HB

122-5

SENATE COMMITTEE REPORT

FURTHER:

5/1/87

DATE TURNED INTO OFFICE 2/1/88

Mr. President:

FINANCE Committee considered HB 122

authority to compromise certain misdemeanors.

and recommended:

[ ] replace with CS FOR) [] same title
[ ] or adopt CS FOR) [] new title

[ ] attached amendment(s) and

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] further referral to

[ ] letter of intent adopted

Committee [✓] attached or [ ] adopted fiscal note(s)
[ ] new [✓] updated or [ ] previous
[✓] zero [ ] fiscal impact

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Paul Fritz N. Re

Rick Halford - do pass
Chairman signature and recommendation

[ ] Committee Backup Attached

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 122
PUBLISH DATE: _____

FISCAL NOTE

REQUEST: _____

Revision Date: _____
Title: An Act relating to the authority to compromise certain misdemeanors
Sponsor: House Rules/Governor
Requestor: Senate Finance

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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
Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault
Date: 1/18/88

Approved by Commissioner: [signature]
Date: 1-19-88
Agency: Public Safety

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

Introduced: 2/11/87
Referred: Judiciary and Finance

wo0727h

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

HOUSE BILL NO. 122

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE -- FIRST SESSION

A BILL

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

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. If [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) 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 previously lived in a spousal relationship with the defendant.

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
Acting Commissioner

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of X 5-DAY NOTICE
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER: FINANCE

**FISCAL NOTE(S) ATTACHED ____ **
IN ACCORDANCE WITH AS 24.08.035
(see below)

4/22/87

DATE TURNED INTO OFFICE 4/30/87

Mr. President:

JUDICIARY Committee considered HB 122

authority to compromise certain misdemeanors.

and recommended:

[ ] replace with CS _____ [] same title
[] new title

[ ] attached amendment(s) and

[X] do pass unanimously

[ ] do not pass

[ ] no recommendation

[X] individual recommendations

[ ] further referral to _____

[ ] letter of intent adopted and attached

** Committee [ ] attached or [✓] adopted fiscal note(s)
[X] zero unanimous [ ] fiscal impact

MEMBERS SIGNING DO PASS

Jack P. Joseph
Carlton Stinglemore
Robert Rodey

OTHER RECOMMENDATIONS

Walter do pass
Chairman signature and recommendation

[ ] Committee Backup Attached

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 10, 1987

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

Dear Representative Grussendorf:

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

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

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

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

with his fist, injuring her and requiring stitches. Nonetheless, the court expressed concern "that domestic assaults not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur." 713 P.2d at 810. The court was unwilling to judicially create an additional exception to the civil compromise statute, however. The court stated:

> The statute, in its current form, does not exempt domestic disputes. Amendment to create additional exceptions is clearly a matter of legislative, rather than judicial, concern.

713 P.2d at 810; footnote omitted.

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

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

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

Sincerely,

Steve Cowper
Governor

Senate

Finance Committee

Outdated

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version: HB 122
Publish Date: HOUSE 3/20/87

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

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)

JNR 3/12/87

Prepared by: Barbara Miklos, Executive Director
Phone: 465-4356
Division: Council on Domestic Violence & Sexual Assault
Date: 3/5/87

Approved by Commissioner:
Date: 3/12/87
Agency: Department of Public Safety

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

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 authority 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)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
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

Nina E. Keeler

Prepared by: Nina Keeler, Program Coordinator
Phone: 465-4356
Division: Council of Domestic Violence & Sexual Assault
Date: 12/16/86

JNR 12/16/86 Approved by Commissioner:
Date: 12/16/86
Agency: Public Safety

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

MUNICIPALITY OF ANCHORAGE

Senator Binkley

MEMORANDUM (excerpts)

DATE: March 5, 1987

TO: Suzanne Tryck, Department of Intergovernmental Affairs

FROM: Frances Purdy, Program Manager, Abuse Prevention Program (FP)

SUBJECT: Testimony on HB 122 - Civil Compromise on Misdemeanors

This bill is the same bill that was introduced in the 1986 legislature. The Special Committee on Domestic Violence encouraged the Municipality of Anchorage to support its passage. The Municipality took an active role in supporting this bill, then HB 463; hopefully, we can continue to work for it becoming law..

The bill would delete the loophole in the current Alaska Statutes that allows a misdemeanor assault to be handled through a civil compromise in lieu of criminal prosecution. This is not the preferred method for closing a domestic violence case. When there is a civil compromise, the victim states to the court that she does not want the criminal action against her abuser pursued. If the judge rules that the compensation (usually a promise of no hitting in the future and a $1.00 renumeration for pain and suffering) offered by the abuser is adequate, the judge then dismisses the criminal case (not allowing the prosecutors to bring criminal charges) and rules favorably (approves) the terms of the (agreement) civil compromise.. ?

The current method for handling these cases is for the prosecution to subpeona an expert witness, like myself, to testify. The expert testimony includes why the victim is unable to fully understand the implications of accepting this compromise. This involves testimony about the history of violence victim has been subjected to and/or the history of violence in this relationship, the level of blame the victim has internalized, the victimization pattern in this relationship, the probability of reoccurrence of the abuse, and the need for a public policy that includes the protection of the victim, children and the abuser from incurring future harm as a result of this progressively deteriorating behavior pattern. The reason for such extensive testimony is to establish grounds for an appeal should the judge grant the civil compromise.

As you can see handling these cases by establishing a record for appeal in each case is lengthy and costly. It is also quite difficult on the victim since she has to be in the court room to testify and explain in front of the abuser the reasons she has for believing that she will not be hurt again. Also, the experience gained in other jurisdictions is that the couple will be back in court later when the violence again erupts. Generally the violence is more traumatic to the victim and the alleged batterer the second time they have to appear in court.

It does not appear to be good public policy to wait for a repetition of harm before intervening. We changed the police procedure in Anchorage and in Alaska to not ignore the first call specifically because our experience had been that the violence generally does intensify over time. By having a judge rule that it is merely a "civil matter" between two "equal" parties, only reinforces that society condones domestic violence. It is also counterproductive to tell law enforcement personnel to respond to these calls and arrest whenever possible or at least take full reports, if on the other hand. we legislatively allow a process that circumvents the criminal justice system.

By closing this loophole now we prevent this compromise to be utilized in settling child and elder abuse cases as well.

Civil compromise erroneously assumes individuals have equal power. Individuals involved in domestic violence do not enjoy a coequal relationship. One of the unfortunate results of domestic violence is that one individual becomes a victim or at least a person who is intimidated, coerced, and frightened (and often physically and/or sexually assaulted) into behaving in a manner more acceptable to the partner. The typical threats to the victim includes: no one will believe her version of the truth, people will believe her partner, and if they do believe her then he will have to go to jail or in some other way have his life ruined. It is not surprising that when his attorney approaches the victim with a civil compromise to avoid the court process, many victims will gullibly believe their problems to be over. Alas, this of course is not true!

Why can't judges continue to use their discretion?
Unfortunately most judges do not have the time to verify the past or current existence of restraining orders, arrests, diversions, Suspended Imposition of Sentence, or convictions regarding domestic violence and the individuals requesting a civil compromise. It is quite possible for these actions to have occurred in another court's jurisdiction and for the paperwork to be unavailable.
This places the judge in a position to cross examine the victim and determine the degree of coercion and determine the probability of future violence while the victim must speak "honestly" in front of the abuser. I do not believe a judge will be more capable of accomplishing this than has anyone else. Counselors know that lethality assessments are not reliable when done with both members of the couple present at the interview.

