

S B

66

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 3, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 5/7/89

The LABOR & COMMERCE Committee considered: CSSB 66(Rls)

CS FOR SENATE BILL NO. 66 (Rules)

[IMMUNITY/TREATMENT OF INTOXICATED PERSONS]

"An Act relating to immunity for treatment of intoxicated or incapacitated persons; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with HCS CSSB 66 (L+C) [] the same title
[] a new title
- [] have attached amendment(s)
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

McAuliffe

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Mark Boyer</u>		X	
<u>Col. J. ...</u>		X	
<u>Tommy ...</u>		X	
<u>Thomas A. ...</u>		X	
<u>David ...</u>		X	
<u>P. G. ...</u>		X	

David ...

Chairman's signature

NEGLIGENCE

and are never understood to signify positive will or intention, unless when joined with other words which show that they are to receive an artificial or unusual, if not an unnatural, interpretation. *Lexington v. Lewis*, 10 Bush, Ky., 877.

"Negligence" is not synonymous with "incompetency," since the competent may be negligent. *Alabama City, G. & A. Ry. Co. v. Bessiere*, 190 Ala. 39, 66 So. 805, 806; *Barclay v. Wetmore & Morse Granite Co.*, 92 Vt. 195, 102 A. 631, 495.

See Care.

Actionable Negligence. See Actionable Negligence.

Collateral Negligence. In the law relating to the responsibility of an employer or principal for the negligent acts or omissions of his employee, the term "collateral" negligence is sometimes used to describe negligence attributable to a contractor employed by the principal and for which the latter is not responsible, though he would be responsible for the same thing if done by his servant. *Weber v. Railway Co.*, 20 App.Div. 292, 47 N.Y.S. 11.

Comparative Negligence. See Comparative Negligence.

Concurrent Negligence. Arises where the injury is approximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. *Carr v. St. Louis Auto Supply Co.*, 293 Mo. 562, 239 S.W. 827, 828.

Contributory Negligence. The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. *Honaker v. Crutchfield*, 247 Ky. 495, 57 S.W.2d 502.

Any want of ordinary care on the part of the person injured, (or on the part of another whose negligence is imputable to him,) which combined and concurred with the defendant's negligence, and contributed to the injury as a proximate cause thereof, and as an element without which the injury would not have occurred. *Railroad Co. v. Young*, 153 Ind. 163, 54 N.E. 791; *Barton v. Railroad Co.*, 52 Mo. 253, 14 Am.Rep. 418; *McLaughlin v. Electric Light Co.*, 100 Ky. 173, 37 S.W. 851, 34 L.R.A. 812; 25 C.J. § Damages; *Townsend v. Missouri Pac. R. Co.*, 163 La. 172, 113 So. 130, 132, 54 A.L.R. 538.

The negligent act of plaintiff which, concurring and cooperating with negligent act of defendant, becomes real, efficient, and proximate cause of injury, or cause without which the injury would not have occurred. *Elder v. Plaza Ry.*, 194 N.C. 617, 140 S.E. 298, 299; *James v. Delaware, L. & W. R. Co.*, 92 N.J.L. 149, 104 A. 328, 333.

"Assumption of risk" and "contributory negligence" are not synonymous. *Chicago, R. I. & P. R. Co. v. Rogers*, 60 O.R. 249, 159 P. 1132, 1136.

Concurrent Contributory Negligence. Knowledge of specific danger and negligent failure to avoid it. *Sprinkle v. St. Louis & S. F. R. Co.*, 215 Ala. 191, 110 So. 137, 140.

Marital Contributory Negligence. Exists when injury would not have happened but for negligence of both parties. *Alexander v. Missouri, K. & T. R. Co. of Texas*, Tex.Civ.App., 287 S.W. 153, 155.

Criminal Negligence. Criminal negligence which will render killing a person manslaughter is the omission on the part of the person to do some act which an ordinarily careful and prudent man would do under like circumstances, or the doing of some act which an ordinarily careful, prudent man under like circumstances would not do by reason of which another person is endangered in life or

bodily safety; the word "ordinary" being synonymous with "reasonable" in this connection. *State v. Coulter*, Mo.Sup., 204 S.W. 5.

Negligence of such a character, or occurring under such circumstances, as to be punishable as a crime by statute; or (at common law) such a flagrant and reckless disregard of the safety of others, or wilful indifference to the injury liable to follow, as to convert an act otherwise lawful into a crime when it results in personal injury or death. 4 Bl. Comm. 192, note; *Cook v. Railroad Co.*, 72 Ga. 48; *Rankin v. Transportation Co.*, 73 Ga. 229, 54 Am.Rep. 874; *Railroad Co. v. Chollette*, 33 Neb. 143, 49 N.W. 1114.

