

HB

122

**HOUSE COMMITTEE REPORT**

(11) -

Date referred: 3/4/87

FURTHER REFERRALS:

DATE: 3/19/87

The Finance Committee has considered HB 122

"An Act relating to the authority to compromise certain misdemeanors."

**RECOMMENDS:**

- replace with \_\_\_\_\_  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

FRANK [Signature]

GOLL [Signature]

BOYER [Signature]

SWACK-AMMER [Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SIGNING OTHER RECOMMENDATIONS:**

ADAMS [Signature]

POWELL [Signature] No Rec

RIEGER [Signature] No Recommendation

DAVIS [Signature] No Rec

BROWN [Signature] - No Rec

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

Chairman's signature

**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

**REQUEST:** \_\_\_\_\_

Bill Version: HB 122

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

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

Title: An Act relating to the authority to compromise certain misdemeanors

Agency Affected: Public Safety

BRU: Council on Domestic Violence and Sexual Assault

Sponsor: Rules/Governor

Requestor: House Finance

Components: \_\_\_\_\_

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

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Barbara Miklos, Executive Director

Phone: 465-4356

Division: Council on Domestic Violence & Sexual Assault

Date: 3/5/87

Approved by Commissioner: [Signature]

Date: 3/12/87

Agency: Department of Public Safety

Distribution (by preparer):

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

*JNR*  
*3/12/87*

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 122

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE -- FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the authority to compromise  
certain misdemeanors."

7

8

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

9

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

10

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH

11

VICTIM HAS CIVIL ACTION. If [WHEN] a defendant is held to answer on a

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charge of misdemeanor for which the person injured by the act con-

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stituting the crime has a remedy by a civil action, the crime may be

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compromised except when it was committed

15

(1) by or upon a peace officer, judge, or magistrate while

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in the execution of the duties of that office;

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(2) riotously;

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(3) with an intent to commit a felony;

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(4) larcenously;

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(5) against

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(A) a spouse or a former spouse of the defendant;

22

(B) a parent, grandparent, child, or grandchild of the

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defendant;

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(C) a member of the social unit comprised of those

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living together in the same dwelling as the defendant; or

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(D) a person who is not a spouse or former spouse of

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the defendant but who previously lived in a spousal relationship

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with the defendant.

This is testimony I gave before the House Finance Committee regarding HB 122 on 3-17-87. Most of it was taken from work done by Fran Purdy, Program Manager for the Abuse Prevention Program for the Municipality of Anchorage.

HOUSE BILL 122  
CIVIL COMPROMISE

MARGOT DICK, COORDINATOR  
ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

NETWORK IS A MEMBERSHIP ORGANIZATION COMPRISED OF 20 DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS THROUGHOUT THE STATE.

WE ARE VERY MUCH IN SUPPORT OF HOUSE BILL 122. IT IS ONE OF OUR HIGHEST PRIORITIES THIS LEGISLATIVE SESSION.

THIS BILL WOULD DELETE A LOOPHOLE IN THE CURRENT ALASKA STATUTES THAT ALLOWS MISDEMEANORS TO BE HANDLED THROUGH A CIVIL COMPROMISE IN LIEU OF CRIMINAL PROSECUTION IN DOMESTIC VIOLENCE CASES.

WHEN THERE IS A CIVIL COMPROMISE, THE VICTIM STATES TO THE COURT THAT SHE DOES NOT WANT THE CRIMINAL ACTION AGAINST THE ABUSER PURSUED. IF THE JUDGE RULES THAT THE COMPENSATION (USUALLY A PROMISE OF NO HITTING IN THE FUTURE AND A \$1.00 REMUNERATION FOR PAIN AND SUFFERING) OFFERED BY THE ABUSER IS ADEQUATE, THE JUDGE THEN DISMISSES THE CRIMINAL CASE (NOT ALLOWING THE PROSECUTORS TO BRING CRIMINAL CHARGES) AND RULES FAVORABLY (APPROVES) THE TERMS OF THE (AGREEMENT) CIVIL COMPROMISE.

IN THE PAST TEN YEARS, THERE HAS BEEN A SERIOUS EFFORT TO CHANGE LAW ENFORCEMENT AND CRIMINAL JUSTICE RESPONSE TO DOMESTIC VIOLENCE. BASED ON RESEARCH THAT HAS BEEN COMPLETED, THERE IS GOOD REASON TO BELIEVE THAT WHEN DOMESTIC VIOLENCE IS MADE PUBLIC THE FIRST FEW TIMES IT OCCURS THAT INDIVIDUALS ARE LESS LIKELY TO CONTINUE IN AN ESCALATING VIOLENCE PATTERN. IF LEFT UNCHECKED, OUR EXPERIENCE HAS BEEN THAT THE VIOLENCE GENERALLY DOES INTENSIFY OVER TIME.