It is interesting to note that at least one of the cases compromised in Fairbanks in November 1985 has resulted four additional assaults culminating in State v. Wharton (4FA-S87-313). Other cases in Fairbanks have also had reoffenses, some have been reported to law enforcement and some have not.

What really happens in a civil compromise:

From the perspective of the alleged offender: The charges have been filed by the prosecutor. After the alleged offender is unable to convince the prosecutor to drop the charges. He attempts to convince the victim that nothing else will happen and that it is in both their interest not to have him go to court. He then finds an attorney that will explain to the victim why it is in her best interest to not have pursue criminal charges. Once the judge agrees to the compromise, the alleged offender continues to maintain his promise to not assault or intimidate the victim.
The difficulty with his maintaining that promise is his lack of skills to understand his emotional needs, communicate his needs, recognize the stress involved in getting what he wants, and nonviolently handle his disappointments. He will "grit his teeth" and "put up" with disappointments or rejection for a while but eventually will blame someone, generally his partner, for "making too many demands [on him] and not giving enough [to him]". As a last resort, he forces his partner to do what he wants her to do or punish her for not doing the "right thing".

From the perspective of the attorney: The alleged offender has explained that the violence was minimal, accidental or at least unintentional, and that it will not happen again. The attorney then encourages the victim to give the alleged offender another chance. The general objective is to add as little tension to this couple's relationship as possible. The victim is asked to sign a prepared statement about her wish to settle this because she believes her partner will not repeat the behavior. Attorneys generally attempt to present the signed document without having to bring the victim into court. When judges require her presence to substantiate the written document, the attorney limits the questions to issues related to the believability of the partner's statement that this will not occur in the future. The emphasis is placed on the harmony the couple has enjoyed since agreeing on this compromise.

From the perspective of the victim: The victim has given interviews to the police and the prosecutor's office. Her partner's attorney now states that all of this can be forgotten if she just signs a statement that she does not want the criminal charges to continue against her partner. Her partner has generally not been violent since the arraignment on the criminal charges and may have begun counseling (substance abuse, anger management, pastoral, self help). There doesn't appear to be much reason to not give him one more chance.

From the perspective of the prosecutor: There was adequate grounds for a charge in this case. The victim wants to give her' partner another chance and does not want anything on his record. The defendant's attorney contacts the prosecutor with information that she wants charges dismissed. After prosecutor refuses to dismiss charges, a motion is filed with a signed statement from the victim requesting dismissal of the charges based on the compromised reached between the defendant and the victim. Further investigation is ordered to determine the history of the relationship (restraining orders, arrests, police reports, child abuse reports, completion of counseling or other conditions on previous convictions or deferred prosecution cases, review of medical history of victim for unreported abuse incidents, etc.). A second interview with victim is scheduled to determine her level of understanding of the implications of her decision. If she still wants to have the civil compromise and the prosecutor believes there has been past violence or future violence is inevitable, the preparation for a trial is begun. Subpeonas are served for necessary witnesses and evidence. A trial date is requested and preparation is made to cross examine the victim about her ability to predict future violence. This preparation includes the need to bring out the level of victimization of the victim while not alienating her from seeking help from the criminal justice system in the future.
The expert witness is prepared to explain to the court the research available concerning the occurrence and reoccurrence of domestic violence, the characteristics of victims and offenders, the viability of an alleged offender voluntarily successfully completing treatment and positively changing his pattern of violence. Generally the trial is at least 3-4 hours .

From the perspective of the expert witness: Is this different from the times when victims called to drop charges when the criminal justice system believed domestic violence to be a private matter best settled by the two individuals without interference or monitoring by the court? Are the victim and her partner going to interpret the court's granting of a civil compromise as approval for this incident to reoccur since it carried no punishment or admonition? Is the alleged offender the type of person who will continue in counseling voluntarily and not drop out within a few months? Is the incident in this case a one time incident or a culmination of a pattern of psychological, sexual, and/or physical abuse? Do the individuals in the couple/family speak independently or is there an existing pattern of victimization that forces the victim to take responsibility for the alleged offender's needs and actions? What is the probability of the victim to assess danger in the relationship and call for assistance in the future? If there are children in the home, what effect has/ will this have on them? To what degree do other problems in the home impact the probability of future violence; e.g. substance abuse, mental illness, finances, family or social support, etc.?

From a public policy perspective: In the past six years, there has been a serious effort to change law enforcement and criminal justice response to domestic violence. Based on research that has been completed, there is good reason to believe that when domestic violence is made public the first few times it occurs, the individuals are less likely to continue in an escalating violence pattern.

It is not likely that the average battering partner will undergo and complete counseling voluntarily. The use of a fairly lengthy suspended jail term has been the most effective in screening and motivating individuals to utilize existing counseling or community/self help resources.

Arrest in domestic violence cases does not appear to be a sufficient deterrent. Arrest often needs to be combined with a realistic threat of jail or actual jail time, lengthy monitoring to ensure lack of reoffense, and rehabilitation of behaviors that culminate in abuse. The use of fines has not been as effective since it generally penalizes the victim and the children and not just the offender. The use of deferred prosecution also penalizes the victim by requiring her continued cooperation in testifying about her partner's behavior, leaving her open to further intimidation until the deferred time is over.

A victim of abuse who does not clearly hear from all resources that the abuse is not her fault and is not to be tolerated, will generally not leave the abusive relationship until the violence reaches the severity of risking her life or the lives of the children. By that time, the need for counseling for the entire family is so great that government will need to subsidize the majority of the cost (either through actual counseling services or support services such as welfare, medical payments, foster care, special education for the children, and/or jail)

Since the public policy goal in intervention in domestic violence cases is to stop the violence at its earliest discernible onset, the use of a civil compromise defeats this purpose. A civil compromise states clearly that the first time is not serious and should not be considered part of a pattern. This reinforces the partners to continue viewing the violence as a private concern that can best be handled in their own home. It reassures the alleged offender that his behavior is understandable and acceptable. It restates for the victim that "overreacted" since the judge now accepts a promise as a remedy for the harm done to her. It does nothing to stop the impression on the children that nothing will happen to you if you use violence in the home to get what you want.

It is unfortunate that by the time law enforcement and prosecutors have screened a domestic violence case, the event is not likely to be insignificant. The only advantage to this practice is that by the time the system does intervene, it is clear that the situation is out of the control of the individuals involved.

In order to restore the order, there is a current practice of offering "first time offenders" an alternative sentence of 60-90 days of suspended jail time, with perhaps a few to serve or credit for serving the day of the arrest, as long as he completes mandatory counseling or a court approved rehabilitation effort and has no similar violation for one year. This provides the offender with a method for changing his behavior with little negative impact from a criminal record. The victim has an oppor tunity to see if the violence will stop before she has to end the relationship. Each member of the family is made aware of the seriousness of the violence and where to receive counseling or self help support. If the victim wishes, the family remains intact as long as there is no reoccurrence of violence. There is a hold on the offender that is not dependent of the victim having to testify about the details of the original incident. Should rehabilitation not be successful and society needs to be protected from this offender, the suspended jail time can be reimposed.

This appears to be a successful method of intervening in the violence while still offering the individuals a chance to repair their lives/relationship with little present or future cost to the family and government.

HB 22

STATE OF ALASKA

PUBLIC DEFENDER AGENCY

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

Dana Fabe
Public Defender

DF:sh

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

HB 22

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

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

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

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

NOTES TO DECISIONS

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

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

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

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

(2) riotously;

(3) with an intent to commit a felony;

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

NOTES TO DECISIONS

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

The act constituting the crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance after the 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 accident cannot settle the state's claim for a violation of its laws. Hensel v. State, Sup. Ct. Op. No. 1755 (File No. 3719), 585 P.2d 878 (1978).

