24 defendant;

25 (C) a member of the social unit comprised of those  
26 living together in the same dwelling as the defendant; or

27 (D) a person who is not a spouse or former spouse of  
28 the defendant but who lived in a spousal relationship with the  
29 defendant.

**DRAFT**

# \_\_\_\_\_

DATE: \_\_\_\_\_

BOOKPROOFED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

1 \* Sec. 2. AS 12.55.025(f) is amended to read:

2 (f) A sentence that the defendant pay money, either as a fine or  
3 in restitution or both, constitutes a lien in the same manner as a  
4 judgment for money entered in a civil action and may be enforced by  
5 execution in the same manner as a judgment in a civil action. Nothing  
6 in this section limits the authority of the court to otherwise enforce  
7 payment of a fine or restitution.

8 \* Sec. 3. AS 12.55.045(a) is amended to read:

9 (a) The court may order a defendant convicted of an offense to  
10 make restitution as provided in this section, including restitution to  
11 a public or private nonprofit organization that has provided counsel-  
12 ing, medical, or shelter services to the victim or as otherwise au-  
13 thorized by law. Before an order of restitution is entered, upon  
14 request, the defendant may have an opportunity to establish by a  
15 preponderance of the evidence the inability to pay restitution during  
16 the term of the sentence. [IN DETERMINING THE AMOUNT AND METHOD OF  
17 PAYMENT OF RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE  
18 FINANCIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS  
19 PAYMENTS WILL IMPOSE.]

20 \* Sec. 4. AS 12.55.051(a) is amended to read:

21 (a) If the defendant defaults in the payment of a fine or any  
22 installment or of restitution or any installment, the court may order  
23 the defendant to show cause why the defendant should not be sentenced  
24 to imprisonment for nonpayment. If the defendant fails to establish  
25 [COURT FINDS] by a preponderance of the evidence that the defendant  
26 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN  
27 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the  
28 fine or restitution, the court may order the defendant imprisoned  
29 until the order of the court is satisfied. A term of imprisonment

**DRAFT**

# 1

DATE: 3-7-86

BOOKPROOFED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

1 imposed under this section may not exceed one day for each \$50 of the  
 2 unpaid portion of the fine or restitution or one year, whichever is  
 3 shorter. Credit shall be given toward satisfaction of the order of  
 4 the court for every day a person is incarcerated for nonpayment of a  
 5 fine or restitution.  
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Proposed Amendment #2

Page 1, Line 28, Insert a new Section 2 to read:

\* Sec. 2. AS 12.55.025(f) is amended to read:

(f) A sentence that the defendant pay money as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action and may be enforced by execution in the same manner as a judgment in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

*§ 12.55.025(f) AS 12.55.025(f)*

Proposed Amendment #1

Page 1, line 6,

change title to read:

An Act relating to criminal procedure.

STATE OF ALASKA 1986 LEGISLATIVE SESSION FEB 07 1986  
FISCAL NOTE

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

**REQUEST**

Bill/Resolution No. : HB463  
 Title : "An Act Relating to Criminal Trials and Restitution"  
 Sponsor : Rep. David Thompson  
 Requestor : House Judiciary  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Council on Domestic Violence and Sexual Assault  
 Components : \_\_\_\_\_

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

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL						
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REVENUE						
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**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Barbara Miklos, Exec. Dir. Phone: 465-4356  
 Division: Council on DV and SA Date: 1/31/86  
 Approved by Commissioner: [Signature] Date: 2/3/86  
 Agency: Dept. of Public Safety

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 463

January 31, 1986

Support

HB 463 - "An Act relating to criminal trials and restitution."

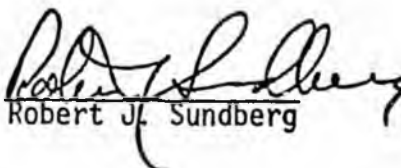
The Council on Domestic Violence and Sexual Assault supports HB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has provided counseling, medical or shelter services to a victim of an offense.

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.

  
Robert J. Sundberg

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

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

REQUEST

Bill/Resolution No.: HB 463  
 Title: "An Act relating to criminal trials and restitution."  
 Sponsor: Repr. Thompson  
 Requestor: Repr. Thompson  
 Date of Request: February 7, 1986

FISCAL DETAIL

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

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

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues Phone: 465-3672  
 Division: Administrative Services Division Date: 2/12/86  
 Approved by Commissioner: Richard I. Pegues/RSR Date: 2/12/86  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 463

This bill expands the exceptions to the authority to compromise misdemeanors for which a victim has a civil action, under AS 12.45.120, to except certain family members and certain others having a past or present living relationship with a defendant. The bill also provides that a court may order restitution to a public or nonprofit organization that has provided counseling, medical or shelter services to the victim. Neither of these new provisions will have a fiscal impact on the Department of Law.

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS  
FY 84**

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	953	1,701	1,114	1,086	220	5,074
Barrow	4	27	8	47	5	91
Bethel	11	28	29	68	---	136
Fairbanks	294	613	217	345	20	1,489
Juneau	117	181	56	119	17	490
Kenai	67	190	66	91	11	425
Ketchikan	76	113	75	63	5	332
Kodiak	7	71	37	41	4	196
Kotzebue	16	16	28	48	---	108
Nome	20	6	32	23	---	81
Palmer	71	172	86	98	15	442
Sitka	48	44	24	34	2	152
Wrangell/ Petersburg	26	32	11	13	4	86
<b>TOTAL</b>	<b>1,746</b>	<b>3,194</b>	<b>1,783</b>	<b>2,076</b>	<b>303</b>	<b>9,102</b>
<b>% OF TOTAL</b>	<b>19%</b>	<b>35%</b>	<b>20%</b>	<b>23%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT**