FOR THIS REASON, WE FEEL STRONGLY THAT IT IS NOT GOOD PUBLIC POLICY TO WAIT FOR A REPETITION OF HARM BEFORE INTERVENING. THE POLICE PROCEDURES AROUND ALASKA HAVE BEEN CHANGING TO REFLECT THIS. MORE AND MORE DEPARTMENTS ARE NOW RESPONDING TO THE FIRST CALL WHEN THERE IS A DOMESTIC VIOLENCE DISTURBANCE, ARRESTING WHEN POSSIBLE AND TAKING FULL REPORTS.

ONE OF THE UNFORTUNATE RESULTS OF DOMESTIC VIOLENCE IS THAT ONE INDIVIDUAL BECOMES A VICTIM OR AT LEAST A PERSON WHO IS INTIMIDATED, COERCED, AND FRIGHTENED (AND OFTEN PHYSICALLY AND/OR SEXUALLY ASSAULTED) INTO BEHAVING IN A MANNER MORE ACCEPTABLE TO THE PARTNER. IT IS NOT SURPRISING THAT WHEN THE ABUSIVE PARTNER'S ATTORNEY APPROACHES THE VICTIM WITH A CIVIL COMPROMISE TO AVOID THE COURT PROCESS, THAT MANY VICTIMS AGREE.

CIVIL COMPROMISE ASSUMES THERE ARE TWO EQUAL PARTIES AGREEING TO RESOLVE A DISPUTE. THESE PARTIES ARE NOT EQUAL IN DISPUTES THAT INVOLVE DOMESTIC VIOLENCE. BY HAVING A JUDGE RULE THAT THE CRIME WAS MERELY A "CIVIL MATTER" BETWEEN TWO "EQUAL" PARTIES, IT ONLY REINFORCES THE MESSAGE THAT SOCIETY CONDONES DOMESTIC VIOLENCE. IT IS ALSO COUNTERPRODUCTIVE TO TELL LAW ENFORCEMENT PERSONNEL TO RESPOND TO THESE CALLS AND ARREST WHENEVER POSSIBLE OR AT LEAST TAKE FULL REPORTS, IF ON THE OTHER HAND WE LEGISLATIVELY ALLOW A PROCESS THAT CIRCUMVENTS THE CRIMINAL JUSTICE SYSTEM.

A VICTIM OF ABUSE WHO DOES NOT CLEARLY HEAR FROM ALL RESOURCES THAT THE ABUSE IS NOT HER FAULT AND IS NOT TO BE TOLERATED, WILL GENERALLY NOT LEAVE THE ABUSIVE RELATIONSHIP UNTIL THE VIOLENCE REACHES THE SEVERITY OF RISKING HER LIFE OR THE LIVES OF THE CHILDREN. BY THAT TIME, THE NEED FOR COUNSELING FOR THE ENTIRE FAMILY IS SO GREAT THAT GOVERNMENT NEEDS TO SUBSIDIZE THE MAJORITY OF THE COST THROUGH PROGRAMS LIKE THE ONES I REPRESENT, SOCIAL WORKERS, WELFARE, MEDICAL PAYMENTS, FOSTER CARE, SPECIAL EDUCATION FOR CHILDREN, AND JAIL TIME FOR THE OFFENDER.

SINCE WE BELIEVE IT MUCH SOUNDER PUBLIC POLICY TO INTERVENE IN DOMESTIC VIOLENCE CASES AND STOP THE VIOLENCE AT ITS EARLIEST DISCERNIBLE POINT, THE USE OF CIVIL COMPROMISE IS NOT APPROPRIATE. IT DEFEATS THIS PURPOSE.