Culpable Negligence. Failure to exercise that degree of care rendered appropriate by the particular circumstances, and which a man of ordinary prudence in the same situation and with equal experience would not have omitted. *Carter v. Lumbar Co.*, 129 N.C. 203, 39 S.E. 828; *Woodman v. Nottingham*, 49 N.H. 387, 6 Am.Rep. 526; *Kimball v. Palmer*, C.C.A.Va., 25 C.C.A. 394, 80 F. 240.

Degrees of Negligence. There are degrees of care, and failure to exercise proper degree of care is "negligence," but there are no degrees of negligence. *Murray v. De Luxe Motor Stages of Illinois*, Mo.App., 133 S.W.2d 1074, 1078.

Classification of "negligence" as "gross," "ordinary," and "slight" indicates only that under special circumstances great care and caution, or ordinary care, or slight care are required, but failure to exercise care demanded is "negligence." 38 Del.Laws, c. 26. *Gallegher v. Davis*, 7 W.W.Harr. 380, 183 A. 620.

Gross Negligence. The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another; such a gross want of care and regard for the rights of others as to justify the presumption of willfulness and wantonness. *Seelig v. First Nat. Bank*, D.C.Ill., 20 F.Supp. 61, 68.

The failure to exercise slight care. *Jones v. Atchison, T. & S. F. Ry. Co.*, 98 Kan. 133, 157 P. 399, 400; *Burton Const. Co. v. Metcalfe*, 162 Ky. 366, 177 S.W. 698, 701.

The want of slight diligence. The want of that care which every man of common sense, how inattentive soever, takes of his own property. The omission of that care which even inattentive and thoughtless men never fail to take of their own property. *Litchfield v. White*, 7 N.Y. 442, 57 Am.Dec. 534; *Seybel v. National Currency Bank*, 54 N.Y. 299, 13 Am.Rep. 583; *Briggs v. Spaulding*, 141 U. S. 132, 11 S.Ct. 925, 35 L.Ed. 662; The want of ordinary diligence and care which usually prudent man takes of his own property of like description. *Dalton v. Hamilton Hotel Operating Co.*, 242 N.Y. 481, 152 N.E. 268, 270. In the law of torts (and especially with reference to personal injury cases), the term means such negligence as evidences a reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or that entire want of care which would raise the presumption of a conscious indifference to the rights of others which is equivalent to an intentional violation of them. *McDonald v. Railroad Co.*, Tex.Civ.App., 21 S.W. 775; *Railroad Co. v. Bode-mer*, 139 Ill. 596, 29 N.E. 692, 32 Am.St.Rep. 218; *Colt v. Western Union Tel. Co.*, 130 Cal. 657, 63 P. 83, 53 L.R.A. 678; *Bremer v. Lake Erie & W. R. Co.*, 318 Ill. 11, 148 N. E. 862, 866, 41 A.L.R. 1345.

Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. *Burke v. Cook*, 246 Mass. 513, 141 N.E. 585, 536. Negligence bordering on recklessness. *People v. Adams*, 289 Ill. 339, 124 N.E. 575, 577.

"Gross negligence" is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong. *Young v. City of Worcester*, 253 Mass. 432.

RECEIVED

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SSSB 66 (R) 1139
PUBLISH DATE: 2/3/89

FISCAL NOTE

SENATOR RICK HALFORD

REQUEST:

Revision Date: _____
Title: "An Act relating to immunity for
treatment of intoxicated persons..."
Sponsor: Senator Halford
Requestor: Senator Halford

Agency Affected: Public Safety
BRU: Law Enforcement
Component: AST, FWP, CAP, VPSO,
FP

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
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 FUND						
FEDERAL FUNDS						
OTHER						
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)

SB 66 would prevent lawsuits against the State, Department, and its officers, employees, and agents for discretionary decisions regarding incapacitated (intoxicated) persons. Passage of this bill may eliminate future liability, and would have no fiscal impact on the Department's present budget.

Prepared by: Captain C. Roger McCoy, Special Assistant

Phone: 465-4322

Division: Office of the Commissioner

Date: 2/28/89

Approved by Commissioner: Arthur English

Date: 2-28-89

Agency: Department of Public Safety

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 10, 1989

FURTHER REFERRALS:

Date of Committee Action: 4/22/89

The JUDICIARY Committee considered:

CSSB 66(R1s)

CS FOR SENATE BILL NO. 66 (Rules)

[IMMUNITY/TREATMENT OF INTOXICATED PERSONS]

"An Act relating to immunity for treatment of intoxicated or incapacitated persons; and providing for an effective date."

RECOMMENDATIONS:

- [] be replaced with CS. SB 66 (Judiciary) [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [X] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [X] zero fiscal note(s) 2/3/89 Pub Safety
- [] zero fn/analysis _____

SIGNING DO PASS:

Mr. Chumbley

Terry Masten

Mike Miller

Phyllis

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Mike Davis</i>		✓	
<i>Carl ...</i>		✓	
<i>...</i>		✓	

...