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Sec. 12.45.130. Acknowledgment of satisfaction by injured party. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime. (§ 6.14 ch 34 SLA 1962)

NOTES TO DECISIONS

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Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited. A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law. (§ 6.15 ch 34 SLA 1962)

NOTES TO DECISIONS

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

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

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 REMANDED with instructions to enter summary judgment in favor of appellant.

Thomas P. HENSEL, Appellant,

v.

STATE of Alaska, Appellee.

No. 3719.

Supreme Court of Alaska.

Nov. 3, 1978.

Proceeding was instituted on petition by State to review an order of the district court granting motion of motorist to dismiss traffic complaint pursuant to civil compromise statutes. The Superior Court, Third Judicial District, Anchorage, J. Justin Ripley, J., determined that offense with which motorist was charged was not amenable to civil compromise and remanded case for further prosecution. Motorist plead nolo contendere to charge and specifically preserved issue of civil compromise for appeal. The Supreme Court held that act constituting crime of leaving scene of an accident is failure to stop and make necessary exchanges of information or assistance after accident has occurred and is not one which causes injury to private citizens within meaning of civil compromise statutes and, hence, is not amenable to civil compromise.

Conviction affirmed.

1. Automobiles ⇐336
Criminal Law ⇐40

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

2. Criminal Law ⇐40

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

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

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

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

OPINION

PER CURIAM.

This case concerns the Alaska civil compromise statutes: AS 12.45.120, 12.45.130 and 12.45.140.[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 partly. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that he has received satisfaction for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime.

AS 12.45.140 provides:

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

2. AS 28.35.060 provides in part:

Duty of operator to give information and render assistance.

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

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

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

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

crime of leaving the scene of an accident is the failure to stop and make the necessary exchanges of information or assistance [5] 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 accident cannot settle the state's claim for a violation of its laws.

The conviction is AFFIRMED.

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.

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

HOUSE BILL 122
CIVIL COMPROMISE

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

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

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

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

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

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

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

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

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

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

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

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

WE STRONGLY URGE YOUR FAVORABLE CONSIDERATION OF THIS BILL.

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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-995.

Court of Appeals of Alaska.

Feb. 7, 1986.

State brought action for misdemeanor assault. The Fourth Judicial District Court, Fairbanks, H.E. Crutchfield, J., dismissed the charge pursuant to misdemeanor 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 authority 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

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

most other similar statutes, a 181[1] 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 public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise ...; a policy which has been carried by the courts, still further than the terms of the statute.

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

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

> *Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action.* When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed
>
> (1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;
>
> (2) riotously;
>
> (3) with an intent to commit a felony;
>
> (4) larcenously.

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

The laws of Oregon, and therefore Alaska, are derived in large part from those of New York. Although, "[t]he major borrowing took place in Oregon in 1853–1854 ... Oregon's celebrated Judge Matthew P. Deady and others reworked the Oregon law in 1862–1864, using as their major sources the 1854 codes and the draft codes prepared for New York by a commission by David Dudley Field. The Field Commission had also relied heavily on the older New York statutes ..." F. Brown: *The Sources of the Alaska and Oregon Codes*, Part II, 2 U.C.L.A.–Alaska L.Rev. 87 (1973).

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

initial decision to charge Nelles. Judge Crutchfield did subsequently exercise his discretion to dismiss the case. Yet this dismissal was expressly authorized by the legislature. AS 12.45.120, 12.45.130. There is no suggestion in the civil compromise statutes that the court's power to dismiss is conditioned upon the agreement of the prosecutor. In fact, the contrary appears to be the case. *See* Annot., 42 A.L.R.3d 315, 319 (a common condition precedent under compromise statutes is the consent of either the court *or* the prosecutor). *See also Hoines 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. Amendment 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.

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 resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal.Penal Code § 273.5 (West 1970) (adopted 1977).

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

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

Southwestern Alaska Council for the Prevention of Child Sexual Assault (SWACPCSA); South Peninsula Women's Services (SWPS); 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)

Back-Up
HB 122

DOMESTIC VIOLENCE

CRITICAL BACKGROUND INFORMATION:

- 19,259, or 10.2%, of women 18 and over in Alaska were abused by their spouse or live-in partner in the past 12 months. (Stockholm/Helms 1986)

- 63.3% of these women had children who were also abused by the spouse or live-in partner. (Stockholm/Helms 1986)

- Sons who witness their fathers' violence have a 1000% greater rate of wife abuse than sons who do not. (Straus, Gelles, & Steinmetz 1980)

- 49,091, or 26%, of Alaskan women have been abused in their lifetime by a spouse or live-in partner. (Stockhelms/Helms 1986)

- There have been 22 domestic violence related deaths in Alaska (including one Village Public Safety Officer) over the past fifteen months. (ANDVSA/CDVSA Survey)

- In Alaska, 50% of the female murder victims were killed by their husbands. (AK Dept. of Public Safety Statistics 1985)

- In 1984, 29% of the homicides in Alaska were family violence homicides. This compared to a national average of 18%. (FBI Crime Statistics, 1984)

District Court
State of Alaska

FOURTH JUDICIAL DISTRICT
604 BARNETTE STREET
FAIRBANKS, ALASKA
99701

Chambers of
H. E. (ED) CRUTCHFIELD, Judge

May 4, 1987

Dear Legislator:

In regards H.B. 122, you will see from the attached material I spent many hours of my own time researching the disposition of domestic assault cases at Fairbanks in 1985. The Daily News-Miner article enclosed pretty well sums up my position.

If you will read the remarks of the State prosecutor, Karla Welch, concerning the three state cases that were dismissed by judges in 1985, and then compare the copies of the 12 cases that she dismissed in 1985 without any type of hearing, you may question her concerns for "getting these people help".

There were 90 domestic assault cases disposed of in the Fairbanks Area in 1985. There were 45 convictions, 5 acquittals by jury, 14 cases were diverted by the District Attorney's Office with conditions, 23 outright dismissals by the prosecutors, and 3 cases dismissed by judges. These numbers were triple checked by me and I have challenged anyone to take the master list from 1985 as I did, and come up with different figures.

When judges dismiss cases by civil compromise, the victim appears at a judicial hearing, is placed under oath, and is questioned regarding possible intimidation. When a district attorney dismisses, there is no hearing and no provision for any counseling or guidance. To my knowledge no assault IV charge has ever been dismissed by a judge when the defendant had a history of any type of assaultive behavior, domestic or otherwise; but that's not true of the prosecutors as the supplied documents will indicate.

H.B. 122 should be defeated and judges allowed to retain and exercise a limited discretion when the circumstances justify such action.

Thank you very much for your consideration.

Sincerely,

H. E. Crutchfield

H. E. Crutchfield
District Court Judge

HEC/ek

...ges don't like taking domestic rap

By KRIS CAPPS
Staff Writer

rbanks District Court judges they are getting a "bum rap" critics who don't like judges g the discretion to dismiss ges in domestic violence

nen In Crisis, Counseling and ance is actively lobbying for that would prohibit dropping criminal cases, even though he victim and defendant say ave worked the problem out selves. These cases are diffe- rom domestic violence res- ng orders, which are handled il court.

nestic violence charges are ionally dismissed at the re- of the victim, after a court ng. Last year, out of more 160 cases, it happened 5 to 10

called a civil compromise, nto motion when the victim a statement stating she has compensated for her injuries ants the case dropped.

trict Court judges this week they resent inferences from A that they have abused the which they don't think needs ging.

e're being indicted as insensi- nd uncaring," said District Judge H.E. Crutchfield. "But is no abuse of judicial discre-

s week, Crutchfield said he hours personally looking at fourth-degree assault and stic assault case filed in 1985, a news story last week said A was pushing for the court m to treat domestic violence rime and to get the perpetra- nto treatment.

said he found a total of 164 that he believes could be clas- as domestic violence cases the number at 10, but a spokesman said that includes cases from the Bush as well. Statistics in that office list 167 domestic violence cases.

