

H B

122



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 Although such provisions were widespread at the turn of the century, many states, including New York, have since repealed their civil compromise statutes.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.

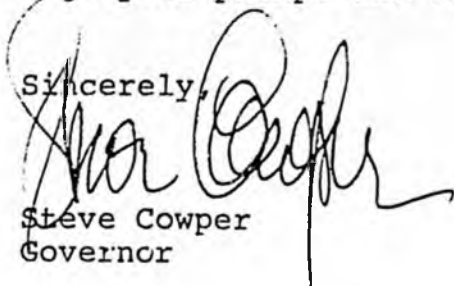
713 P.2d at 810; footnote omitted.

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

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H. JUD.	3-3-87	1:30 p.m.
H. JUD.	2-27-87	1:30 p.m.
H. JUD.	2-18-87	1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: /11/87

FURTHER REFERRALS: Finance

DATE: _____

The Judiciary Committee has considered HB 122

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

RECOMMENDS:

- replace with (S HB 122 (Judiciary)) 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:

[Handwritten signature]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature] no rec

[Handwritten signature] no rec

[Handwritten signature] no rec

[Handwritten signature] (DON'T PASS)

[Handwritten signature]

 Do not pass unless amended to
 allow compromise in certain
 cases - particularly certain
 divorce cases as per Judiciary
 Committee Gruenberg amendment #3-4

[Handwritten signature]

 Chairman's signature

REVISED

adopted

A M E N D M E N T #1

Offered in the House

By Gruenberg &

To: HB 122

Taylor

Page 1, line 19

Delete "(4) larcenously;" and insert "[(4) LARCENOUSLY]"

Renumber following section accordingly.

Comment: In appropriate cases, the court should have the authority to allow civil compromises of petty larcenies, including, for example, shopliftings. Larcenies under \$500 and theft of credit cards are misdemeanors and could be civilly compromised if the amendment is adopted.

REVISED

Defeated

A M E N D M E N T #2

Offered in the House

By Gruenberg

TO: HB 122

Taylor

Page 1, line 20, following "(5)":

Insert "in a case involving a misdemeanor charge under AS 11.41, criminal trespass (AS 11.46.320 -.330), harassment (AS 11.61.120), or ^a similar municipal ordinances which was committed."

Crimes against people

Reasons: Assault cases.

Ulmer:
→ *Custodial interference.*
→ *malicious destruction of property*

→

REVISED

Repealed

A M E N D M E N T #3

Offered in the House

By Gruenberg

TO: HB 122

Page 1, line 11, following "Action."

Insert "(a)"

Page 1, after line 28 insert:

"Section 2. AS 12.45.120 is amended by adding a new subsection to read:

(b) Notwithstanding AS 24.45.120(a)(5) the court may accept a civil compromise to a crime otherwise compromisable, if the court makes findings based on clear and convincing evidence that:

(1) the victim and defendant are engaged in a pre-existing open divorce case in which both are represented by independent counsel, and both counsel have jointly petitioned the court to accept the compromise,

(2) both parties are aware of the consequences of the prosecution of the criminal charge, and the consequences of a dismissal,

(3) there is no duress or coercion of the victim, and;

(4) there is no need to protect the victim or the public by prosecuting the criminal charge."

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 122
Publish Date: 02/11/87

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

MEMORANDUM

4/14/87

TO: Rep. John Sund
FROM: J. Hartle, PA
RE: HB 122 Civil compromise

***** Max says that the floor battle will be over adopting the Judiciary Committee CS - he will move it *****
After that is decided, Max will have amendments re divorce.

HB 122 (Rules/Governor) An Act relating to the authority to compromise certain misdemeanors

Status: House Floor

Judiciary heard HB 122 2/18, 2/26, 3/3

Testified: Barbara Mikilos, Council on Domestic Violence and Sexual Assault
Margot Dick, Shelters Network
Gayle Horetski, Law - Prosecution

Judiciary passed out CS

Judiciary CS: Deleted "larcenously" as type of crime that cannot be civilly compromised - allowing compromise for larceny.