Mr. Chumbley

Chairman's signature

ALASKA STATE LEGISLATURE

Anchorage Office:
3111 C St., Suite 530
Anchorage, AK 99503
907-561-7616



While in Juneau:
P.O. Box V
Juneau, AK 99811
907-465-4958

Senator Rick Halford

Hayden

MEMORANDUM

To: Representative Peter Goll, Co-Chairman
Representative Max Gruenberg, Co-Chairman
House Judiciary Committee

From: Senator Rick Halford *Rick*

Date: March 19, 1989

I would appreciate a hearing on Senate Bill 66 at your earliest convenience.

This bill was introduced after concerns were shared with me by the Anchorage Chamber of Commerce's Crime Commission and the Alaska Municipal League. The concerns came about after an Alaska Supreme Court ruling determined that Municipalities have an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to appropriate treatment facilities.

It is my believe that when the Legislature first enacted the Uniform Alcoholism and Intoxication Treatment Act in 1972, they intended to provide immunity to municipalities and the State as well as peace officers and emergency service personnel. They did this by explicitly stating that peace officers or members of the emergency service patrol who comply with the section are acting in the course of their official duty and are not criminally or civilly liable for it. The original bill expanded the current subsection (g) of AS 47.37.170, to clarify that immunity was to be granted to municipalities and the State as well.

Senate Bill 66 has undergone a major metamorphosis as it has evolved through the committee process. The current form of the bill amends AS 47.37.170 (g)

to allow individuals to sue for damages caused by gross negligence or intentional misconduct in relation to the decision of whether to take or not to take an individual into protective custody, or to release them from protective custody, if they are intoxicated or incapacitated.

I encourage you to hear this bill in your committee as soon as possible.

North Slope Borough School District



March 23, 1989

RECEIVED MAR 27 1989

House Bill file

Senator Al Adams
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Al:

The Board of Education for the North Slope Borough School District supports the passage of ~~Senate Bill 194~~, related to judicial review of school boards' non-retention or dismissal of teachers. For a school board to not retain or dismiss teachers and other staff is a serious matter. Any decision made regarding the employment or dismissal of staff is done with as much factual information as possible, following Board Policy and existing State and Federal laws. Therefore, we agree with the contents of this Legislation that the Superior Court should not reverse the School Board's decision to dismiss teachers.

We urge the passage of this bill.

Sincerely,

Leona Okakok
President, Board of Education

BL/ma

cc: Representative Eileen MacLean
Representative Johnny Ellis,
Chairman, House HESS Committee
Representative Peter Goll,
Chairman, House Judiciary Committee
Shirley Holloway, Superintendent
Ashley Reed, Lobbyist, NSBSD

TANANA CHIEFS CONFERENCE, INC.
Board of Directors
Resolution No. 89-1

HB 32

HB 88

SB 66

SUPPORTING NATIVE ELDERS IN THEIR FIGHT AGAINST ALCOHOL AND DRUGS

- WHEREAS, there are many problems which threaten our survival as a people, but none have such a devastating impact on our villages and families as does the problem of alcohol and drug abuse
- WHEREAS, the use of alcohol and drugs offers nothing to our villages but broken spirits, broken families, pain, suffering and death; and
- WHEREAS, the use of alcohol and drugs never has been and never will be of any value to our Native culture and Native people; and
- WHEREAS, since its introduction from other cultures, Native elders have warned their villages that alcohol and drugs are the greatest threat to health, life and cultural values; and
- WHEREAS, as the keepers and teachers of Native culture, the elders today speak stronger than ever against alcohol and drugs and have committed themselves to bring their message against alcohol and drugs to their villages; and

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors request that Governor Steve Cowper and every Alaska State legislature and member of Alaska's delegation in Congress support the efforts of the Interior villages in their fight against alcohol and drug abuse; and

BE IT FURTHER RESOLVED that the Tanana Chiefs Conference Board of Directors direct TCC to pursue state, federal, local, and private sector funding to institute comprehensive region wide alcohol and drug prevention programs utilizing elders, concerned village volunteers, village councils and youth in each village and that these concerned village teams be afforded training and ongoing support; and

BE IT FURTHER RESOLVED that the Village Councils and village courts pass ordinances against alcohol and drugs and strictly enforce these ordinances through their village courts; and

BE IT FURTHER RESOLVED to protect our children and families, Village Councils and courts strongly consider the use of traditional Native justice mechanisms and banish bootleggers and drug pushers from our village; and

BE IT FURTHER RESOLVED each school in each village includes a comprehensive drug prevention to their curriculum and actively implements preventive education at every grade level; and