According to Crutchfield a hearing is always held to make sure the victim knows exactly what that means. But Ruth Lister, director of WICCA, said women don't always know what they are doing.

"We maintain and have often seen that women are intimidated by defense attorneys to civilly compromise," Lister said. "Sometimes they don't even know the consequences and what they're agreeing to. What they're agreeing to is dropping the charges."

"That is not in the interest of either the victim or the perpetrator," she said. "He is given the message that he can commit a crime and there will be no consequences. And he doesn't get any help in learning how to stop his violence."

Crutchfield said he found five cases civilly compromised in 1985. One was not opposed by the prosecutor. In the second, the defendant had no prior criminal record of violent behavior. In the third, the defendant was already in federal prison and the victim moved Outside. In the fourth, the police just gave the defendant a summons and didn't even arrest him at the time. He also had no criminal record. In the fifth, the dismissal was appealed to the Court of Appeals, which ruled that the judge did not abuse his judicial discretion. The dismissal was upheld.

"Does this sound like wholesale use of discretion?" asked Crutchfield. "To me, we have other things to do than get the Legislature to change the law because of some perceived abuse by judges. It gives the impression we're not treating this matter seriously."

HERSHEL CRUTCHFIELD

Assistant District Attorney Karla Taylor-Welch prosecutes most of the domestic violence cases that are filed with her office. She said she wasn't accusing any judge of abusing judicial discretion, but she also did not like to see these cases civilly compromised.

"I don't think these cases are appropriate for civil compromise," she said. "We need to get these people help. Civil compromise does not accomplish getting treatment."

Although she didn't know the exact rate of recidivism, she said she had at least one former offender back in court on Friday. His earlier case had been civilly compromised.

She said she bad no complaints about sentences handed down by judges in these cases, however. Usually, a first-offender gets a suspended sentence and an order to get treatment. Repeat offenders get jail time, she said.

Judges met with WICCA representatives and law enforcment officers at noon Friday to discuss civil compromises, but no resolution was reached in the matter and apparently neither side swayed the other to their way of thinking.

"I think its a philosophical difference," said one judge. "I think we're getting a bum rap."

Judges in Massachusetts Studying Spouse Abuse

Special to The New York Times

GARDNER, Mass., May 1 — Massachusetts has started a program in which all 150 state district court judges will be trained in better handling of cases of domestic violence.

The mandatory training, which began Thursday, includes discussion of the state's 1978 Abuse Prevention Act, identifies the traits of abusers and victims, and identifies the dynamics of their relationship.

Half the judges attended this week's session at Mount Wachusetts Community College, and half will be here for a session next Friday.

Samuel E. Zoll, chief judge of the 69 district courts, called the session "provocative," adding, "This has not been the best of times" for the district courts and family abuse cases.

He was referring to complaints last fall from battered women and their advocates who said that some judges had failed to use the law to protect victims of domestic violence. Three district court judges are currently under investigation by judiciary administrators for their conduct in such cases and bills are in the State Legislature to make judges more accountable for their actions in court.

Court Role in Woman's Death

The recent protests were set off by the death last August of a battered women, Pamela Nigro Dunn, 22 years old, whose husband has been charged with her murder. Mrs. Dunn had appeared before the Somerville district court for protection from Mr. Dunn, but she was harassed and her fears belittled, her attorney, Paula Becker, said in September.

A 1985 report by Gov. Michael S. Dukakis's Anti-Crime Council described the legal system's response to the law as one of "noncompliance." The law makes domestic abuse, or the threat of abuse, a crime and gives judges the power to order offenders to halt any abuse, vacate a house and temporarily relinquish custody of children or face criminal charges.

"All professionals need sessions like this," said Judge Paul F. LoConto of Worcester. "I wish we had more of them."

Sarah M. Buel of the Governor's Anti-Crime Council said: "Just having this training helps get out the message that this is a serious crime and tells women that the system is there to protect them. With all the publicity, complaints of domestic violence in the courts have quadrupled since this time last year.

"There's still a problem with getting vacate orders. Often women must leave the home. But in Massachusetts, with only 30 shelters for battered women, we have to turn away five for every two we take in."

[redacted]

but it's 1987 and a 1978 law. In other areas, we get training immediately after a new law is passed. That says something about what people assume you know or the importance they ascribe to the issue."

[redacted]

In a presentation to the group, Judge Roxanne Bailin of Colorado said women were the victims in 98 percent of the domestic violence cases, yet were often blamed for provoking the violence. She said there has been violence in about a quarter to a third of the marriages in the nation.

She told the judges that many women believe they are failures if they cannot keep a peaceful, nurturing home. They are often kept isolated from friends or family members who could help them break the cycle of abuse — contrition on the part of the man, denial of the violence by both parties. Women may report the violence to the legal system and then recant, the Massachusetts judges were told, enabling them to continue relationships on which they are dependent.

Possible Harm of Courts

Indifference by courts can compound the problem immeasurably, Judge Bailin said. "To her the message is, what's happening at home is inevitable," she said. "For him, the court reinforces the pattern. She's in more danger than if she never came to court."

Another speaker, [redacted], an associate professor at the University of Massachusetts Medical School, said the role of the courts was critical [redacted]

[redacted]

Judge Lawrence F. Feloney of Cambridge said, "We've taken this problem out of the home with so little background. We should have an advocate at the side [redacted]

Judge Albert L. Kramer of Quincy questioned whether the educational sessions would be sufficient to attack the problems.

"Even if judges are vigilant," he said, "we need more education and a change in the law that requires the court to link the women up with support services that will empower them to realize they don't have to be trapped in an abusive relationship and can leave for good."

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA)
)
Plaintiff,)
)
vs.)
)
TIMOTHY J. BLAIR,) DOB: 12/28/65
) DOV: 12/29/85
Defendant.) OFF: ASSAULT IV
)

No. 4FA-S85-3726

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Public Defender Agency
912 Barnette St., Suite 1
Fairbanks, AK 99701

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED, at Fairbanks, Alaska, this 2nd day of January, 1986.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: K T Welch
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 3rd day of January, 1986 a copy of the foregoing was mailed to the attorneys of record.

Margaret L. Jackson

Subscribed and sworn to before me the date last written.

Notary Public in and for the State of Alaska.
My Commission Expires: 3/2/89

I certify that on 1-3-86 copies of this form were sent to:
CLERK: [signature]

Copies sent to:
JS ____
DOC ____
FCC ✓
DA ✓
CA ____
BA ____
FPD ✓

Re: FA15-3244-85

(907) 452-1665

The State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska

State of Alaska

Plaintiff

Timothy J. Blair
DOB: 12/28/65
AKOL: 5604011
ADD: Arctic Drive, North Pole, Alaska
P/E: Unemployed

Defendant

MISDEMEANOR
Criminal Complaint

No. 4FA-S85-3726 Cr.

AS 11.41.230(a)(3)

ASSAULT IN THE FOURTH DEGREE

Complainant, Gary D. Cook, Alaska State Trooper

personally appearing before me and being duly sworn, states that on or about the 29th day of December, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, Timothy J. Blair did unlawfully by words or conduct recklessly cause fear of imminent physical injury by shoving Tammye L. Blair causing her to hit her head against the wall.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(3) and against the peace and dignity of the State of Alaska.