First	267	370	166	229	28	1,060
Second	40	49	68	118	5	280
Third	1,134	2,134	1,303	1,316	250	6,137
Fourth	305	641	246	413	20	1,625

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 82/83

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,008	1,596	1,230	914	169	4,917
Barrow	11	18	10	24	3	65
Bethel	16	33	53	58	0	160
Fairbanks	303	543	270	211	6	1,333
Juneau	112	167	95	90	1	465
Kenai	85	149	59	56	5	354
Ketchikan	69	97	79	69	7	321
Kodiak	77	58	36	43	2	217
Kotzebue	14	13	28	25	2	82
Nome	17	17	39	18	2	93
Palmer	73	134	66	34	7	314
Sitka	5	28	33	17	9	145
Wrangell/ Petersburg	24	39	9	8	0	80
<b>TOTAL</b>	<b>1,867</b>	<b>2,892</b>	<b>2,007</b>	<b>1,567</b>	<b>213</b>	<b>8,546</b>
<b>% OF TOTAL</b>	<b>22%</b>	<b>34%</b>	<b>23%</b>	<b>18%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

First	263	331	216	184	17	1,011
Second	42	48	77	67	7	240
Third	1,243	1,937	1,391	1,047	183	5,802
Fourth	310	576	323	269	6	1,493

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 81/82

COURT	CASE TYPE					TOTAL
	DIVORCE	DISS. OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,295	1,541	1,643	539	162	5,180
Barrow	25	14	13	27	11	90
Bethel	14	13	49	37	4	117
Fairbanks	325	486	266	170	48	1,295
Juneau	271	3	79	50	13	416
Kenai	171	33	75	53	9	341
Ketchikan	190	-	105	51	9	355
Kodiak	89	-	43	23	3	158
Kotzebue	22	-	31	31	3	87
Nome	29	3	33	7	9	81
Sitka	76	1	38	14	8	137
<b>TOTAL</b>	<b>2,507</b>	<b>2,094</b>	<b>2,375</b>	<b>1,002</b>	<b>279</b>	<b>8,257</b>
<b>% OF TOTAL</b>	<b>30%</b>	<b>25%</b>	<b>29%</b>	<b>12%</b>	<b>.3%</b>	<b>100%</b>

Fiscal Year July 1 - June 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

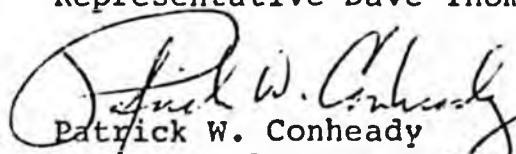
First	537	4	222	115	30	908
Second	51	3	64	38	12	168
Third	1,555	1,574	1,761	615	174	5,679
Fourth	364	513	328	234	63	1,502

TO: Helen Fisher  
Legislative Assistant to  
Representative Dave Thompson

DATE: March 12, 1986

FILE NO:

TELEPHONE NO: 465-3678

FROM:   
Patrick W. Conheady  
Assistant Attorney General  
Chief, Pretrial Services

SUBJECT: Proposed CSHB 463  
(Judiciary);  
3/11/86 version

You have requested my analysis of the March 11 version of HB 463. In addition to the pertinent comments contained in my March 7 memorandum, I would like to add the following:

In Section 1 of the bill, new language has been added providing an exception to the prohibition on civilly compromising domestic assaults. That exception is contained in proposed AS 12.45.120(4)(A) and provides "unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued." This department opposes this new provision as contrary to our stated position against compromising domestic assaults.

Such an exception will not facilitate divorce proceedings as the battering spouse will have motivation to assert the necessity of a civil compromise as a precondition to a less contentious divorce. Furthermore, fear of lapsing spousal privilege causing divorce proceedings to drag on with the pendency of a criminal assault prosecution are unfounded as the spousal privilege does not apply when one spouse is the victim of the other spouse's criminal act. See Rule 505(a)(2)(D)(i) of the Alaska Rules of Evidence.

Section 1 of the bill also contains the drafting error referred to in my initial memorandum.

Prior Section 2, facilitating payment of restitution to victim has been deleted from the bill.

Sections 2 and 3 of this version mirror section 3 and 4 of the version I prepared on March 7.

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:62

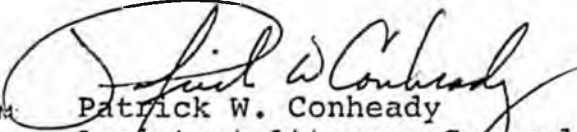
# MEMORANDUM

# State of Alaska

TO: Helen Fisher  
Legislative Assistant to  
Representative Dave Thompson

DATE: March 7, 1986

FILE NO:

FROM:   
Patrick W. Conheady  
Assistant Attorney General  
Chief, Pretrial Services

TELEPHONE NO: 465-3678

SUBJECT: Proposed CSHB 463  
(Judiciary)

You have requested my analysis of the proposed judiciary committee substitute for HB 463 dated February 27, 1986. In brief:

Section 1. The proposed committee substitute retains the language contained in the original version of HB 463. This language would overturn State v. Nelles, Op. No. 578 (Alaska App., February 7, 1986). The proposed CS goes a step further, however, and eliminates larcenous conduct from the list of misdemeanors not amenable to civil compromise. This would significantly broaden both the number and types of criminal cases which could be comprised, and is a step backward in terms of developing a just and rational prosecution system. The Department of Law opposes such a step, which is clearly not related to the original purpose of this bill. Also, the technical manner in which the "larcenously" language is repealed is extremely poor drafting. The new prohibition against the compromise of domestic assaults should be added as a new subsection 5. This would ensure that there would not be any confusion between the new language and that which now appears in any cross references in existing statutes and in court decisions referring to AS 12.45.120(4).