Issue: Gruenberg wants to add exceptions to the exception i.e. situations where civil compromise can occur between family members who are in divorce proceedings. (See newspaper from Ulmer re murders in families who are in divorce proceedings).

Finance Committee (by one vote) adopted original bill (rejecting Judiciary CS)

Testimony for the bill:

The only thing batterers seem to consistently respond to is getting into serious trouble with the law. This seems to be the only approach that really gives them the message that society does not approve of their actions. Too frequently, the victim will drop the charges, civilly compromise the case

and start the cycle of behavior again.

Testimony against the bill:

Takes away an ability of people to settle their own disputes voluntarily.

Testimony for removing "larcenously:"

Gives a person who has been robbed a tool for getting his or her money back e.g. "make me whole and I will compromise out of court." Otherwise it doesn't do the thief any good to make the victim whole.

Testimony against removing "larcenously:"

Allows a criminal to maintain a pattern of behavior, i.e. stealing and compromising, without involving law enforcement. A conviction for larceny is usable in court against an accused criminal.

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

February 18, 1987

Honorable John Sund, Chairman
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

Dear Chairman Sund and members of the committee:

The Alaska Women's Lobby would like to express our continuing support for legislation which would prohibit the civil compromise of criminal cases which arise from domestic assault.

It has been policy in many areas of the state to take domestic assault cases to court even if the victim changes her/his mind but the statutes must back up this policy.

Professionals believe that nearly all such victims are physically or emotionally coerced into dropping the charges.

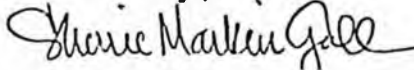
Civil compromise is not appropriate in domestic violence cases as it is very important to get the offender into treatment in order to avoid subsequent offenses.

HB 122 recognizes that society must sometimes intervene to protect vulnerable persons who may be unable to protect themselves.

We are whole-heartedly supportive of this important legislation and would urge it's speedy passage.

Thank you for your consideration.

Sincerely,



Sherrie Markin Goll
Alaska Women's Lobby

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

From Rep Gruenberg
STEVE COWPER, GOVERNOR

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

March 17, 1987

Mark Handley
Aide to Representative Gruenberg
P.O. Box V
Juneau, Alaska 99811

Dear Mark:

Thank you for requesting my input on Representative Gruenberg's amendment to HB 122 regarding civil compromise of misdemeanors.

It is my understanding that Representative Gruenberg's amendment would allow theft and concealment of merchandise cases to be civilly compromised if they are misdemeanors. There are a number of theft offenses which would be particularly amenable to civil compromise. For example, theft of services, AS 11.46.200 includes absconding without paying for hotel or restaurant services. If a defendant in one of these cases were to pay the hotel or restaurant for the services rendered and were perhaps to provide additional compensation for the time and effort spent in processing the charges, the criminal justice system would be relieved of this class of cases.

Another classification of theft cases which might be amenable to compromise are those involving theft of lost or mislaid property, AS 11.46.160. In these cases, a person is charged with theft if he finds mislaid property and keeps that property rather than attempting to restore it to the owner. In a case of this sort, if the property were eventually returned to the owner and other compensation or services rendered by the defendant to the owner's satisfaction, the criminal justice system could be relieved of processing this type of case.

A third classification of theft cases which might appropriately allow civil compromise are those involving theft of merchandise from a store. Again, if a defendant were to return the merchandise and perhaps volunteer to do yard work or janitorial work for the owner of the store, this type of case might appropriately be removed from the criminal justice system.

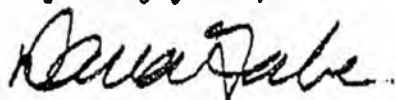
It is my understanding that the state's position is to continue to obtain formal theft convictions in order to assure that a prior record is available for impeachment purposes should trials on other criminal offenses arise in the future. However, some theft cases are resolved prior to police involvement or charges being filed if the victim is able to obtain the return of his property before the police are called. In those cases, the state never has involvement and no prior conviction

exists. Representative Gruenberg's proposed amendment will simply allow the same type of resolution short of criminal justice proceedings at a later stage of the case.