APPROPRIATE INTERVENTION IS TAKING PLACE IN SOME COMMUNITIES LIKE ANCHORAGE AND KETCHIKAN THROUGH STRONG ARREST POLICIES, WHICH RESEARCH INDICATES THAT IN AND OF THEMSELVES DO SIGNIFICATELY REDUCE REPEAT OFFENSES. HOWEVER, PROSECUTION IS ALSO VERY IMPORTANT SO THAT THE OFFENDER CAN BE MANDATED INTO COUNSELING IN LIEU OF SERVING JAIL TIME. THE USE OF A FAIRLY LENGTHY SUSPENDED JAIL TERM HAS BEEN THE MOST EFFECTIVE IN SCREENING AND MOTIVATING INDIVIDUALS TO UTILIZE EXISTING COUNSELING OR COMMUNITY/SELF HELP RESOURCES. IT IS NOT LIKELY THAT THE AVERAGE BATTERING PARTNER WILL UNDERGO AND COMPLETE COUNSELING VOLUNTARILY. NATIONWIDE, ONLY ABOUT 5% DO SO. HOWEVER, COUNSELING HAS BEEN SHOWN TO BE VERY EFFECTIVE FOR BATTERERS WHO DO COMPLETE IT. THEREFORE, OFFERING "FIRST TIME OFFENDERS" AN ALTERNATIVE SENTENCE OF 60-90 DAYS OF SUSPENDED JAIL TIME, WITH PERHAPS A FEW TO SERVE OR CREDIT FOR SERVING THE DAY OF THE ARREST, AS LONG AS MANDATORY COUNSELING OR A COURT APPROVED REHABILITATION EFFORT IS COMPLETED, WITH THE PROVISION THAT NO SIMILAR VIOLATION IS COMMITTED FOR A YEAR PROVIDES THE OFFENDER WITH A METHOD FOR CHANGING HIS BEHAVIOR WITH LITTLE NEGATIVE IMPACT FROM A CRIMINAL RECORD. THIS APPEARS TO BE A SUCCESSFUL METHOD OF INTERVENING IN THE VIOLENCE WHILE STILL OFFERING THE COUPLE A CHANCE TO REPAIR THEIR LIVES/RELATIONSHIP WITH LITTLE PRESENT OR FUTURE COST TO THE FAMILY AND GOVERNMENT.

WE STRONGLY URGE YOUR FAVORABLE CONSIDERATION OF THIS BILL.

HB122

and James filed for divorce on June 29, 1983. The divorce was not granted until May 29, 1984. Given these circumstances, the court did not abuse its discretion in relying on the date of permanent separation in its division of property and award of interest.

The superior court's division of property is REVERSED and the case REMANDED for further proceedings consistent with this opinion.<sup>4</sup>



STATE of Alaska, Appellant,

v.

Bruce NELLES, Appellee.

No. A-995.

Court of Appeals of Alaska.

Feb. 7, 1986.

State brought action for misdemeanor assault. The Fourth Judicial District Court, Fairbanks, H.E. Crutchfield, J., dismissed the charge pursuant to misdemeanor or civil compromise statute and State appealed. The Court of Appeals, Bryner, C.J., held that: (1) the civil compromise statute did not violate doctrine of separation of powers, and (2) dismissal of case upon civil compromise did not imply that case was prosecuted solely to obtain advantage in civil matter.

Affirmed.

#### 1. Constitutional Law $\S$ 61, 74

##### Criminal Law $\S$ 12

Civil compromise statute [AS 12.45-120-12.45.140] does not violate separation of powers doctrine because court's authori-

4. Because we remand for further proceedings, we need not consider James' contention that the

ty to compromise misdemeanors has been expressly conferred by legislature and prosecutorial consent to civil compromise is not necessary as matter of constitutional law.

#### 2. Constitutional Law $\S$ 70.1(10)

Amendment to civil assault statute [AS 12.45.120-12.45.140] to create exception for crimes arising from domestic disputes is clearly matter of legislative, rather than judicial, concern.

#### 3. Criminal Law $\S$ 40

Civil compromise statute [AS 12.45-120-12.45.140] does not conflict with Code of Prof.Resp., DR 7-105(A), prohibiting a lawyer from presenting criminal charges solely to obtain advantage in civil matter, because dismissal of case upon civil compromise does not imply that case was prosecuted "solely to obtain an advantage in civil matter."

Jeffery O'Bryant, Asst. Dist. Atty., Harry L. Davis, Dist. Atty., Fairbanks, and Harold M. Brown, Atty. Gen., Juneau, for appellant.

Raymond Funk, Asst. Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

#### OPINION

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

court abused its discretion in awarding attorney's fees to Deborah.

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*, 131 Cal.App.3d Supp. 10, 182 Cal.Rptr. 761, 766 (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>

It appears that Alaska's civil compromise statutes derived from the same source as

1. 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 (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).

most other similar statutes, a 181. 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>

1 N.Y.R.L. § 19 (1813), quoted in *People v. Moulton*, 131 Cal.App.3d Supp. 10, 182 Cal. Rptr. 761, 765 (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

2. 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

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. 12.45.130. 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) larcenously.