Section 2 is the amendment proposed by Representative Thompson during the hearing, plus language suggested by Public Defender Dana Fabe. The purpose of Representative Thompson's amendment was to clarify that an order of restitution or a fine resulting from a criminal conviction could be enforced by execution in the same manner as a civil judgment. We believe that this is the appropriate interpretation of the existing language in subsection (f), but the court, in a few jurisdictions, disagrees with this view. Representative Thompson's amendment would clarify the existing language and eliminate the need to litigate this issue.

During her testimony on the bill, Dana Fabe opposed the amendment because it would supposedly expose defendants to civil liability when they plead nolo contendere rather than guilty. I do not agree with Ms. Fabe's opinion on this point. Restitution and fines under AS 12.55 are criminal sanctions that may be

imposed upon any offender at sentencing. Currently, when pleading nolo, defendants may be sentenced to pay a fine or restitution. These defendants are not exposed to separate civil liability. Representative Thompson's amendment addresses only the manner in which these sanctions may be collected; in my opinion it did not expose those who plead nolo to any greater risk of civil liability than currently exists.

In a policy sense, the addition of Ms. Fabe's proposed language would insulate those who plead nolo from paying a fine or restitution unless a separate civil suit is filed. The burden upon victims, especially in misdemeanor cases (where the majority of restitution orders arise), is immense. The filing of a civil suit would require the victim to prove not only damages, but also fault. Although Alaska has an unquestionably adequate supply of lawyers (3.6 per thousand), I am not in favor of putting them to work at the expense of victims or crimes. If the language proposed by Ms. Fabe remains, we would have to oppose the entire bill. Victims have a difficult enough time collecting restitution under current law; to impede it further is indefensible.

Section 3 of the proposed substitute retains the provision permitting payment of restitution to shelters and other non-profits, but it eliminates the repeal of the provision requiring the court to make an affirmative finding of the defendant's ability to pay before a restitution order may be imposed. In interpreting the last sentence of existing AS 12.55.045(a), the Alaska Court of Appeals has held that "the trial court may not set restitution unless it first determines post incarceration earning capacity and determines that restitution award to be set will be within defendant's ability to pay." See Karr v. State, 686 P.2d 1192 (Alaska App. 1984). In effect, as I stated in my testimony at the hearing, when the court does not make this affirmative finding, any order of restitution is presumptively invalid.

In the practical world of criminal proceedings, most orders of restitution arise in district court, i.e., they result after a conviction for a misdemeanor. Mr. Svobodny, the Juneau District Attorney, and Ms. Joannides, one of his assistants, tell me that they have never witnessed a district court proceeding where this inquiry required by AS 12.55.045(a) has occurred. Representative Taylor has indicated that he did comply with the requirements of an affirmative finding when he was a judge. However, I believe that Judge Taylor was the exception in these situations. Furthermore, in any given day, a sizable number of offenders enter pleas of guilty or no contest at the initial

Helen Fisher

March 7, 1986  
Page 3

arraignment in court; if the courts universally complied with the current mandate of AS 12.55.045(a) to make affirmative finding prior to ordering restitution, the workload at arraignments alone would substantially increase. Finally, Representative Clocksin's assumption during the hearing that convicted offenders are under oath at the time of sentencing, is not accurate. Offenders are generally not placed under oath, nor are they required to speak at sentencing. An offender may be able to assert a valid privilege against answering inquiries from a sentencing judge.

In my opinion, the issue here is basically one of the rights of victims versus the rights of offenders. In 1984, this state enacted a victim's bill of rights and required the inclusion of a victim impact statement as part of a presentence report in felony matters. These actions were the state's attempt to recognize that offenders are not the only individuals with cognizable rights during criminal proceedings. However, by retaining provisions in the statutes like the last sentence of AS 12.55.045(a), we are merely giving lip service to victims while upholding burdensome, statutorily-created offender rights.

As I understand it, Representative Thompson's original purpose in HB 463 was to allow restitution to be ordered to the state's shelter system, when the shelters provided care to the victim. For the shelters involved, this bill does no more than that which has been done for victims directly -- the law authorizes them to recover restitution, yet makes it practically impossible to actually collect it.

Section 4 of the proposed committee substitute is the same as the original bill.

I have prepared a proposed committee substitute which incorporates our objections to the proposed judiciary committee substitute. You will notice that in Section 3, I have drafted new language suggested by Representative Gruenberg that also addresses another concern raised by Representative Clocksin on this bill.

If I can provide further assistance, do not hesitate to contact me.

PWC:ejf

Attachment:

# Alaska State Legislature

DISTRICT 27  
AKHIOK  
CHIGNIK  
CHIGNIK LAGOON  
CHIGNIK LAKE  
CHINIAK  
IVANOF BAY  
KARLUK  
KODIAK  
LARSEN BAY  
OLD HARBOR  
OUZINKIE  
PERRYVILLE  
PORT LIONS  
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(LIO) (907) 486-8116

Representative  
**Dave Thompson**

February 26, 1986

To: Representative Max Gruenberg  
Representative Don Clocksin  
From: Dave Thompson  
Re: CS for HB 463

*To Hayden  
please*

It is my understanding that at the conclusion of the Judiciary Committee hearing on HB 463, you were both appointed by Representative M. Mike Miller to write the committee substitute - with some assistance by me. Please let me know the status of the re-write. Either I, or my aide, Helen, would be willing to work with you at your convenience on HB 463.

Thank you.

*DWT*

cc: Representative M. Mike Miller

FEB 11 1986

11B463

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA, )

Appellant, )

File No. A-995

O P I N I O N

BRUCE NELLES, )

Appellee. )

[No. 578 - February 7, 1986]

Appeal from the District Court of the State of Alaska, Fourth Judicial District, Fairbanks, H. E. Crutchfield, Judge.