BE IT FURTHER RESOLVED as an example to our children and to each other alcohol to be served at any TCC function from this day forward; and

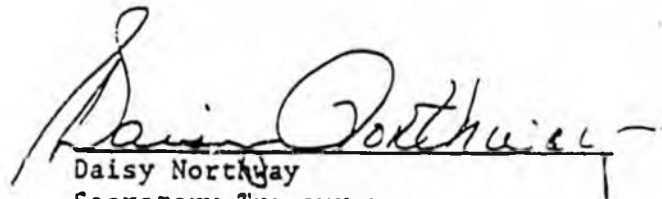
BE IT FURTHER RESOLVED any TCC employee determined to have a drug or problem be given the option to receive treatment or be ately terminated from employment; and

BE IT FURTHER RESOLVED each Native person of strong body and mind lend hand to help their elders and village leaders in this most serious task; and

BE IT FURTHER RESOLVED for the spiritual well being of our children families and for the survival and strengthening of our will from this day forward, let it be known that the elders of Athabascan Nation have declared war on all those who associated with alcohol and drug abuse.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1989 at Fairbanks, Alaska and a quorum was duly established.



Daisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc

Submitted by: Executive Board

IMMUNITY FROM SUIT BY INTOXICATED PERSONS

WHEREAS, a legislative proposal has been introduced to take away the right of people to sue the state, municipalities, police, or other emergency service people for performing or failure to perform duties in dealing with intoxicated or incapacitated persons; and

WHEREAS, the Tanana Chiefs Conference Board of Directors are concerned that if the police are not liable in any way for their performance of duties with intoxicated or incapacitated persons that the public would be put at undue risk; and

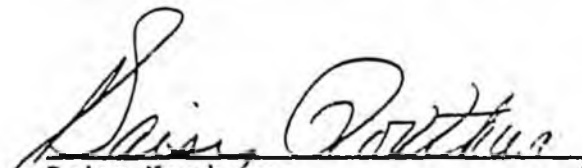
WHEREAS, community service patrols can be operated in a very task specific manner and at a cost effective rate in dealing with incapacitated persons but are not currently funded to patrol at an adequate level.

NOW THEREFORE BE IT RESOLVED that the Tanana Chiefs Conference Board of Directors opposes removing liability from the state, municipalities, police, or other emergency service people for performing or failure to perform duties in dealing with intoxicated or incapacitated persons; and

BE IT FURTHER RESOLVED that the Tanana Chiefs Conference Board of Directors support increased funding of Community Service Patrols and other services for chronic public inebriates.

C E R T I F I C A T I O N

I hereby certify that this resolution was duly passed by the Tanana Chiefs Conference, Inc. Board of Directors on March 16, 1989 at Fairbanks, Alaska and a quorum was duly established.



Daisy Northway
Secretary-Treasurer
Tanana Chiefs Conference, Inc

Submitted by: Alcohol Workshop

ALASKA STATE LEGISLATURE

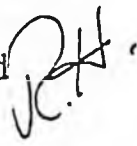
Anchorage Office:
3111 C St., Suite 530
Anchorage, AK 99503
907-561-7616

While in Juneau:
P.O. Box V
Juneau, AK 99811
907-465-4958

Senator Rick Halford

MEMORANDUM

To: Representative Max Gruenberg, Co-Chairman
Representative Peter Goll, Co-Chairman
House Judiciary Committee

From: Senator Rick Halford 

Date: April 19, 1989

Senate Bill 66, dealing with the question of immunity for treatment of incapacitated individuals is currently in the House Judiciary Committee. I am interested in having the bill move from committee at your earliest possible convenience.


Thank you for your attention to this matter.

Alaska MUNICIPAL League

TELEPHONE
(907) 586-1125

217 SECOND ST., SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
Members of the House Judiciary Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 6, 1989

SUBJECT: SB 66 - Immunity for Treatment of Incapacitated Persons

The Alaska Municipal League supports legislation which removes an affirmative duty upon municipalities or their agents to take persons incapacitated by alcohol into protective custody under AS 47.37.170(b). Therefore, AML supports the SB 66 and HB 116, as originally introduced and which provided for complete immunity. AML believes complete immunity is what the legislature originally intended when the statute was adopted and is necessary to fulfill the legislative intent and relieve the costly burden of the liability implied by the Supreme Courts's ruling. House CS for CS Senate Bill 66 (L&C) creates a "gross negligence" standard of liability under AS 47.37.170 which is a lower standard than "intentional misconduct" adopted in the Senate version, CS for SB 66 (Rules). The "gross negligence" standard is not necessary to insure that the intent of AS 47.37 is carried out and will not adequately protect municipalities, especially from the costs to defend against frivolous court cases and higher insurance costs.