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

Cite as 713 P.2d 805 (Alaska App. 1986)

*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>

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 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.

[1] In the present case, there was no judicial interference with the prosecution's

3. 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.

713 P.2d—19

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

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 *Hoincs v. Barney's Club, Inc.*, 28 Cal.3d 603, 170 Cal.Rptr. 42, 47, 620 P.2d 628, 633 (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.

[2] 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. Amend-

4. 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 re-

sulting 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).

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

ment 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.

[3] 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**.



sulting 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).

Cited in *Martinez v. State*, Sup. Ct. Op. No. 389 (File No. 662), 423 P.2d 700 (1967).

**Sec. 12.45.082. Definition of "statement."** In AS 12.45.060 — 12.45.080 the term "statement," in relation to any witness called by the state, means

(1) a written statement made by the witness and signed or otherwise adopted or approved by the witness; or

(2) a stenographic, mechanical, electrical, or other recording, or a transcription of the statement which is a substantially verbatim recital of an oral statement made by the witness to an agent of the state and recorded contemporaneously with the making of the oral statement. (§ 6.09 ch 34 SLA 1962)

Revisor's notes. — Formerly AS 12.45.160. Renumbered in 1984.

NOTES TO DECISIONS

For the purposes of AS 12.45.060, "statement" is defined in subsections (1) and (2) of this section. *Wright v. State*, Sup. Ct. Op. No. 833 (File No. 1288), 501 P.2d 1360 (1972).

*Secs. 12.45.083 — 12.45.115. Mental disease or defect excluding responsibility and incompetency to stand trial; procedure. [Repealed, § 42 ch 143 SLA 1982. For present provisions, see AS 12.47.]*

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**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) larcenously. (§ 6.13 ch 34 SLA 1962; am § 15 ch 8 SLA 1971)

NOTES TO DECISIONS

The crime of leaving the scene of an accident is not amenable to civil compromise. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the acci-

dent has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the accident cannot settle the state's claim for a violation of its laws. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

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AS 12.47.]

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**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. (§ 6.14 ch 34 SLA 1962)

NOTES TO DECISIONS

The crime of leaving the scene of an accident is not amenable to civil compromise. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the acci-

dent has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the accident cannot settle the state's claim for a violation of its laws. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

**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. (§ 6.15 ch 34 SLA 1962)

NOTES TO DECISIONS

The crime of leaving the scene of an accident is not amenable to civil compromise. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the acci-

dent has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the accident cannot settle the state's claim for a violation of its laws. *Hensel v. State*, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

**Sec. 12.45.150. Order for private prosecutor to pay costs for malicious prosecution without probable cause.** The name of a person who voluntarily appears before a judge, magistrate or grand jury to prosecute a person in a criminal action, either for a misdemeanor or felony, shall be endorsed upon the complaint, information, or indictment as a private prosecutor. If it is found by a judge, magistrate or court trying the action or hearing the proceeding that the prosecution is malicious or without probable cause, those facts shall be entered upon the record in the action or proceeding by the judge, magistrate or court. Upon making the entry, the judge, magistrate or court shall immediately render judgment against the private prosecutor for the costs and disbursements of the action or proceeding, which may be enforced by execution in the same manner as a judgment in a civil action. (§ 6.16 ch 34 SLA 1962; am § 16 ch 8 SLA 1971)

BILL NO: CSHB 122 (Jud)

DATE: March 5, 1987

TITLE: An Act relating to the authority to compromise certain misdemeanors

CONTACT: Barbara Miklos  
Executive Director  
Council on Domestic  
Violence and  
Sexual Assault

The Council on Domestic Violence and Sexual Assault supports CSHB 122 (Jud) which adds domestic assaults to the list of misdemeanors that cannot be civilly compromised.

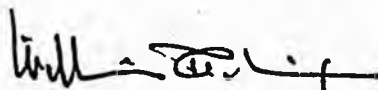
Under Existing law (AS 12.45.120-12.45.140), a misdemeanor crime for which the injured party has a civil remedy may, except under certain circumstances, be ordered dismissed by the court if the defendant and the victim reach a civil compromise (in other words, if the defendant pays the victim money in recompense). This bill amends AS 12.45.120 to add crimes that arise from a domestic violence situation to the list of crimes that may not be civilly compromised.