Appearances: Jeffery O'Bryant, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Harold M. Brown, Attorney General, Juneau, for Appellant. Raymond Funk, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

The state appeals from a district court dismissal of a misdemeanor assault charge against Bruce Nelles. Judge H.E. Crutchfield dismissed the charge pursuant to the misdemeanor civil compromise statute. We affirm.

BACKGROUND

While intoxicated, Nelles struck his girlfriend, Mary M. Henry, on the mouth with his fist. Henry's injury required four stitches. She filed a citizen arrest form seeking Nelles' arrest.

At a bail hearing before Judge Crutchfield, Nelles' attorney moved for dismissal. He submitted a statement titled "Compromise of Criminal Action," which was signed by Henry and stated:

Comes now the injured party in the above-entitled action, Mary Henry, and hereby acknowledges that he/she has received satisfaction for the injury to his/her person and further states that he/she does not wish to proceed with this action, since he/she has received satisfaction for injury to his/her person from the Defendant, Bruce Nelles.

The state opposed Nelles' motion for dismissal. The court allowed Nelles' counsel to examine Henry under oath. Henry testified that she and Nelles intended to marry, that he had never assaulted her on any other occasion during their one year together, that none of her clothes had been torn, that she had not incurred any medical expenses, that she was unemployed at the time of the assault, had lost no wages, and that she did not want any civil compensation from Nelles.

Judge Crutchfield further questioned Henry:

Court: (to witness) I don't know whether Mr. Wildridge, in taking this written statement from you, explained the provisions of Title 12.45.120-130, which I'm obviously looking at. And, I think the basis for this is to not prosecute some cases but by the same time the legislature recognizes that the court system and the police, and the prosecutor should not be some type of a buffer zone and have their time taken up with boy-girl relations, okay?

Henry: I understand.

Court: And, there's some provisions for costs and I've never been clear about who the costs should be assessed against, whether it's the defendant or the witness who brings the charges, and, then -- you are aware, of course, that there's a possibility that if I grant it, that I may, based upon the court's time and everybody's time, I may have to assess some costs -- before it would be dismissed? Did you understand that?

Henry: (inaudible)

Court: Okay.

. . .

Court: You're not frightened of Mr. Nelles I take it then, you, he didn't try to talk you into doing this or threatening you in any way?

Henry: No.

Judge Crutchfield initially denied Nelles' motion to dismiss. After Nelles moved for reconsideration, however, Judge Crutchfield ordered the case dismissed "pursuant to the civil compromise provisions" and "upon payment of \$100 costs." The state has appealed the order of dismissal.

#### DISCUSSION

"In theory there should be no compromises of criminal cases." Miller, The Compromise of Criminal Cases, 1 So. Cal. L. Rev. 1 (1927). And in practice, "the civil and criminal law operate independently of one another so that resolution of a victim's civil rights and remedies has no effect upon criminal prosecution." People v. Moulton, 182 Cal. Rptr. 761, 766 (Cal. App. Dep't. Super. Ct. 1982). "An exception to this principle exists, however, where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of certain conduct." Annot., 42 A.L.R.3d 315, 318, § 2[a]. Many states, including Alaska, have adopted such statutes, allowing judicially-sanctioned compromises and dismissals of criminal charges.<sup>1</sup>

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<sup>1</sup>. AS 12.45.120-.140; Ariz. Rev. Stat. Ann. § 13-3981 (1978); Cal. Penal Code § 1377-79 (West 1982); Idaho Code Ann. § 19-3401-3403

(footnote continued)

It appears that Alaska's civil compromise statutes derived from the same source as most other similar statutes, a 1813 New York statute that read:

That in all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate who may have taken the recognisance, or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate in his discretion to discharge the recognisance, &c. or for the court also in their discretion, to order a nolle prosequi to be entered on the indictment.<sup>2</sup>

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(footnote 1 continued)

(1979); Mass. Gen. Laws Ann. ch. 276, § 55 (West 1972); Nev. Rev. Stat. § 178.564-568 (1983); Okla. Stat. Ann. tit. 22, § 1291-94 (West 1958); Or. Rev. Stat. § 135.703-709 (1983); Pa. Stat. Ann. tit. 19, 26 (Purdon 1964); Utah Code Ann. §§ 77-50-1 to -3 (1978).

<sup>2</sup>. In large part, the laws of Alaska are derived from those of Oregon. F. Brown, The Sources of the Alaska and Oregon Codes, Part I, 2 U.C.L.A.-Alaska L. Rev. 15, 16 (1972). The Alaska civil compromise statutes appear to first have been adopted in 1900 and to have been derived from the Oregon Civil Compromise Statutes. See Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) (the Alaska statute refers to the Oregon law, presumably as its source). See infra. n.3. The Alaska statutes also had virtually identical wording to the Oregon statutes. Compare Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) with Gen. Laws of Or., Code of Crim. Proc., ch. XXX, §§ 315-318 (Deady 1845-1864); renumbered, Ann. Laws of Or., Crim. Code. tit. I, ch. XXX, §§ 1519-1522 (Hill 1892); renumbered, Or. Laws, tit. XVIII, ch. XV, §§ 1696-1699 (Lord 1910).