For the second year, relief from the implied liability created by the Supreme Court ruling in Busby v Municipality of Anchorage is a priority of the AML and the 126 municipalities the AML represents directly. The AML believes the Court misinterpreted the intent of the Legislature in AS 47.37.170(b) and the resulting implications of liability have created an unnecessary and unintentional burden on our law enforcement officials and our correctional facilities. SB 66, as introduced, provides legislative clarification for the courts and removes the threat of liability which is a deterrent to the protection of all our citizens. House CS for CS for SB 66 (L&C) does not go far enough in providing protection for municipalities in carrying out a State-mandated duty.

I have attached a copy of the AML position on Busby which was contained in the AML's Municipal Platform which outlines the AML's legislative priorities for 1989 and which was provided to all legislators. I have also attached copies of letters from municipalities and the relevant AML resolutions passed by the AML membership at their annual conference in November.

House Judiciary Committee re SB 66
April 6, 1989
Page 2

Governor Cowper introduced HB 406 last year which would have provided complete immunity under AS 47.37 but unfortunately the bill did not get out of the House. Some believe that the immunity granted under AS 47.37.170(g) should be qualified or conditional by adding a legal test of "gross negligence", as is proposed in House CS for CS for SB 66 (L&C). This is inappropriate and unnecessary. No problem or complaint existed before Busby. The Supreme Court in the Busby case did not rule that the defendant was incapacitated or that the Anchorage police officer did not do their duty under AS 47.37.170 (b); only that the statute did constitute a duty. Our law enforcement officials are professionals and understand and carry out their duties under AS 47.37. Creating a civil liability for carrying out this duty may have the opposite effect of deterring the effective enforcement of AS 47.37 or the best protection of the public. In addition, such liability causes increased insurance costs and may reduce the availability of the insurance. Plus, the cost of defense for invalid claims can be significant and non-recoverable.

The AML supported SB 66, as introduced, and again asks that the Committee consider language providing for complete immunity. AML urges the Committee to consider passing the bill out as originally introduced and, if not, with "intentional misconduct" language as passed by the Senate. The AML urges the Legislature to resolve the issue this year.

Attachments

cc: Senator Halford
Representative MacLean

Removal of Municipal Liability Imposed by Busby Decision

The Alaska Municipal League urges the Legislature to pass legislation reversing the implied liability of municipalities caused by the Busby decision regarding taking incapacitated persons into protective custody.

Background

The decision of the Alaska Supreme Court in Busby v. Municipality of Anchorage, which interpreted the intent of the Alaska Legislature in enacting AS 47.37.170(b), judicially created a duty to take incapacitated persons into custody that the Legislature did not intend to impose upon local communities.

The purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in local communities. However, to change that ability of local communities to help those in need into an affirmative duty to do so imposes on local communities obligations they are neither equipped nor fairly required to meet. The League supports a wide variety of measures to deal with the complicated issues of alcohol/drug abuse in Alaska. Nonetheless, the creation by the courts of a governmental obligation to take incapacitated persons into custody that took place without the discussion and study of the impacts of that obligation that would occur during the normal legislative process was not a good or fair way to address the problem.

The effect of this court decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facility. The result has been great expense to the municipality or the State and an increased workload for peace officers, which comes at the expense of other duties, including investigation of violations of alcohol control laws.

Therefore, the League supports amending AS 47.37.170(b) by adding to it the following declaration: "This section shall not impose any affirmative duty upon municipalities or their agents to take persons incapacitated by alcohol into protective custody."

Resolution of the Alaska Municipal League

Resolution No. 89-7

**A RESOLUTION URGING THE REVERSAL OF THE IMPLIED
LIABILITY OF MUNICIPALITIES REGARDING
TAKING INCAPACITATED PERSONS INTO PROTECTIVE CUSTODY**

WHEREAS, the purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in Alaska communities to help those in need, and

WHEREAS, the Alaska Supreme Court decision in Busby v. Municipality of Anchorage incorrectly interpreted the legislative intent behind AS 47.37.170(b) and judicially created an affirmative duty to take incapacitated persons into custody that was never intended to be imposed upon local communities, and

WHEREAS, the effect of this decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facilities, and

WHEREAS, this obligation has resulted in a great deal of expense to municipalities or the State and an increased workload for peace officers, leaving them with inadequate time for other police duties, including investigation of violations of alcohol control laws, and

WHEREAS, this decision to burden local governments with an obligation that they are neither equipped nor fairly required to meet was arrived at judicially, without any communication with or consideration for the communities involved and the impact such an obligation would have;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 16th Alaska Legislature to enact legislation which clarifies the municipalities' Good Samaritan role in assisting incapacitated individuals by adding to AS 47.37.170(b) the simple declaration:

Resolution of the Alaska Municipal League

Resolution No. 89-8

A RESOLUTION SEEKING ALTERATIONS OF STATE STATUTES
TO ALLOW MORE LOCAL AUTONOMY IN DEALING WITH
THE PUBLIC INEBRIATE PROBLEM

WHEREAS, Alaska Statute 47.37.170(b) requires that a person appearing to be incapacitated by alcohol in a public place be taken into protective custody by a peace officer, and


WHEREAS, little latitude is available to local governments under this statute to deal with the problem, and

WHEREAS, AS 47 places local jurisdictions in undue risk of litigation, and

WHEREAS, compliance with AS 47 jeopardizes municipal financial ability to provide health and related social services to persons experiencing alcohol related problems;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Legislature to alter AS 47.37.170 to permit greater local autonomy in dealing with public inebriates.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

Resolution of the Alaska Municipal League

Resolution No. 89-9

**A RESOLUTION URGING THE LEGISLATURE TO PROVIDE FUNDING
TO MUNICIPALITIES TO OFFSET THE COST OF COMPLYING
WITH THE PROVISIONS OF AS 47.37**

WHEREAS, alcohol abuse is purported to be the number-one health problem in the State of Alaska, and

WHEREAS, the Alaska Supreme Court has held that municipalities have an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility, if one is available, and

WHEREAS, if a treatment facility is not available, the municipality must detain incapacitated persons in a state or municipal detention facility, and

WHEREAS, failure to provide protective custody to persons incapacitated by alcohol may result in liability for damages to the intoxicated person when injury results, and

WHEREAS, this increased responsibility and liability have been imposed on municipalities at a time when there are decreasing state revenues to fund municipal jail contracts, and

WHEREAS, treatment facilities and detention facilities have no real means to enforce the collection of fees from those who are taken into protective custody, and

WHEREAS, those taken into protective custody often do not have the resources to pay for medical treatment or detention, and

WHEREAS, local governments have been forced to assume the financial burden of providing medical examination, treatment, and protective custody detention as required by AS 47.37, and

WHEREAS, once an incapacitated person is taken into protective custody, the treatment facility or detention facility assumes further liability for the safety and welfare of that person while detained, and



RECEIVED

P.O. Box 23, Craig, Alaska 99921

(907) 826-3275

FEB 28 1989

ALASKA MUNICIPAL LEAGUE

February 24, 1989

FAX to:

Senator Dick Eliason

State Capitol

Juneau, Ak 99811

Dear Dick,

You will be in a key position to make a decision on SB66 and other bills that relate to the *Busby* issue. Craig has had direct experience in defending itself against unfounded claims last year in *Nelson v. Craig* wherein the Court ruled that the claim was unfounded and that the City was entitled to recover court costs and attorney fees from the plaintiff. However, since plaintiff has no assets, the City is spending more money to perfect the claim. This suit would not have been filed had there been immunity provided for officers who were simply doing their job properly.

Please support SB66 as introduced, providing immunity for police officers. I recognize that there is a sentiment by some legislators not to trust our certified officers to perform adequately and that there is a feeling that the rights of the incapacitated persons may be jeopardized if officer's can not be sued for failing to recognize or incarcerate them when they are located. However, in a situation where individual professional judgement is required, such as the decision as to whether a person is incapacitated and in need of custody, wide latitude should be afforded the officer on the street. Municipalities need immunity from this particular liability. Without it, all discretion of the officer is removed. Our officers when encountering an incapacitated person MUST place that person in custody. They may not release them to family, they may not take them home, they must go to jail or an approved treatment facility (which most SE communities do not have). The "intentional misconduct" standard is certainly better than the "gross negligence" standard, but the fact is that without a clear immunity, small communities will be forced to defend against unfounded and expensive suits.

Your support on this issue will directly affect the price of doing business in every community you represent, and the rest in the State. I hope you can support us on this. Thanks.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Palmer", is written over the typed name.

David R. Palmer
City Administrator

cc: Rep Peter Goll
AML

From Police Organizations (see back)

REMOVAL OF MUNICIPAL LIABILITY IMPOSED BY BUSBY DECISION

The Busby decision arose from a case in Anchorage involving an inebriate who was contacted, but not taken into custody, by a police officer and who was later struck by a motor vehicle. Busby sued the municipality for not having taken him into custody. The case reached the Supreme Court, which found in Busby's favor.

The Court interpreted the intent of the legislature in enacting the Uniform Alcoholism and Intoxication Treatment Act, AS 47.37.170 (b), to create a duty for municipalities to take incapacitated persons into custody. The purpose of the statute is for municipalities to help those in need. The Court apparently interpreted this as a responsibility which imposes upon municipalities substantial obligations, including placing such persons in a treatment facility or in a state or local correctional facility.

Some communities, especially those in outlying areas with very small police departments or remote state trooper posts have no treatment or correctional facilities. They only have a holding facility, or local jail, with no professional person to provide suitable treatment.