This complaint is based upon the personal knowledge and investigation of the complainant who responded to a residence off of Arctic Fox Drive in North Pole, Alaska, on a report of Timothy J. Blair, the defendant, holding a knife to the throat of victim, Tammye L. Blair. Upon arrival at the scene contact was made with Tammye Blair and Timothy Blair and Tammye Blair stated that Timothy Blair had taken a kitchen knife and held it to her throat then taken it away and had also shoved her causing her to hit her head against the wall. Further based on a statement of Timothy Blair to the complainant that he had shoved Tammye Blair, however, he denied holding a knife to the throat of Tammye Blair.

D.A.

Gary D. Cook
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 29 day of December, 19 85

(SEAL)

Gary L. Wraft
DISTRICT JUDGE Notary
Exp. 8-27-88

03 034

71623

AS AUTHORIZED BY ...
133 SLA 1960 SEC. 33.30.190

(Official Title)

Approved by me this 30th day of December, 19 85

Susan Peterson
Judge

State of Alaska

Plaintiff

vs

CARL E. LUNDBERG
DOB 5/29/44
SSN 517-46-0404
OL# 0482897
ADD 2410 Poppy Lane

Defendant

P/E UAF Physical Plant

MISDEMEANOR
Criminal Complaint

No. _____ Cr.

AS 11.41.230(a)(1)
ASSAULT IV

Complainant, Gregory W. Tanner, Alaska State Trooper,

personally appearing before me and being duly sworn, states that on or about the 13th day of October, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, Carl E. Lundberg, did recklessly cause physical injury to Bernadette C. Lundberg by striking her in the face with his fist.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based upon the investigation of the complainant who responded to 2410 Poppy Lane in reference to a domestic disturbance. Further that upon arrival the investigating Trooper contacted Bernadette Lundberg who was crying and somewhat hysterical. Further that Bernadette stated that her husband, the defendant, had struck her in the face with his fist. This complaint is further based on the statement of Carl E. Lundberg that he had struck his wife because she had scratched him. This complaint is finally based upon the observations of the complainant who observed a bruised and swollen area on the left side of Bernadette Lundberg's face.

Gregory W Tanner
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 13 day of Oct, 19 85

(SEAL)

R J Shoor
DISTRICT JUDGE
Notary nec 2.14.88

03 034

71623

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA, Plaintiff, vs. CARL E. LUNDBERG, AK. ID/OL: 0482897 Defendant.	DOB: 05/29/44 DOV: 10/13/85 OFF: Assault IV	

Case No. 4FA-S85-3023 Cr.

FILED in the Trial Courts
State of Alaska, Fourth Judicial
OCT 21 1985
By ..... Deputy

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, Alaska 99701

Carl E. Lundberg
2410 Poppy Lane
Fairbanks, AK 99701

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) because victim declines to prosecute.

DATED, at Fairbanks, Alaska this 17th day of October, 1985.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: _____
Karla Taylor-Welch
Assistant District Attorney

DISTRICT ATTORNEY, STATE OF ALASKA
604 BARNETTE STREET, ROOM 247
STATE COURT AND OFFICE BUILDING
FAIRBANKS, ALASKA 99701
(907) 452-1565

The undersigned hereby certifies that on the 21st day of Oct 19 85 the attached document was mailed to the attorneys of record.

_____

Subscribed and sworn to before me the date last written.

_____
Notary Public

Copies sent to:

JS _____
DOC _____
FCC ✓
DA ✓
CA _____
BA _____
FPD ✓
Dept. Public Safety ✓
Attorney _____
Misc. Faxed D. J. - 10-21-85
CLK - 10-22-85

FA15-2638-85

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS, ALASKA

FILED IN OPEN COURT
DATE 4/25/86
BY Woolley
Deputy Clerk

(X) STATE OF ALASKA,

( ) CITY OF FAIRBANKS,

Plaintiff,

vs.

Lyle Bott

DOV 9/17-18/85
Defendant.
DOB 7-28-~~[illegible]~~50

CASE NO. 4FA-S85-2766

NOTICE OF DISMISSAL

Ct I only
Assault IV

PLEASE TAKE NOTICE that the complaint in the above-entitled case is hereby dismissed pursuant to rule 43 (a), RULE OF CRIMINAL PROCEDURE.

DATED: 4/25/86

K T Welsh
(DISTRICT ATTORNEY)
(~~CITY ATTORNEY~~)

I certify that on 5-1-86
copies of this form were sent to:
CLERK: [illegible]

Copies sent to:

JS _____
VIC _____
FCC ✓
DA ✓
CA _____
BA _____
FPD ✓
Dept. Public Safety ✓
Attorney PDA
Misc. [illegible]

Fourth Judicial District, Fairbanks, Alaska.

State of Alaska

Plaintiff

vs

LYLE BOTT
DOB: 07.28.50
SSN: 553-86-1548
ADD: Natalie & Brock Roads
North Pole, Alaska

Defendant

COUNT #I

MISDEMEANOR
Criminal Complaint
No. 4FA-S85-2766 Cr.
ASSAULT IV
AS 11.41.230(a)(1)

Complainant, Carol J. Bott

personally appearing before me and being duly sworn, states that on or about the seventeenth day of September, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, Lyle Bott did recklessly cause physical injury to Carol J. Bott, to-wit: by striking her, choking her and causing physical injury.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based upon the observations and investigation of Trooper R. Quinn who responded to Natalie Road in reference to an assault that occurred at the Bott residence. Trooper Quinn observed bruises on the complainant's right forearm, left elbow and on the base of her neck on the left side down toward her chest. This complaint is also based on dirt on the complainant's back and left arm indicating she had been lying on the ground or floor. Further on the statement of the complainant to Trooper R. Quinn that the defendant had choked her, hit her repeatedly and thrown her down causing her pain.

Carol J. Bott
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 18th day of Sept, 1985

(SEAL)

Jack F. Lawrence
DISTRICT JUDGE

03 034

03-034

71823

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA)
)
Plaintiff,)
)
vs.)
)
JONATHAN M. BURR,) DOB: 03/16/65
) DOV: 06/25/85
Defendant.) OFF: ASSAULT IV
)

No. 4FA-S85-1805 Cr.

NOTICE OF DISMISSAL

FILED in the Trial Courts
State of Alaska, Fourth District
SEP 10 1985
Clerk, Trial Courts
By _____ Deputy

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Cameron M. Leonard
Assistant Public Defender
912 Barnette, Suite 1
Fairbanks, AK 99701

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED, at Fairbanks, Alaska, this 10th day of September, 1985.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: K Taylor-Welch
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 10 day of September, 1985 a copy of the foregoing was mailed to the attorneys of record.

Morgan L. Nakos

Subscribed and sworn to before me the date last written.

Frances M. Kordasiewicz
Notary Public in and for the State of Alaska.
My Commission Expires: 3/2/89

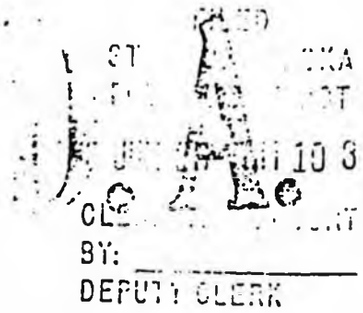
Copies sent to:
JS ____
DOC ____
FCC ✓
DA ✓
CA ____
BA ____
FPD ✓
Dept. Public Safety ✓
Attorney PD - A
DEWS

Re: FA15-1549-85

DISTRICT ATTORNEY, STATE OF ALASKA
604 BARNETTE STREET, ROOM 247
STATE COURT AND OFFICE BUILDING
FAIRBANKS, ALASKA 99701
(907) 452-1565

In the District Court of the State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska



State of Alaska — Plaintiff

vs

JOHN M. BURR
DOB: 03/16/65
SSN: 574-64-5309
ADD: 1 Mile Nelson Road
P/E: Eagle Chevron, Fairbanks — Defendant

MISDEMEANOR
Criminal Complaint
4FA-S85-1805
No. _____ Cr.