The laws of Oregon, and therefore Alaska, are derived in large part from those of New York. Although, "[t]he major borrowing took place in Oregon in 1853-1854 . . . Oregon's celebrated Judge Matthew P. Deady and others reworked the Oregon law in 1862-1864, using as their major sources the 1854 codes and the draft codes prepared for New York by a commission by David Dudley Field. The Field Commission had also relied heavily on the older New York statutes . . . ." F. Brown, The

(footnote continued)

1 N.Y.R.L. § 19 (1813), quoted in People v. Moulton, 182 Cal. Rptr. 761, 765 (Cal. App. Dep't. Super. Ct. 1982). The purpose of the statute was to encourage the amicable resolution of disputes that were primarily private in nature:

The policy underlying compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849 as follows:

There are many cases, which are technically public offenses, but which are in reality rather of a private than a public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise . . . ; a policy which has been carried by the courts, still further than the terms of the statute.

People v. Moulton, 182 Cal. Rptr. at 766 (citations omitted).

Alaska's civil compromise statutes are contained in AS 12.45.120-12.45.140, which state:

Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;

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(footnote 2 continued)

Sources of the Alaska and Oregon Codes, Part II, 2 U.C.L.A. - Alaska L. Rev. 87 (1973).

- (2) riotously;
- (3) with an intent to commit a felony;
- (4) larcenously.

Sec. 12.45.130. Acknowledgment of satisfaction by injured party. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime.

Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited. A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.<sup>3</sup>

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<sup>3</sup>. The statutes, as originally adopted in 1900, read:

Sec. 253. What crimes may be compromised. That when a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed--

First. By or upon an officer of justice, while in the execution of the duties of his office;

Second. Riotously; or

Third. With an intent to commit a felony; or

Fourth. Larcenously.

Laws. Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1519.

Sec. 254. Compromise by permission of the court; order thereon. That if the party injured appear before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and the reasons therefor must be entered on the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s.

(footnote continued)

In this case, the state initially contends that these statutes violate the separation of powers doctrine. The state relies upon State v. Carlson, 555 P.2d 269, 271-72 (Alaska 1976), and Public Defender Agency v. Superior Court, 534 P.2d 947, 951-52 (Alaska 1975). It argues that the district court's order of dismissal amounts to "a usurpation of the executive power residing in the state district attorney's office to bring charges and determine their disposition." We find this argument to be without merit.

In State v. Carlson, the defendant was indicted for murder, but the trial court, against the state's opposition, agreed to accept a guilty

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(footnote 3 continued)

1520; Saxon v. Hill, 6 Oreg., 383.

Sec. 255. Order a bar to another prosecution.  
That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.

Sec. 256. No crime can be compromised, except.  
That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

The statutes appear unchanged from the original version in Comp. L. Ann., tit. XV, ch. 28, §§ 2362-2365 (1913); Comp. L. Ann., §§ 5431-5434 (1933), and Comp. L. Ann., tit. 66, ch. 18, §§ 66-18-1 to 66-18-4 (1948). In 1962, a number of minor amendments were made to the language of the statutes. See SLA, ch. 34, § 6.13 (1962). Additionally, the first exception in Sec. 253 was expanded from the original "an officer of justice" to "a peace officer or magistrate," in 1962, SLA, ch. 34, § 6.13 (1962), and expanded to "a peace officer, judge or magistrate," in 1971. SLA, ch. 8, § 15 (1971). Also, Sec. 255 was consolidated with Sec. 254 in 1962. SLA, ch. 34, § 6.13 (1962).

plea to the lesser offense of manslaughter. No statute or rule permitted the trial court to accept such a plea. The supreme court reversed, finding that the trial court's decision would "usurp the executive function of choosing which charge to initiate. . . ." 555 P.2d at 272. In Public Defender Agency v. Superior Court, the trial court ordered the state to prosecute a civil action for child support. The supreme court similarly concluded that the separation of powers doctrine had been violated, holding that "the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding." 534 P.2d at 950.

In the present case, there was no judicial interference with the prosecution's initial decision to charge Nelles. Judge Crutchfield did subsequently exercise his discretion to dismiss the case. Yet this dismissal was expressly authorized by the legislature. AS 12.45.120, 12.45.130. There is no suggestion in the civil compromise statutes that the court's power to dismiss is conditioned upon the agreement of the prosecutor. In fact, the contrary appears to be the case. See Annot., 42 A.L.R.3d 315, 319 (a common condition precedent under compromise statutes is the consent of either the court or the prosecutor). See also Hoines v. Barney's Club, Inc., 170 Cal Rptr. 42, 47 (Cal. 1980) (in explaining the civil compromise statute, the court stated that the prosecutor has no role in a dismissal of civil compromise). The state has cited no case purporting to hold that prosecutorial consent to a civil compromise is necessary as a matter of constitutional law, and we are aware of none. Because the court's authority to compromise misdemeanors has been expressly conferred by the legislature, we find the present case readily distinguishable from State v. Carlson and Public Defender Agency

v. Superior Court, and we conclude that there is no separation of powers violation made out here.

The state's next argument is that crimes arising from domestic disputes should not be amenable to civil compromise. Certainly, the state has a valid concern: that domestic assaults not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur. However, the state cites no support for the argument that public policy mandates a judicially created exception to the civil compromise statute. The statute, in its current form, does not exempt domestic disputes. Amendment to create additional exceptions is clearly a matter of legislative, rather than judicial, concern.<sup>4</sup>

Moreover, we note that, under the Alaska civil compromise statute, the decision whether to dismiss or prosecute is vested in the sound discretion of the trial court, and no right to dismissal is conferred upon the accused. In cases of domestic violence that appear to involve a continuing danger of injury to the victim, it could well be an abuse of discretion for the trial court to order dismissal. In the present case, however, the state has not suggested any ongoing danger to the victim, and the record contains nothing to indicate that Judge Crutchfield abused his discretion in this regard.

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<sup>4</sup>. We note that California has amended the civil compromise statute to create an exception barring civil compromise when the injury arises from a second willful and knowing violation of a restraining order imposed to prevent domestic violence. Cal. Penal Code § 1377 (West 1982) (statute amended 1979). It should also be noted that any willful infliction of physical injury resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal. Penal Code § 273.5 (West 1970) (adopted 1977).