We encourage and support legislation which would remove the liability from municipalities and their officers for acting in good faith and making a decision not to take an inebriated person into custody. With this kind of liability attached, the impact upon the municipalities and the ability for officers to make good common sense decisions about a person's liberty is great.

L. D. D.

JAN 26 1989



City and Borough of Sitka

304 LAKE STREET · SITKA, ALASKA · 99835

January 24, 1989

PUBLIC OPINION MESSAGE

The City and Borough of Sitka wishes to express its support for Senate Bill 66. This bill wisely returns the duty to aid intoxicated persons to the status of a "public duty" removing the ability of individuals to sue for an alleged failure to perform that duty. It allows public officials, normally police officers, to reasonably weigh an individual's right to freedom from restraint against that same individual's personal safety without the added distraction of concern for liability resulting from a decision which someone else might later decide was wrong.

Sent to Ct RA 1/24/89



1791-1991

CITY OF KENAI

"Oil Capital of Alaska"

210 FIDALGO KENAI, ALASKA 99811

TELEPHONE 283-7835

FAX 907-283-3014

January 23, 1989

Senator Rick Halford
Alaska State Legislation
Pouch V
Juneau, Alaska 99811

Re: Senate Bill 66

Your efforts for corrective legislation relative to the oppressive financial burden the *Busby* decision will have on municipalities and *Busby's* detrimental psychological effect on our cadre of dedicated police officers is most appreciated.

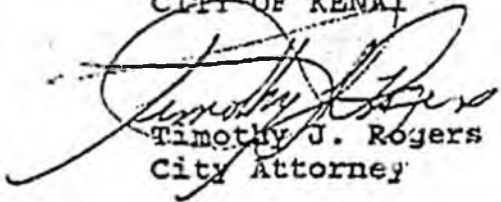
As a City Attorney, who is also a former Public Defender and criminal defense attorney, as well as a member of AML's Legislative Committee, I have attempted to study this legislation objectively and have concluded that corrective legislation such as SB 66 is not only appropriate, but much needed.

To suggest that the decision whether or not to take an incapacitated person into custody is one to which civil liability should be attached, is both ludicrous and demeaning to the police officer involved, as well as a slap in the face of every professional police department in the State of Alaska. Furthermore, such civil liability could well result in redlining of certain areas insofar as police activity is concerned so that the problem is not encountered, the liability alleviated, and resultant deaths and injuries, as a result of custodial arrests not taking place, multiplied. It can be anticipated that in the present economic climate such "unavailability" of police officers would be couched ostensibly in terms of "fiscal restraints," when in fact, the real reason would be fear of liability with its resultant financial burden for the governmental agency involved.

Senator Rick Halford
January 23, 1989
Page 3

Again, we thank you for your assistance in the forming of SB 66 as a reasonable and rational solution to a serious and expensive problem for all concerned.

CITY OF KENAI



Timothy J. Rogers
City Attorney

TJR/clf

cc: Senator Mike Szymanski
Senator Al Adams
Senator Paul E. Fischer
Representative C.E. Swackhammer
Representative Mike Navarre
Scott Burgess, AML
Mike Daugherty, AACP
Duane Udland, AACP
John McKibben, AACP
George Novaky, AACP
Glen Godfrey, AACP
Richard Cummings, AACP

Shirley Warner, APOA
Dale Florian, APOA
Steve Kalwara, APOA
John Shover, APOA, FBINAA
Greg Russell, APOA
Greg Hansen, APOA
Terry Quarton, APOA
Kevin O'Leary, FBINAA
Rick Ross, FBINAA
Turk Mayfield, FBINAA
Dan Anslinger, AACP,
FBINAA

NORTHWEST ARCTIC BOROUGH

P.O. BOX 1110
KOTZEBUE, AK 99752
(907) 442-2500 / FAX 442-2930

RECEIVED

FEB 09 1989

ALASKA MUNICIPAL LEAGUE

January 27, 1989

Steve Cowper, Governor
State of Alaska
P.O. Box A
Juneau, Alaska 99811-0101

Dear Governor Cowper:

Last week the hearing on Senate Bill 66 was cancelled although we would have testified in favor of the bill.

We support AML's position on complete immunity and feel that it would benefit all the eleven second-class communities in our district. As a member of AML we have been part of their deliberations and we feel you should consider this as a supportive issue on our behalf.

Thank you for considering our concern.