AS 11.41.230(a)(1)
ASSAULT IV

Complainant, John Roberts, Alaska State Trooper,

personally appearing before me and being duly sworn, states that on or about the 25th day of June, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, John M. Burr, did unlawfully and recklessly cause physical injury to Tanis E. Joiner, by slapping her in the face and throwing her down on the floor, causing her to strike her head on the sofa.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of the victim, Tanis Joiner, to the complainant that the defendant, John Burr, beat her up and dragged her inside of the residence. Further based on the observations of the complainant who observed a large welt and red marks on the forehead of the victim. Further based on the statement of the defendant that he slapped the victim and pushed her down after she slapped him. Finally based on the defendant being placed under citizen's arrest by the victim in the presence of Troopers Roberts and Cook.

John Roberts
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 25th day of June, 1985

(SEAL)

Marie L. Flanagan
DISTRICT JUDGE Notary

MCE 5/13/89

03 034

1623

[redacted]

[redacted]

DATE 7/15/85
BY [illegible]
Deputy Clerk

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS, ALASKA

(X) STATE OF ALASKA,
( ) CITY OF FAIRBANKS,
Plaintiff,

VS

David Parker

DOB: 11/28/50 Defendant.
DOV: 4/16/85

CASE NO. 4FA-85-985

NOTICE OF DISMISSAL

COUNT: I

CHARGE: Assault IV

PLEASE TAKE NOTICE that the complaint in the above-entitled case is hereby dismissed pursuant to Rule 43(a), RULE OF CRIMINAL PROCEDURE.

DATED: 7/15/85

[signature]
(DISTRICT ATTORNEY)
~~(CITY ATTORNEY)~~

I certify that on 7-18-85 copies of this form were sent to:
CLERK: [signature]

Copies sent to:

JS _____
DOC _____
FCC ✓
DA ✓
CA _____
DA _____

In the District Court of the State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska

STATE OF ALASKA
APR 16 1985
FOURTH JUDICIAL DIST.
DISTRICT ATTORNEY

State of Alaska
Plaintiff
vs
NAME: David E. Paxton
DOB: 11/28/50
SSN: 574-20-3149
ADD: 3.6 mi Goldstream Road, Fbks
Defendant

MISDEMEANOR
Criminal Complaint
No. 4FA-S85-985 Cr.

Trial Court
State of Alaska, Fourth Distric
APR 16 1985

AS 11.41.230 (3)
ASSAULT FOURTH DEGREE

Complainant, Sergeant Robert L. Barnes, Alaska State Trooper Per Deputy

personally appearing before me and being duly sworn, states that on or about the 16th day of April, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, David E. Paxton unlawfully by action and conduct recklessly placed another person in fear of imminent physical injury.

All of which is contrary to and in violation of AS 11.41.230 (3) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Myron T. Porter, that he observed a pickup stop on the roadway in front of the Fine Arts Building on the U of A campus and a man force a screaming woman into the vehicle. This complaint is also based upon the statement of Debra M. Bates that the defendant, her husband, did force her into their pickup and took her home. Further, that she was placed in fear when the defendant grabbed her off the street, and that she struggled to get free and was forced into the vehicle against her will.

D.A.

Sergeant R Barnes AST
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 16 day of Apr, 1985

(SEAL)

Wanda M. Bauer
NOTARY PUBLIC
10/13/86

13.034 71623

OWNER OF CASH (Type or Print) OWNER OF CASH (Signature)

SA# 20264 FBKS AK - 99701

ADDRESS PHONE

SUBSCRIBED AND SWORN TO before me this ____ day of ____, 19 ____, at

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

FILED
STATE OF ALASKA
FOURTH DISTRICT
'85 JUN 3 AM 8 23
CLERK OF COURTS
BY: [illegible]
DEPUTY CLERK

STATE OF ALASKA,
Plaintiff,
vs.
WILLIAM A. STEVENS,
Defendant

DOB: 4/6/57
DOV: 4/26/85
OFF: Assault IV

Case No. 4FA-S85-1119 Cr.

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Public Defender Agency

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a).

DATED at Fairbanks, Alaska, this 30 day of May, 1985.

NORMAN C. GORSUCH
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: [signature]
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 31st day of May 1985, a copy of the foregoing was mailed to the attorneys of record.

[signature]

Subscribed and sworn to before me the date last written.

[signature]
Notary Public in and for the State of Alaska

I certify that on 6-7-85 copies of this form were sent to DA, PD, CLERK [illegible]

District Attorney
Fourth Judicial District, State of Alaska
604 Barnette St., Room 247
Fairbanks, Alaska 99701
Phone: 452-1565

In the District Court of the State of Alaska

Judicial District, FAIRBANKS Alaska

STATE OF ALASKA FOURTH DISTRICT
FILED

BY ____ DEPUTY CLERK

State of Alaska

Plaintiff

vs

WILLIAM A. STEVENS
DOB 4/6/57
ADD Aurora Motel #7, Fbx.
P/E Shakey's - River Mall, Fbx.

Defendant

MISDEMEANOR
Criminal Complaint

4FA-S85-1119 Cr.

ASSAULT IV
AS 11.41.230(a)(1)

Complainant, Gregory W. Tanner, Alaska State Trooper,

personally appearing before me and being duly sworn, states that on or about the 26th day of April, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, William A. Stevens did unlawfully and recklessly cause physical injury to Ulla Stevens, by striking her in the head.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based upon the observations and investigation of the complainant who was dispatched to the Aurora Motel apartment #7 in reference to a domestic disturbance at that location. Further that the complainant found the defendant outside of the apartment and found Ulla Stevens, the defendant's wife, inside of apartment #7. Further that Ulla Stevens advised the complainant that the defendant had struck her in the head with what she believed to be a blunt instrument of some kind. This complaint is further based on the observations of the complainant who observed a small laceration on the forehead of Ulla Stevens and a bruised bump on the left side of Ulla Stevens's forehead. Further on the complainant's observations of blood on the face of Ulla Stevens and also on the floor of the bathroom inside the residence.

D.A.

Gregory W Tanner
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 26th day of April, 19 85

(SEAL)

Patricia E. Beacken
notary ~~DISTRICT JUDGE~~ MCE 12/30/86

My Commission expires: ____

APPROVED: ____
DATE

____
DISTRICT ATTORNEY

APPROVED: ____
DATE

EXONERATED
Per [illegible]
On 6-3-85
[illegible]
Deputy Clerk

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA,
Plaintiff,
vs.
NEAL CHARLIE, JR.
Defendant

DOB: 10.20.63
DOV: 6.23.85
OFF: Assault in the Fourth Degree

COUNT I: Assault in the Fourth Degree

Case No. 4FA-S85-1795

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Neal Charlie, Jr.
General Delivery
Minto, AK 99758

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED at Fairbanks, Alaska, this 9th day of July, 1985.

NORMAN C. GORSUCH
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: K. Welch
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 9th day of July, 1985 a copy of the foregoing was mailed to the attorneys of record. (n/a - defendant)

Morgan A Jackson

Subscribed and sworn to before me the date last written.