Since AS 12.45.120 does not specifically exempt domestic assaults, they may be compromised civilly. This has been occurring in Fairbanks and was upheld in February, 1986 in a Court of Appeals decision (State of Alaska v. Nelles) because the Court was unwilling to judicially create an additional exception to the Civil Compromise Statute. They indicated that "amendment to create additional exceptions is clearly a matter of legislative rather than judicial concern".

However, according to legal theory cited in the Nelles appeals case, "there should be no compromise of criminal cases . . . 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 on criminal prosecution" except "where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of a certain conduct".

If Alaska is going to keep a statute allowing civil compromises in criminal misdemeanors, it is imperative that domestic violence cases are added to the list of exceptions. Most domestic violence assaults are classified as misdemeanors, no matter how serious they may be. Victims are put in increased jeopardy when this can be used as a mechanism for batterers to escape retribution. Victims of domestic violence are frequently pressured by the defendant or defendant's attorney to "drop charges" or to "work things out". These victims are particularly vulnerable to persuasion by the defendant, be it by promises or threats. If domestic violence victims were not faced with the option of civil compromise, a means of manipulation by the defendant, his family and friends or the defense attorney would be abolished.

As Governor Cowper stated in his letter accompanying this legislation, "The abuse of women, children and the elderly is an offense against every member of civilized society; it is emphatically not a private dispute for which a civil compromise is appropriate".



William R. Nix  
Acting Commissioner

DEPARTMENT OF  
PUBLIC SAFETY

DEPARTMENT OF  
PUBLIC SAFETY  
PAPER /  
POSTED

BILL NO: HB 122

DATE: February 17, 1987

TITLE: An Act relating to the authority to compromise certain misdemeanors

CONTACT: Barbara Miklos  
Executive Director  
Council on Domestic  
Violence and  
Sexual Assault

The Council on Domestic Violence and Sexual Assault supports HB 122 which adds domestic assaults to the list of misdemeanors that cannot be civilly compromised.

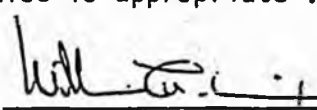
Under Existing law (AS 12.45.120-12.45.140), a misdemeanor crime for which the injured party has a civil remedy may, except under certain circumstances, be ordered dismissed by the court if the defendant and the victim reach a civil compromise (in other words, if the defendant pays the victim money in recompense). This bill amends AS 12.45.120 to add crimes that arise from a domestic violence situation to the list of crimes that may not be civilly compromised.

Since AS 12.45.120 does not specifically exempt domestic assaults, they may be compromised civilly. This has been occurring in Fairbanks and was upheld in February, 1986 in a Court of Appeals decision (State of Alaska v. Nelles) because the Court was unwilling to judicially create an additional exception to the Civil Compromise Statute. They indicated that "amendment to create additional exceptions is clearly a matter of legislative rather than judicial concern".

However, according to legal theory cited in the Nelles appeals case, "there should be no compromise of criminal cases . . . 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 on criminal prosecution" except "where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of a certain conduct".

If Alaska is going to keep a statute allowing civil compromises in criminal misdemeanors, it is imperative that domestic violence cases are added to the list of exceptions. Most domestic violence assaults are classified as misdemeanors, no matter how serious they may be. Victims are put in increased jeopardy when this can be used as a mechanism for batterers to escape retribution. Victims of domestic violence are frequently pressured by the defendant or defendant's attorney to "drop charges" or to "work things out". These victims are particularly vulnerable to persuasion by the defendant, be it by promises or threats. If domestic violence victims were not faced with the option of civil compromise, a means of manipulation by the defendant, his family and friends or the defense attorney would be abolished.

As Governor Cowper stated in his letter accompanying this legislation, "The abuse of women, children and the elderly is an offense against every member of civilized society; it is emphatically not a private dispute for which a civil compromise is appropriate".

  
\_\_\_\_\_  
William R. Nix  
Acting Commissioner

H3122

Compensation Act, evidenced its intent to exclude defective, dangerous machinery from the coverage of the Compensation Act . . . ."

425 P.2d at 605. Similarly, AS 23.40.040 was comprehensive when it was enacted, but it was further defined by PERA.

[11] All statutes relating to the same subject matter should be read together as a whole in order that a total scheme evolves which maintains the integrity of each act and avoids ignoring one or the other. *Fuentes v. Workers' Compensation Appeals Board*, 16 Cal.3d 1, 128 Cal.Rptr. 673, 547 P.2d 449, 453 (1976); *State v. Wright, supra*. With this goal in mind, PERA and AS 23.40.040 can be effectively harmonized to further the legislative purpose of establishing uniform procedures for public employee collective bargaining and to protect the policies the legislature thought important in enacting PERA.