The state further argues that the civil compromise statute engenders conflict with the Alaska Code of Professional Responsibility, Disciplinary Rule 7-105(A), which states that "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." See, e.g., MacDonald v. Musick, 425 F.2d 373 (9th Cir. 1970) (prosecutorial misconduct where charge of resisting arrest was introduced as "bludgeon" behind the attempt to defeat a possible civil action by the arrestee for false arrest). This rule is plainly inapplicable here. Dismissal of a case upon civil compromise simply does not imply that the case was prosecuted "solely to obtain an advantage in a civil matter."<sup>5</sup>

Judge Crutchfield's dismissal of the case is AFFIRMED.

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<sup>5</sup>. The state has also argued that Alaska's civil compromise statute is unconstitutionally vague. We find this argument to be frivolous.

Alaska Women's Commission

Testimony  
Suzanne Lombardi

HB 463

The legislative committee of the Alaska Women's Commission met February 12, 1986 and expressed support of HB 463, an act relating to Criminal Trials and Restitution.

Section I

The Commission believes that domestic violence is a violent crime that should be handled as any other assault would be by the Judiciary system.

By adding domestic violence to the list of crimes that cannot be compromised by civil action, the Alaska State Legislature is continuing to send the message that this crime is clearly unacceptable.

Although, the compromise statute is not often used, a court opinion was handed down recently that reinforces the Commission's concern. In the Court of Appeals - State of Alaska vs. Nelles the court upheld the dismissal of charges and the defendant paid \$100 restitution to a victim who required four stitches in her mouth due to a blow with a fist. The court said "certainly the state has a valid concern: that domestic assaults go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur."...."an ammendment to create additional exceptions is clearly a matter of legislative rather than judicial concern."

## Section II

This section allows restitution to be provided to an organization that has provided counseling, medical, or shelter services to the victim.

Many women have no insurance and suffer permanent physical as well as emotional handicaps because of lack of proper medical or counseling services. Furthermore, with the severe funding cutbacks, many shelters are in great need of additional support and this bill will assure that vital services are provided to the victim.

## Section III

If the defendant fails to pay restitution he must prove his inability to comply was neither intentional nor in bad faith.

The Alaska Women's Commission believes this bill is another positive step in the direction of eradicating violence in Alaska.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women Aid in Crisis (AWAIC)  
Advocates for Victims of Violence (AVV)  
Aiding Women in Abuse and Rape Emergencies (AWARE)  
Alaska Women's Resource Center (AWRC), Arctic Women in Crisis (AWIC)  
Bering Sea Women's Group (BSWG)  
Cordova Women's Resource Center (CWRC), Emmonak Women's Shelter,  
Kadiak Women's Resource & Crisis Center (KWRC), M&N, Inc.  
Men's Support Network (MSN), Safe & Fear Free Environment (SAFE)  
Sikans Against Family Violence (SAFV)  
Southwestern Alaska Council for the  
Prevention of Child Sexual Assault (SWACPSA)  
South Peninsula Women's Services (SPWS)  
Tundra Women's Coalition (TWC), Valley Women's Resource Center (VWRC),  
Women in Crisis Counseling & Assistance (WICCA)  
Women in Safe Homes (WISH), Women's Resource & Crisis Center (WRCC)

## POSITION PAPER: HB 463

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit membership organization composed of twenty domestic violence and sexual assault programs throughout the state. The Network strongly supports HB 463 for the following reasons:

Section 1: As you are aware, on February 7, 1987, the Court of Appeals affirmed a decision made by Judge Crutchfield to dismiss a misdemeanor assault charge against Bruce Nelles pursuant to the misdemeanor civil compromise statute in the case STATE OF ALASKA vs. BRUCE NELLES. In this case, the Court of Appeals found that AS 12.45.120 and 12.45.130 expressly authorize the court to compromise misdemeanors and that the court's power to dismiss is in no way conditioned upon the agreement of the prosecutor.

In the case of STATE vs. NELLES, Nelles struck his girlfriend, Mary Henry, on the mouth with his fist causing a cut which required four stitches. She stated that he had never assaulted her on any other occasion during their year together, there were no medical expenses, no loss of wages, and that she did not want civil compensation. Since the state had not suggested there was any ongoing danger to the victim, the Appeals Court found that Judge Crutchfield had not abused his discretion in dismissing the case.

The civil compromise statutes have been rarely used in the courts in domestic violence cases. Only within recent past have we seen these statutes employed for this purpose; and, until now, only in a few cases. The Network is very concerned that in light of this recent opinion, civil compromise in domestic violence cases will begin to be utilized more regularly. We strongly urge you to adopt this provision of the bill and create an additional exception to exempt domestic disputes from these statutes.

Our experience in this field tells us several things:

-With couples who are violent, there occurs what is most often referred to as a "continuum of violence. The violence starts with a minor offense and then becomes more frequent and more intense. A recent study in Minneapolis showed there was a substantial decrease in second time offenders when a mandatory arrest policy was adopted by that community. These results agree with the work

completed by the Dobbashes, two other highly regarded researchers in the field. They have found that the messages society gives the batterer about what is permissible behavior, in the form of sanctions, has a significant impact on their future behavior. For these reasons, the Municipality of Anchorage has recently adopted a no drop policy for domestic violence cases. We must send a message to batterers and their victims that domestic violence is unacceptable in any form.

-Many domestic violence cases precipitate divorce and child custody cases. Typically, battered women are afraid of what will happen to them outside of the courtroom and are therefore reluctant to testify. The batterer is in the position of power within the relationship. The Network is very concerned that the pressure for the woman to agree to civilly compromise the case could in some cases be enormous. Victims of domestic violence are not in a position to negotiate an equitable civil compromise.