Notary Public in and for the State of Alaska.
My Commission Expires: 7-28-86

I certify that on 7-11-85 copies of this form were sent to:
CLERK: K. J.

Copies sent to:
JS
DDD
FCC ✓
DA ✓
CA
BA
FFD ✓
Defn.
Attorney PD
Misc. Newsm

Ref: FA15-1540-85

Fourth Judicial District, State of Alaska
604 Barnette St., Room 247
Fairbanks, Alaska 99701
Phone: 452-1565

In the District Court of the State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska

FILED
ST... FOURTH ... JUN 10
CLERK
BY: DEPUTY CLERK

State of Alaska — Plaintiff

vs

NEAL CHARLIE, JR.
DOB: 10/20/63
SSN: 574-48-6506
ADD: Minto, Alaska — Defendant

MISDEMEANOR

Criminal Complaint

No. 4FA-S85-1795 Cr.

AS 11.41.230(3)
ASSAULT IN THE FOURTH DEGREE

Complainant, Larry Charlie, Village Public Safety Officer,

personally appearing before me and being duly sworn, states that on or about the 23rd day of June, 19 85, at or near Minto, in the Fourth Judicial District, State of Alaska, Neal Charlie, Jr., did unlawfully and recklessly assault Vivian Charlie by shoving her and putting her in fear for her safety and the safety of her 1 year old child.

All of which is contrary to and in violation of AS 11.41.230(3) and against the peace and dignity of the State of Alaska.

This complaint is based on the investigation and observations of the complaint who responded to Vivian Charlie's residence in Minto and found the defendant in the house in an intoxicated condition. On the statement of Vivian Charlie that the defendant had shoved her and broke a window. Also on the statement of Ray Allen Monroe that the defendant entered the house, shoved Vivian and punched out the window.

Larry Charlie
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 23rd day of JUNE, 1985

(SEAL)

Kenneth D. Cook
DISTRICT JUDGE
NOTARY
8-2-86

03 034

71621

FILED IN OPEN COURT

BY Woolley
Deputy Clerk

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA)
)
Plaintiff,)
)
vs.)
)
ROBERT ANTOINE,) DOB: 10/12/56
) DOV: 08/04/85
Defendant.) OFF: ASSAULT IV
)

No. 4FA-S85-2253 Cr.

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Paul Canarsky
Assistant Public Defender
912 Barnette St., Suite 1
Fairbanks, AK 99701

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED, at Fairbanks, Alaska, this 30 day of Sept, 1985.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By Mara J. Mock
for Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the ____ day of September, 1985 a copy of the foregoing was mailed to the attorneys of record.

_____

Subscribed and sworn to before me the date last written.

_____
Notary Public in and for the State of Alaska.
My Commission Expires: _____

Re: FA15-1961-85

Copies sent to:
JS ____
DOC ____
FCC ✓
DA ✓
CA ____
BA ____
PPD ✓
Dept. Public Safety ____
Attorney ____
Misc. ____

DISTRICT ATTORNEY, STATE OF ALASKA
604 BARNETTE STREET, ROOM 247
STATE COURT AND OFFICE BUILDING
FAIRBANKS, ALASKA 99701
(907) 452-1565

FOURTH Judicial District, FAIRBANKS, Alaska

D.A.

State of Alaska

vs

Plaintiff

ROBERT ANTOINE

Defendant

MISDEMEANOR
Criminal Complaint
No. 4FA-85-2253 Cr.
AS 11.41.230(a)(1)
ASSAULT IN THE FOURTH DEGREE

Complainant, JAMI REIDL, A Private Citizen

personally appearing before me and being duly sworn, states that on or about the 4th day of August, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, ROBERT ANTOINE did unlawfully and recklessly cause physical injury to JAMI REIDL by striking her.

All of which is a Class A Misdemeanor offense, being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based on the statement of the complainant who states that the Defendant came to 2010 Lisga, after threatening the complainant over the phone that he was going to come over and slap her. The Defendant did grab the complainant and slapped her in the face. This complaint is also based on statements of witnesses, NICHOLE ANTOINE and MARK VARSHO, that the Defendant came to 2010 Lisga and grabbed the complainant and slapped her in the face. This complaint is also based on the observations of OFFICER A.L. HORNBECK that the complainant has bruising to the right arm, and redness to the left side of her face.

DOB: 10-12-56
SSN: 361-48-7458
POE: Goodtimers Club/Ft Wainwright PX
OLN: 5363981
OCA: 85-16908

Jami M Erickson Reidl
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 4th day of Aug, 19 85

(SEAL)
MY COMMISSION EXPIRES: 1-3-86

(NOTARY) XXXXXXXXXXXXXX

03 034 71623

DATE 1/24/86
BY Linda Lacy
Deputy Clerk

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS, ALASKA

(X) STATE OF ALASKA,

( ) CITY OF FAIRBANKS,

Plaintiff,

vs.

Rudolph Moeder

Defendant.

DOV 10-7-85
DOB 5-20-43

CASE NO. 4FA-85-2177

NOTICE OF DISMISSAL

Assault IV

PLEASE TAKE NOTICE that the complaint in the above-entitled case is hereby dismissed pursuant to rule 43 (a), RULE OF CRIMINAL PROCEDURE.

DATED: 1/7/86

Rudolph
(DISTRICT ATTORNEY)
~~(CITY ATTORNEY)~~

I certify that on 1-10-86
copies of this ~~form~~ ~~were~~ sent to:
CLERK: D. Davidson

Misc.
Attorney
Dept. Public Safety
FPD
BA
CA
DA
FCC
DOC
JS

Copies sent to:

JS
DOC
FCC ✓
DA ✓
CA
BA
FPD ✓
Dept. Public Safety ✓
Attorney
Misc.

In the District Court of the State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska

DA

State of Alaska

Plaintiff

vs

RUDOLPH F. MOEDER
DOB: 5-20-43
ssn: 514-42-7265
OLN 6240706
1559 Eielson Street

Defendant

MISDEMEANOR
Criminal Complaint

No. 4FA-S85-2977 Cr.

ASSAULT IN THE FOURTH DEGREE
A.S. 11.41.230(a)(1)

Complainant, Officer Wagner, Fairbanks Police Department

personally appearing before me and being duly sworn, states that on or about the 7th day of October, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, Rudolph F. Moeder did unlawfully and recklessly cause physical injury to Sarah R. Alexander by striking her.

All of which is a class A misdemeanor offense, being contrary to and in violation of A.S. 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

This complaint is based on the statement of Sarah Alexander to the complainant that the defendant became upset with her after she had returned home without the money she owed his nephew, Roger Morrow, and that he called her a "liar" and "fucking bitch." Further that the victim then attempted to leave the residence and was grabbed by the defendant who slapped her across the face with an open hand, causing a bruise to her upper-left cheek. The victim struggled free and ran outside the residence with the defendant chasing her and as she reached her vehicle and got in and was about to shut the car door, the defendant reached in and grabbed the victim by the throat causing bruises and scratches, then pulled her from the vehicle by the throat and drug her back into the residence and into the bedroom and continued to assault her by pushing her onto the bed and slapping her, at which time the defendant stated, "If anything happened to him or one of his you will not need a hospital the next time, but six feet of dirt." Further that as the defendant started to hit her with his fist, his son Byron Moeder grabbed his father's arm and told the victim to run before she got hurt bad. This is also based on the observations of Officer Wagner that the victim had bruises on her face and neck and scratches on her chin and neck.