In a time of declining oil revenues, it will be important to focus judicial, prosecution and public defense resources on those offenses which truly require formal prosecution, conviction and incarceration. The civil compromise statute will apply only to misdemeanor offenses involving less than \$500 of property or services. If the victim is satisfied with the return of property or payment for lost time or services, it may make sense for the criminal justice system to focus on other cases where the victim wishes to proceed with prosecution.

I appreciate your request for my input on this matter. Feel free to contact me if you have any questions on this bill or any others.

Very truly yours,



Dana Fabe
Public Defender

DF:sh

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.⁴



STATE of Alaska, Appellant,

v.

Bruce NELLES, Appellee.

No. A-955.

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 ⇨61, 74

Criminal Law ⇨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 ⇨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 ⇨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.¹

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).

818 ALASKA
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.²

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 1855-1864); 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 765 (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;

(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. 27 (1973).

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.³

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.

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.LAnn.*, tit. XV, ch. 28, §§ 2362-2365 (1913); *Comp.LAnn.*, §§ 5431-5434 (1933), and *Comp.LAnn.*, 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 *Hoiner 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.⁴

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."⁵

Judge Crutchfield's dismissal of the case is AFFIRMED.



HB122

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 RE-MANDED 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, 23.35.060.

- 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, 23.35.060.

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 ROOCHEVER, 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 12.45.140.¹

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 28.35.060.² 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.³

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).⁴ 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 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 assistance⁵ 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.



**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 463 (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:

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature] No Rec

[Signature] Do NOT PASS

[Signature] NO REC.

[Signature] No Rec.

[Signature]
Chairman

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

vague

non and bond

Professional
licensed

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 counsel-
8 ing, medical, or shelter services to the victim or as otherwise au-
9 thorized by law. Before an order of restitution is entered, upon
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 FINAN-
14 CIAL RESOURCES OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS
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 any
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 AN
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 of
29 the court for every day a person is incarcerated for nonpayment of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

fine or restitution.

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

need some definitions
medical → ~~only~~ as provided by a licensed medical
provider (what ever the term of art is)
counseling → some guidelines of "licensed counselor."
shelter services → "room and board"

1 (E) a person who is not a spouse or former spouse
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
6 make restitution as provided in this section, including restitution
7 a public or private nonprofit organization that has provided counsel-
8 ing, medical, or shelter services to the victim or as otherwise au-
9 thorized by law. Before an order of restitution is entered, upon
10 request, the defendant may have an opportunity to establish by
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 FINAN-
14 CIAL 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 AN
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 of
29 the court for every day a person is incarcerated for nonpayment of a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

fine or restitution.

Civil compromise statute

Introduced: 1/13/86
Referred: Judiciary and
Finance

1 IN THE HOUSE

BY THOMPSON

HOUSE BILL NO. 463

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

6 For an Act entitled: "An Act relating to criminal trials and restitution."

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

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

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

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

16 (2) riotously,

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

18 (4) larcenously;

19 (5) by assault 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.

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

29 (a) The court may order a defendant convicted of an offense to

*degrees of
kinship*

1 make restitution as provided in this section, including restitution to
2 a public or private nonprofit organization that has provided counsel-
3 ing, medical, or shelter services to the victim or as otherwise au-
4 thorized by law. [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF
5 RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES
6 OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IM-
7 POSE.]

*pro
guys*

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

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

burden of proof

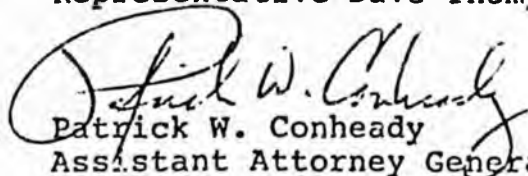
MEMORANDUM STATE OF ALASKA

TO: Helen Fisher
Legislative Assistant to
Representative Dave Thompson

DATE: March 12, 1986

FILE NO:

FROM:


Patrick W. Conheady
Assistant Attorney General
Chief, Pretrial Services

TELEPHONE NO: 465-3678

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

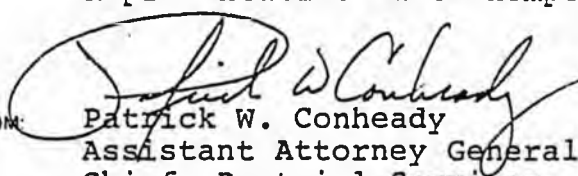
MEMORANDUM

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 CSHE 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 of 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 caseload 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:

DRAFT # _____

DATE: _____

BOOKPROOFED: _____

APPROVED: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
IN THE HOUSE

CS FOR HOUSE BILL NO. 463 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the authority to compromise certain misdemeanors and to the payment of fines and 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) larcenously;

(5) by assault against

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

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

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

(D) a person who is not a spouse or former spouse of the defendant but who lived in a spousal relationship with the 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

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

**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	43	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
TOTAL	1,746	3,194	1,783	2,076	303	9,102
% OF TOTAL	19%	35%	20%	23%	3%	100%

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	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	58	28	33	17	9	145
Wrangell/ Petersburg	24	39	9	8	0	80
TOTAL	1,867	2,892	2,007	1,567	213	8,546
% OF TOTAL	22%	34%	23%	18%	3%	100%

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	319	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
TOTAL	2,507	2,094	2,375	1,002	279	8,257
% OF TOTAL	30%	25%	29%	12%	.3%	100%

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

ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

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

Abused Women's 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); Fairbanks Women's Shelter;
Kodiak Women's Resource & Crisis Center (KWRCC); MEN, Inc.;
Men's Support Network (MSN); Safe & Fear-Free Environment (SAFE);
Sitka's Against Family Violence (SAFV);
Southwestern Alaska Council for the
Prevention of Child Sexual Assault (SWACPCSA);
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 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 of their future behavior. For these reason, 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.

ALASKA WOMEN'S LOBBY

POST OFFICE BOX 10-1571, ANCHORAGE, ALASKA 99510

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

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 her second husband. He broke her nose three times, chipped her tail bone, damaged her eye. Once, she says, he beat her so brutally she was hospitalized with a case of shock that lasted two weeks.

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

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?

Form

A

The Boy Scout's honor day tradition Jr.

Sch. naut Mercu spacec:

Fu

The get Anc Shanno plant i: gear wi a Bowl pledges March.

To d: contribu mated s operation

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.

Ernie Purdy

11.41.

Pro Police

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

HOUSE BILL NO. 122

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE -- FIRST SESSION

A BILL

2 For an Act entitled: "An Act relating to the authority to compromise
3 certain misdemeanors."
4

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

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

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

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

14 (2) riotously;

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

16 (4) larcenously;

17 (5) against

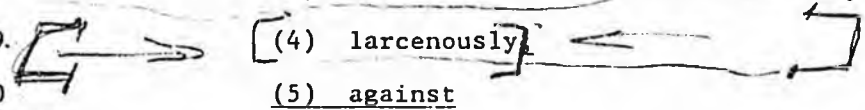
18 (A) a spouse or a former spouse of the defendant;

19 (B) a parent, grandparent, child, or grandchild of the
20 defendant;

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

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

Am. End #1
Cross in
MISO. AS 11.41



- Pre existing divorce not disqualification

where is the DWI exception.

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
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						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	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 *BMM* Phone: 465-4356
Division: Counsel on Domestic Violence & Sexual Assault Date: 2/17/87

Approved by Commissioner: X [Signature] 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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 122
Published date: 2/11/87

REQUEST
Bill/Resolution No.: 773-87-0072
Title: An Act relating to the author-
ity to compromise certain misdemeanors.
Sponsor: _____
Requestor: _____
Date of Request 12/16/86

FISCAL DETAIL
Agency Affected: Public Safety
BRU: Council on Domestic Violence &
Sexual Assault
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

Prepared by: *Nina G. Keeler*
Nina Keeler, Program Coordinator
Division: Council of Domestic Violence & Sexual Assault

Phone: 465-4356
Date: 12/16/86

JMR
12/16/86 Approved by Commissioner: *[Signature]*
Agency: Public Safety

Date: 12/16/86

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

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

DEPARTMENT OF PUBLIC SAFETY

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

William R. Nix
Acting Commissioner

*only represents
if is acting in*

*such a manner should be reported to Bureau of Court for
authentic conduct*