Section II: We very much support this section as it would clarify that restitution could be paid to programs that offer services to victims. The Network's programs are understaffed and underfunded, and additional sources of revenue are very much needed. We feel it is entirely appropriate that some of these costs be borne by the perpetrators of these crimes.

Section III: We feel that it should be the Court's responsibility to determine the amount of restitution that should be paid by the defendant, but not whether he is able to pay. If the defendant defaults and then proves that it was neither intentional or in bad faith then the Court can adjust the amount of restitution due. It is our hope that this change will increase the amount of restitution actually paid.

# WOMEN IN CRISIS

## Fear a controlling emotion in victims' lives

**EDITOR'S NOTE:** To protect the identity of the subject of this article, only her first name is used. But authorities say her story is typical of battered women.

By **KAY LEVINE**  
Daily News reporter

It's not a sentimental journey into the past when Deb speaks of this article, only her first name is used. But authorities say her story is typical of battered women.

Then, jarringly, Deb laughs. "Oh, no!" she says. It was her first husband that put her in the hospital for two weeks. She forgot. Both husbands beat her so much that it's hard to remember who did what.

"I thought everybody lived that way," Deb says.

There is some basis for that belief: At least 1.8 million women in this country are beaten each year in their homes, according to the Abused Women's Aid in Crisis center.

The organization, a non-profit corporation usually called AWAIC, offers counseling and other services to battered women, their children and the men who do the hitting.

Deb says AWAIC saved her life. Without the counseling she got there, she says would have let some man beat her to death. Deb now works at AWAIC part time, leading counseling groups three evenings a week.

It's a busy place. From Aug. 1 to Oct. 1, 1985, AWAIC saw 150 "new" victims — women who hadn't been there before. During that period, 89 women returned for their second or subsequent stays, says Ginger Halterman, shelter director.

What concerns Halterman most is her suspicion that only about half of the women who are battered report it. The others remain silent because they're afraid and because they don't know help exists, she says.

When abused women do look for help, they often begin by calling the police. Anchorage police were called to the scenes of 1,664 family disturbance complaints during 1985.

Not all the disturbances involved violence; police records do not show such a breakdown, according to officer Cathy Brewster.

Nor does the police department keep statistics on the number of homicides that are preceded by family disturbance calls. But Brewster says national statistics — which show a pattern of increasing violence in abusive relationships — are accurate.

"Every time you go back, it escalates," she says.

The Center for Women Policy Studies in Washington, D.C., reported in 1982 that 40 percent of female homicide victims are killed by family members or boyfriends. A Kansas City study found that in half the homicide cases involving family members, police had been called to the home at least five times before the killing.

When Anchorage police respond to domestic violence complaints, they tell the battered party no one deserves to be treated like that, Brewster says.

Police tell the victim how to get court-ordered guidelines for the man to follow, which can include the requirement that he stay away from the woman completely. Police also tell victims about AWAIC.

But victims don't always listen. Some

battered women would rather face known violence than trade it for unfamiliar sources of relief, says Brewster. Others don't want to publicize their problems.

"You get real frustrated with these people," she says. "You can give them the ride and provide the paperwork . . . a lot of times they won't go through with it."

According to the AWAIC volunteer training manual, a woman's refusal to accept help is based on an unconscious agreement with the man who beats her. Futilely, she tries to make the relationship work by letting him have what he seems to need: To vent his frustrations by beating her.

Deb's girlhood did everything to prepare her for such an arrangement. She had five stepfathers while she was growing up, all of whom were cruel in some way or other, although "only one" beat her severely.

Nothing in her upbringing made her expect anything from life but insults, pain and frustration, she says. Her family moved back and forth between Kentucky and Ohio when she was young. Bleakness was the most consistent factor.

"I never had shoes when I was a kid, or clothes, or — half the time — food," she says. She can remember banging her head on the floor at the age of 2 or 3 in an attempt to interrupt her parents' shouting matches.

When Deb was 5, her parents divorced and left her and her sister with their aunt and uncle in Kentucky. The girls lived in a barn for two years because their aunt didn't want them messing up the house, says Deb.

She continued to be abused in various ways until seven years ago, when a television commercial said that life wasn't that bad for everyone, Deb says. The commercial

See Page J-3, AWAIC



Two workers at The Abused Women's Aid In C

## AWAIC help for victims

Continued from Page J-1

suggested there was a way out, even for her.

Deb was afraid to write down the telephone number that appeared on the screen, so she memorized it. Eleven months later, after her third broken nose, she literally crawled out the front door of her home, went to a neighbor's and dialed for help.

The number was for the crisis line at AWAIC. She had to wait two days for a room at the shelter because it was full (AWAIC has living space for 53). In the meantime, she stayed at the McKinnell Emergency Shelter, run by the Salvation Army.

AWAIC, which began in 1977, is located at 100 W. 13th Ave. The organization offers a 24-hour crisis line and living space for women and children. Clients can stay for as long as five weeks.

There are individual and group counseling for women residents and therapeutic play groups for children. AWAIC also offers support groups for women who aren't residents.

Men who want to stop violent behavior can enter an intense six-month counseling program called the Male Awareness Program. Counselors teach practical alternatives to violence, anger control and stress reduction, according to an AWAIC brochure.

Deb stayed at the shelter for three weeks. The experience turned her life around, she says.

Before she came to AWAIC, Deb had worked occasionally as a waitress, but she had never had any personal goals.

She says she couldn't have imagined a career.

At the shelter, the staff began her therapy by building her self-esteem. "They told me how nice I looked and what a good mother I was," she says.