The judgment is REVERSED and REMANDED with instructions to enter summary judgment in favor of appellant.



Thomas P. HENSEL, Appellant,

v.

STATE of Alaska, Appellee.

No. 3719.

Supreme Court of Alaska.

Nov. 3, 1978.

Proceeding was instituted on petition by State to review an order of the district court granting motion of motorist to dismiss traffic complaint pursuant to civil compromise statutes. The Superior Court, Third Judicial District, Anchorage, J. Justin Ripley, J., determined that offense with

which motorist was charged was not amenable to civil compromise and remanded case for further prosecution. Motorist plead nolo contendere to charge and specifically preserved issue of civil compromise for appeal. The Supreme Court held that act constituting crime of leaving scene of an accident is failure to stop and make necessary exchanges of information or assistance after accident has occurred and is not one which causes injury to private citizens within meaning of civil compromise statutes and, hence, is not amenable to civil compromise.

Conviction affirmed.

1. Automobiles ⇌ 336

Criminal Law ⇌ 40

Act constituting crime of leaving scene of an accident is failure to stop and make necessary exchanges of information or assistance after accident has occurred and is not one which causes injury to private citizens within meaning of civil compromise statutes and, hence, is not amenable to civil compromise. AS 12.45.120, 12.45.130, 12.45.140, 28.35.060.

2. Criminal Law ⇌ 40

Settlement of claim for injuries resulting from an accident cannot settle a claim by State for violation of its laws such as a traffic complaint for leaving scene of accident. AS 12.45.120, 12.45.130, 12.45.140, 28.35.060.

Max F. Gruenberg, Jr., Anchorage, for appellant.

Mary Anne Henry, Asst. Dist. Atty., Joseph D. Balfe, Dist. Atty., Anchorage, and Avrum M. Gross, Atty. Gen., Juneau, for appellee.

Before BOOCHEVER, Chief Justice, and RABINOWITZ, CONNOR and MATTHEWS, Justices.

## OPINION

## PER CURIAM.

This case concerns the Alaska civil compromise statutes: AS 12.45.120, 12.45.130 and 12.45.140.<sup>1</sup>

On September 22, 1976, Hensel struck a vehicle driven by Dan B. Chatfield on the Old Wasilla Highway and then left the scene. Hensel was charged with leaving the scene of an accident in violation of AS 28.35.060.<sup>2</sup> An affidavit in proof of satisfaction and civil compromise was signed by Chatfield and filed in district court. It stated that, as a result of the accident, Chatfield's vehicle was damaged in the amount of \$365.00 and that Hensel had paid that amount of money to Chatfield.

On December 13, 1976, Hensel filed a motion to dismiss the complaint pursuant to AS 12.45.120 and 12.45.130, the civil compromise statutes. A hearing was held before the district court, which granted Hensel's

motion to dismiss. The state petitioned the superior court for review. On April 11, 1977, the superior court concluded that the charge of leaving the scene of an accident was not amenable to civil compromise. The case was remanded for further prosecution. Hensel pled *nolo contendere* to the charge, specifically preserving the issue of the civil compromise for appeal.<sup>3</sup>

We have not previously had an opportunity to interpret the civil compromise statutes.

[1, 2] We agree with the superior court's conclusion that the crime of leaving the scene of an accident is not amenable to civil compromise. This conclusion is supported by cases interpreting similar statutes. *State v. Duffy*, 33 Or.App. 301, 576 P.2d 797, 798 (1978); *People v. O'Rear*, 220 Cal. App.2d Supp. 927, 34 Cal.Rptr. 61, 63-64 (Cal.App.1963).<sup>4</sup> The act constituting the

## 1. AS 12.45.120 provides:

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

## AS 12.45.130 provides:

*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 he has received satisfaction 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.

## AS 12.45.140 provides:

*Compromise or stay upon compromise by other means prohibited.* No crime may be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.

## 2. AS 28.35.060 provides in part:

*Duty of operator to give information and render assistance.*

(a) The operator of a vehicle involved in an accident resulting in injury to or death of a person or damage to a vehicle which is driven or attended by a person shall give his name, address, and vehicle license number to the person struck or injured, or the operator or occupant, or the person attending, and the vehicle collided with and shall render to any person injured reasonable assistance, including making of arrangements for attendance upon the person by a physician and transportation, in a manner which will not cause further injury, to a hospital for medical treatment if it is apparent that treatment is desirable. Under no circumstances is the giving of assistance or other compliance with the provisions of this paragraph evidence of the liability of an operator for the accident.