AN ARREST WARRANT IS ORDERED

Daniel J. Wagner
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 8th day of OCTOBER, 19 85

(SEAL)

DISTRICT JUDGE

03 034

71629

...rict, FAIRBANKS Alaska

State of Alaska

Plaintiff

ENNO H. CLEVELAND
OB: 04/24/50
K/OL: #0230919
DD: 1097 Clear Creek Blvd.
/E: Sohio, Prudhoe Bay

Defendant

MISDEMEANOR
Criminal Complaint
No. 4FA-S85-2168 Cr.

AS 11.41.230(a)(3)
ASSAULT IN THE FOURTH DEGREE

Complainant, Jeff L. Slamin, Alaska State Trooper,

rsonally appearing before me and being duly sworn, states that on or about the 23rd day of June, 19 85, at or near Fairbanks, in the Fourth Judicial trict, State of Alaska, Benno H. Cleveland, did unlawfully and recklessly, by words or onduct, cause fear of imminent physical injury to Terry Rees, by shoving her and oking her.

ll of which is a Class A Misdemeanor offense being contrary to and in violation AS 11.41.230(a)(3) and against the peace and dignity of the State of Alaska.

his complaint is based upon the statement of Terry L. Rees that an argument erupted tween the defendant and herself at which time the defendant shoved her into the ll and furniture, and at one time put his hands on her throat and did not let until she began coughing.

Cleveland, Benno
DOB: 4-25-50
4FA-C79-544 A & B on a Police Officer
4FA-79-620.. OMVI
4FA-S82-1237 DWI
4FA-S85-879 Ct.I. DWI
Ct.II. Refusal B/A

Jeff L. Slamin #161 AST
(SIGNATURE OF COMPLAINANT)

Sworn to and subscribed before me this 26TH day of JULY, 1985

(SEAL)

Earl E. Gillette
DISTRICT JUDGE

71633

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA)
)
Plaintiff,)
)
vs.)
)
BENNO H. CLEVELAND,) DOB: 04/24/50
) DOV: 06/23/85
Defendant.) OFF: ASSAULT IN THE FOURTH DEGREE

No. 4FA-S85-2168 Cr.

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Benno H. Cleveland
24 Harriet St.
Fairbanks, AK 99701

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED, at Fairbanks, Alaska, this 9th day of August, 1985.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: KTWelch
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 9 day of August, 1985 a copy of the foregoing was mailed to the attorneys of record.

Morgan S. Jackson

Subscribed and sworn to before me the date last written.

Richard D. Rockwood
Notary Public in and for the State of Alaska.
My Commission Expires: 4-23-86

Re: FA15-1606-85

DISTRICT ATTORNEY, STATE OF ALASKA
604 BARNETTE STREET, ROOM 247
STATE COURT AND OFFICE BUILDING
FAIRBANKS, ALASKA 99701
(907) 452-1565

HFA-585-611

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

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA, Appellant, v. BRUCE NELLES, Appellee.	File No. A-995 O P I N I O N [No. 578 - February 7, 1986]

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

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

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

BRYNER, Chief Judge.

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

BACKGROUND

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

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

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

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

Judge Crutchfield further questioned Henry:

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

Henry: I understand.

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

Henry: (inaudible)

Court: Okay.

. . .

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

Henry: No.

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

DISCUSSION

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

---

[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

(footnote continued)

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

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

(footnote 1 continued)

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

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

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

(footnote continued)

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

> The policy underlying compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849 as follows:
>
> > There are many cases, which are technically public offenses, but which are in reality rather of a private than a public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise . . . ; a policy which has been carried by the courts, still further than the terms of the statute.

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

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

> Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed
>
> (1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;

(footnote 2 continued)

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

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

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

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

---

[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.

(footnote continued)

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

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

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(footnote 3 continued)

> 1520; Saxon v. Hill, 6 Oreg., 383.
>
> Sec. 255. Order a bar to another prosecution. That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.
>
> Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.
>
> Sec. 256. No crime can be compromised, except. That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.
>
> Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

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

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

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

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

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

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[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 resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal. Penal Code § 273.5 (West 1970) (adopted 1977).

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

Judge Crutchfield's dismissal of the case is AFFIRMED.

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

In the District Court of the State of Alaska

FOURTH Judicial District, FAIRBANKS Alaska

State of Alaska

Plaintiff

vs

NAME: Gordon C. Reed
DOB: 12/30/50
SSN: 574-22-8042

Defendant

MISDEMEANOR

Criminal Complaint

4FA-S85-2292

No. _____ Cr.

AS 11.41.230(a)(3)
ASSAULT IN THE FOURTH DEGREE

Complainant, S. R. Koziczkowski, Alaska State Trooper,

personally appearing before me and being duly sworn, states that on or about the 28th day of July, 19 85, at or near Fairbanks, in the Fourth Judicial District, State of Alaska, Gordon C. Reed, did unlawfully and intentionally place Vivian D. Reed in fear of imminent serious physical injury by striking her and pushing her down and stating that they were going to duke it out.

All of which is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(3) and against the peace and dignity of the State of Alaska.

This complaint is based upon the statement of Vivian D. Reed that Gordon C. Reed told her they were going to duke it out; on her statement that he struck her several times and pushed her down; upon the statement of Rachel L. Nowlin that she heard the altercation; and upon the observation of the complainant which revealed Vivian D. Reed had two scrape marks on her right forearm which appeared to have been freshly made.

REED, Gordon
DOB: 12/30/50

73-4074 A&B
74-1547 A&B
F74-6312 OMVI [redacted]
74-6242 Possession Of Hallucinogenic, Depressant Drugs

4FA-78-2751 OMVI
4FA-S83-4082 Ct. I DWI
Ct. II Refuse BA Ct. III Resisting Arrest
Ct II Reckless Endangerment

REED, GORDON COLEMAN

69-153 TR
69-237 MIP
F69-787 Basic Speed (order-of-closure)
69-3087 MIP
69-3236 Petty Larceny
F70-3177 Aid, Abet, Assist or Encourage
Curfew Violation
72-1669 Racing
73-6116 Improper turn

S. R. Koziczkowski
SIGNATURE OF COMPLAINANT

Sworn to and subscribed before me this 29 day of July, 19 85

DISTRICT JUDGE
NOTARY PUBLIC

REED, Gordon C.
12-30-50
4FA-S85-186 Assault IV

45 days / 30 susp
No alcohol use
1 A mtg per wk for 6 mos

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

STATE OF ALASKA)
)
Plaintiff,)
)
vs.)
)
GORDON REED) DOB: 12/30/50
) DOV: 07/28/85
Defendant.) OFF: ASSAULT IN THE FOURTH DEGREE
)

No. 4FA-S85-2292 Cr.

NOTICE OF DISMISSAL

TO: District Court
Fourth Judicial District
604 Barnette Street
Fairbanks, AK 99701

Gordon C. Reed
P.O. Box 58198
Fairbanks, AK 99711

PLEASE TAKE NOTICE that the above-entitled action is hereby dismissed pursuant to Criminal Rule 43(a) in the interest of justice.

DATED, at Fairbanks, Alaska, this 9th day of August, 1985.

HAROLD M. BROWN
ATTORNEY GENERAL

HARRY L. DAVIS
DISTRICT ATTORNEY

By: KT Welch
Karla Taylor-Welch
Assistant District Attorney

AFFIDAVIT OF MAILING

The undersigned hereby certifies that on the 13 day of August, 1985 a copy of the foregoing was mailed to the attorneys of record.

Morgan S. Taylor

Subscribed and sworn to before me the date last written.

Frank D. Rockwood
Notary Public in and for the State of Alaska.
My Commission Expires: 9-28-86

Re: FA15-1932-85

DISTRICT ATTORNEY, STATE OF ALASKA
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