At first, she resisted the notion she had something to contribute. When a counselor suggested she put in some time as an AWAIC volunteer, "I said 'Why? I can't do anything.'"

But Deb left the shelter with short- and long-term goals: a car in three months, a mobile home within a year, a VISA card in three years and her own home in five years.

She met all her goals. And while she worked her way through the list, she used her experiences as an AWAIC volunteer and — starting in 1979 — as a paid staff member.

She worked full-time for three years, then became an engineering technician for Anchorage Water and Wastewater Utility. Deb still works at AWAIC three evening shifts per week. Most of her time is spent leading group counseling sessions for non-residents.

Deb is considering getting a college degree; she might study public relations. "I would like to not have a crisis-oriented position," she says. "It's time to move on."

She wonders if her children will be able to do the same. As in many cases, they bear heavy scars from a violent home life. Low self-esteem is the main problem, she says; and it's with children that the cycle of violence must be broken. Deb says she doesn't know how to do that: "Why is it so hard to unlearn?"

## Therapy groups available

Women can call the crisis line or come to the shelter 24 hours a day. The crisis line number is 272-0100. Women needing shelter after 5 p.m. should try to call before coming so shelter staff can anticipate their arrival.

Women may come to the front office during regular office hours to seek counseling

required. The topics for each week of the four weeks include: Myths and Facts About Domestic Violence; Continuums of Battering; A Look at Social, Emotional, Physical and Sexual Abuse; Co-dependency; Can a Couple Be Addicted to Their Own Violence? and Where Do We Go From Here?

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# ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

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February 19, 1986

To: The Honorable Mike M. Miller  
Chairman  
House Judiciary Committee

Re: HB 463, relating to compromise and restitution in domestic violence

Mr. Chairman and members of the Committee:

The Alaska Women's Lobby appreciates the opportunity to express it's support for the legislation before you today, HB 463.

We do believe that adding assaultive behavior to the exceptions to civil compromise will add to the protection of victims rights and elevates the seriousness of the crime. Many victims of domestic violence cannot afford legal counsel to protect their rights and allow themselves to be intimidated by the perpetrator and the defense attorney into not prosecuting because civil compromise is available.

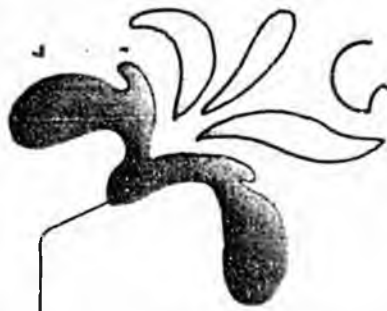
We also favor allowing the court to order restitution to those public and private non-profit organizations which provide the victim services. Assault victims have medical and dental expenses, and require counseling and advocacy.

Reinforcing the failure to make restitution with a criminal sanction, unless the defendant proves he is unable to pay, will encourage the offender to pay the restitution.

We believe that this bill is in keeping with the seriousness of the crime of domestic violence and the need to fully protect the victims of this crime. We urge passage of HB 463.

Thank you for your consideration.

Alaska Women's Lobby  
Sherrie Goll, Lobbyist



# WICCA

Members of the House Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

March 31, 1986

Dear Members of the House Judiciary Committee,

I am writing in regard to HB463. Many battered women do not have the economic advantage of their perpetrators and therefore are unable to obtain the legal counsel they need to protect their rights as victims of domestic violence. They are unknowingly led to believe that a civil compromise is the quick, clean answer to "the problem" by the perpetrator's attorney. They are vulnerable, intimidated and believe this is the appropriate course of action because a lawyer says so. They are further intimidated at every turn by the Legal and Criminal Justice System and the District Attorney's office is often unable to advise them due to a large case load. Civil Compromise only gives the batterer another message that there is no consequence to breaking the law by using violence to solve problems with anger and frustration.

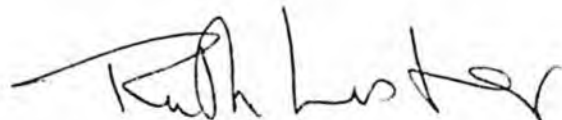
Most assault victims have large medical and dental expenses for what the law calls a "simple assault." One blow to the head, one kick in the back, one shove down the stairs has ongoing physical and emotional repercussions. When a victim has no insurance and possibly no job, being physically disabled even for two days, is an unbearable expense. The effects of being battered require counseling and advocacy; few of these support systems are free. The perpetrator of any crime must assume responsibility for the long and short term damages that the commission of the crime has inflicted on the victim.

Many people who use power and violence to express anger have little or no regard for the Criminal Justice System nor for Law Enforcement. They often disregard IRO's, bail conditions, and Civil Court Orders. Unless there is a criminal sanction for failing to pay restitution, the offender will pay none. Unless this is reinforced by the Judicial System it will be worthless. Persons who do not pay restitution for property crimes are incarcerated. Should it be any less of a crime to purposefully attack someone and injure them in such a way that they are unable to work or continue to be seriously injured?

The introduction of House Bill 463 is necessary and highly representative of Alaska's progressive attitude toward protecting the victims of domestic violence.

Whether or not a divorce proceeding is pending should have no bearing on civil compromise. As domestic violence statistics show, many victims were assaulted while they were separated from their spouses or during the traumatic time period of litigation for divorce. From the number of ex-spouses filing charges for assault and criminal harassment stemming from violations of Injunctive Relief Orders, we know these crimes need to be dealt with in a punitive manner and not civilly compromised.

Sincerely,



Ruth Lister  
Executive Director  
for Women in Crisis- Counseling and Assistance



Barbara J. Babnew  
Legal Advocate

cc: Members of the Interior Delegation  
Senate Judiciary Committee