(b) Except as provided in (c) of this section, a person who fails to comply with any of the requirements of this section is, upon conviction, punishable by imprisonment for not more than one year, or by a fine of not more than \$500, or by both. This provision does not apply to a person incapacitated by the accident to the extent he is physically incapable of complying with the requirement.

3. See *Oveson v. Municipality of Anchorage*, 574 P.2d 801, 803 n.4 (Alaska 1978); *Cooksey v. State*, 524 P.2d 1251, 1254-57 (Alaska 1974).

4. See also, *State ex rel. Williams v. City Court of City of Tucson*, 18 Ariz.App. 394, 502 P.2d 543, 545 (1972); *State ex rel. Schafer v. Fenton*, 104 Ariz. 160, 449 P.2d 939, 941 (1969).

crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance<sup>5</sup> after the accident has occurred. This omission is not one which causes injury to the private citizen within the meaning of the civil compromise statutes. Settlement of the claim for injuries resulting from the

5. This case does not involve a claim based on a failure to render assistance. We do not reach

the issue of whether such a claim is subject to civil compromise.

accident cannot settle the state's claim for a violation of its laws.

The conviction is **AFFIRMED**.



**STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE**

Bill Version: CSHB 122 (JUD)  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_

Revision Date: \_\_\_\_\_  
Title: An Act relating to the authority to compromise certain misdemeanors  
Sponsor: House Rules/Governor  
Requestor: House Judiciary

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

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

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: Barbara Miklos, Executive Director *BKM* Phone: 465-4356  
Division: Council on Domestic Violence & Sexual Assault Date: 2/17/87

Approved by Commissioner: *J. Miklos* Date: 2/17/87  
Agency: Public Safety

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

APR 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CS HB 122 (JUD)  
Publish Date:

REQUEST:

Revision Date:  
Title: Authority to compromise  
certain misdemeanors.  
Sponsor: Rules Committee  
Requestor: House Judiciary

Agency Affected: Alaska Court System  
BRU: Trial Courts  
Components:

<u>EXPENDITURES/REVENUES:</u> (Thousands of Dollars)						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Travel	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Contractual	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Supplies	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Equipment	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Land & Structures	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Grants & Claims	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
REVENUE	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

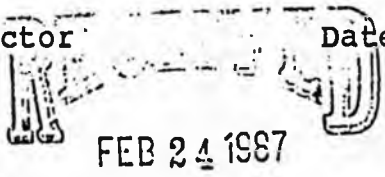
<u>FUNDING:</u> (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

<u>POSITIONS:</u>						
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Karla Forsythe, General Counsel Phone: 264-8215  
 Division: Alaska Court System Date: 2-20-87  
 Approved by: *Stephanie J. Cole* Stephanie J. Cole, Deputy Director Date: 2-20-87  
 Agency: Alaska Court System



- Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management & Budget  
 Impacted Agency(ies)  
 Senate Secretary

LEGISLATIVE FINANCE

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

Bill Version: CSHB 122 (JUD)  
Publish Date: \_\_\_\_\_

REQUEST: \_\_\_\_\_  
Revision Date: \_\_\_\_\_  
Title: "An Act relating to the authority to compromise misdemeanors..."  
Sponsor: Rules Committee  
Requestor: House Judiciary

Agency Affected: Administration  
BRU: Office of Public Advocacy  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Brant McGee, Public Advocate  
Division: Office of Public Advocacy  
Approved by Commissioner: Garrey Peska  
Agency: Department of Administration

Phone: 274-1684  
Date: 2/22/87  
Date: 2/26/87

- Distribution (by preparer):
- Legislative Finance
  - Legislative Sponsor
  - Requestor
  - Office of Management and Budget
  - Impacted Agency(ies)
  - Senate Secretary

RECEIVED

FEB 27 1987

STEVE COWPER  
GOVERNOR

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 10, 1987

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that would prohibit the "civil compromise" of criminal cases arising from domestic violence situations. This proposed legislation was requested by the Council on Domestic Violence and Sexual Assault and is supported by the Alaska Network on Domestic Violence and Sexual Assault.

Under existing law (AS 12.45.120 -- 12.45.140), a misdemeanor crime for which the injured party has a civil remedy may, except under certain circumstances, be ordered dismissed by the court if the defendant and the victim reach a civil compromise (in other words, if the defendant pays the victim money in recompense). This bill amends AS 12.45.120 to add crimes that arise from a domestic violence situation to the list of crimes that may not be civilly compromised.

Alaska's civil compromise statute, originally adopted in 1900, is modelled upon an 1813 New York statute. The statute apparently was based on the belief that there are some minor cases (such as libel, trespass, or simple assault) that, while technically public offenses, are, in reality, primarily private disputes between two parties. In such cases, it was believed, the public interest would be better served if the parties could reach an amicable resolution of their private dispute outside of the courtroom. Although such provisions were widespread at the turn of the century, many states, including New York, have since repealed their civil compromise statutes. There are only about 15 states, including Alaska, which now retain some form of civil compromise statute.

Unfortunately, in recent years the civil compromise statute has been used by abusive spouses as an easy and cheap way of obtaining the dismissal of criminal charges pending against them. In the recent case of State v. Nelles, 713 P.2d 806 (Alaska App. 1986), the Alaska Court of Appeals upheld a Fairbanks judge's decision to dismiss criminal charges against a man who had struck his girlfriend in the face

with his fist, injuring her and requiring stitches. Nonetheless, the court expressed 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." 713 P.2d at 810. The court was unwilling to judicially create an additional exception to the civil compromise statute, however. The court stated:

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.

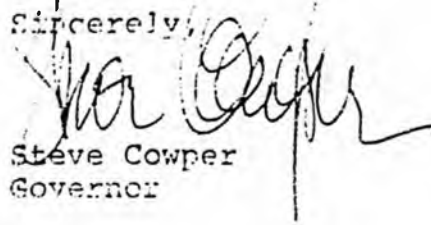
713 P.2d at 810; footnote omitted.

In recent years, there has been an increasing awareness in our society of the pervasive problem of domestic violence: the physical and sexual abuse of women, children, and the elderly. In 1980, the Alaska legislature adopted a tough new domestic violence law that allows the victim of domestic violence to go to court to obtain a restraining order for protection against an abusive spouse or family member (AS 25.35.010 -- 25.35.060). Under certain circumstances, violation of such a court order is a crime (see, e.g., AS 11.61.120(a)(6)). Because of the need to protect victims from domestic abuse, the legislature amended the state's criminal procedure code in 1978 to allow a peace officer to arrest an offender for certain types of domestic crimes, even if the crime was a misdemeanor not committed in the officer's presence. This is an exception to the general rule. See AS 12.25.030(b).

Battered wives, young children, and elderly parents are often in an extremely precarious position. The victim may be dependant upon the offender for food, shelter, and emotional support, and may therefore be particularly vulnerable to threats or coercion. In recent years, state prosecutors have handled several homicide and felony assault cases where the victims had been repeatedly beaten by their husbands or boyfriends. In some of these cases, criminal charges had been filed, only to be later dismissed at the victim's request. It makes little sense to toughen the state's civil and criminal laws against domestic violence on one hand but, on the other hand, to continue to allow abusers to pressure their victims into "civilly compromising" the charges against them.

This bill recognizes that we have an obligation to protect those who are too young, too old, or too emotionally vulnerable to be able to effectively protect themselves. The abuse of women, children, and the elderly is an offense against every member of a civilized society; it is emphatically not a "private dispute" for which a civil compromise is appropriate. I urge your prompt and favorable action on this bill.

Sincerely,



Steve Cowper  
Governor

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 122 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to the authority to compromise  
7 certain misdemeanors."  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. AS 12.45.120 is amended to read:  
10 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
11 VICTIM HAS CIVIL ACTION. If [WHEN] a defendant is held to answer on a  
12 charge of misdemeanor for which the person injured by the act con-  
13 stituting the crime has a remedy by a civil action, the crime may be  
14 compromised except when it was committed  
15 (1) by or upon a peace officer, judge, or magistrate while  
16 in the execution of the duties of that office;  
17 (2) riotously;  
18 (3) with an intent to commit a felony;  
19 (4) against  
20 (A) a spouse or a former spouse of the defendant;  
21 (B) a parent, grandparent, child, or grandchild of the  
22 defendant;  
23 (C) a member of the social unit comprised of those  
24 living together in the same dwelling as the defendant; or  
25 (D) a person who is not a spouse or former spouse of  
26 the defendant but who previously lived in a spousal relationship  
27 with the defendant [LARCENOUSLY].

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 122

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE -- FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the authority to compromise  
7 certain misdemeanors."

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

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

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

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

17 (2) riotously;

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

19 (4) larcenously;

20 (5) against

21 (A) a spouse or a former spouse of the defendant;

22 (B) a parent, grandparent, child, or grandchild of the  
23 defendant;

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

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