Sincerely,


Chuck Greene, Mayor

cc: Scott Burgess, AML
Senator Al Adams
Representative Eileen MacLean



CITY of YAKUTAT

P.O. BOX 6

YAKUTAT, ALASKA 99689

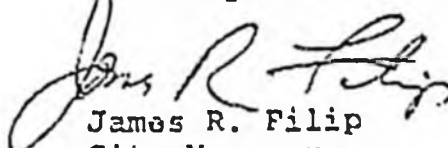
(907) 784-3323

To: Mr. Larry Scandling
FROM: City Manager J. R. Filip
SUBJECT: SB 66
DATE: January 24, 1989

The City of Yakutat supports legislative initiatives which provide complete immunity from provisions of AS47.37. In the absence of immunity, the City may be unreasonably exposed to added expense at a time when municipal revenues are already strained.

Your support of these changes is appreciated.

Sincerely,
The City of Yakutat



James R. Filip
City Manager

cc: Sen. Eliason
Rep. Goll
A.M.L.

JAN 26 1989

CITY OF KING COVE

P.O. Box 37 • King Cove, Alaska 99612 • (907) 497-2340

January 24, 1989

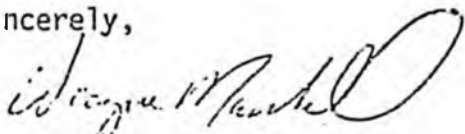
Honorable Steve Cowper
Governor, State of Alaska
P.O. Box A
Juneau, AK 99811-0101

Dear Governor Cowper:

The City of King Cove asks for your support of SB 66 which provides a municipality immunity for actions taken or not taken under AS 47.37. The potential liability a small community could incur in a "Busby" case or action would seriously impact the City's financial position. In addition, as a member of the recently created Joint Insurance Association among municipalities, the City is concerned that one or several "Busby" cases could result in the break-up of the JIA.

The City hopes that you and the legislature act to provide complete immunity to municipalities for actions taken or not taken under AS 47.37.

Sincerely,



Wayne Marshall
City Manager
City of King Cove
1007 W. 3rd Ave. Suite 201
Anchorage, AK 99501


cc: Bob Evans, Deputy Chief of Staff
Laury Roberts Scandling, Director of Constituent Relations
✓ Scott Burgess, AML

Alaska
MUNICIPAL
League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Peter Goll, Co-Chair
Representative Max Gruenberg, Co-Chair
Members of the House Judiciary Committee

FROM: Scott A. Burgess, Executive Director 

DATE: April 26, 1989

SUBJECT: SB 66 - Immunity for treatment of incapacitated persons

Relief from the implied liability under AS 47.37.170 (b) resulting from the Alaska Supreme Court 1987 ruling in Busby v. Municipality of Anchorage has been a top priority of the Alaska Municipal League for two years. The issue has been debated extensively and the AML will agree to the language in proposed House CS for CS for Senate Bill No. 66 (Judiciary) (Ford 4/13/89, attached) in order to get the issue resolved legislatively this year. AML understands the standard of liability in the proposed Judiciary CS would be "gross negligence or intentional misconduct" rather than AML's request for complete immunity. Further, if the Co-Chairs believe the proposed language is what is necessary to move the bill out of committee, the AML will not oppose the Judiciary CS in order to get the bill passed, to get relief from potential frivolous lawsuits, and to get on with the job of protecting the public.

Attachment

SAB2: sb66g

Original sponsors: Halford, Kelly,
Faiks, and Jones

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 66 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity for treatment of intoxi-
7 cated c' incapacitated persons; and providing for an
8 effective date."

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

10 * Section 1. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring an action for damages based on the
12 decision under this section to take or not to take an intoxicated
13 person or a person incapacitated by alcohol into protective custody,
14 unless the action is for damages caused by gross negligence or inten-
15 tional misconduct.

16 * Sec. 2. This Act applies to causes of action that accrue on or after
17 the effective date of this Act.

18 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
19
20
21
22
23
24
25

RECEIVED MAR 23 1989

Alaska State Legislature

Al Adams
District L

WHILE IN SESSION
P.O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-3707

OUT OF SESSION
P.O. Box 333
Kotzebue, Alaska 99752
(907) 442-3245

3111 C Street
Anchorage, Alaska 99503
(907) 561-7622



Official Business

Bill file
SB 66

March 21, 1989

George N. Ahmaogak, Sr.
Mayor
North Slope Borough
Post Office Box 69
Barrow, Alaska 99723

Dear George:

Thank you for your letter regarding Senate Bill 66 delineating reasons that passage of this legislation is important for the North Slope Borough. From the first committee hearing I have been supportive of this legislation and will continue to urge its passage this session.

Currently the bill is in the House Judiciary Committee and has yet to be scheduled. A staff member from the sponsor's office, Senator Halford, has said that requests are being made to hear the bill in that committee.

A copy of the North Slope Borough's position paper will be sent today to the two committee chairmen, Representatives Goll and Gruenberg. A copy will also be sent to Representative MacLean so that she can urge a hearing also.

Thank you again for your clear and concise statement about this bill. As always, it is a pleasure working for and with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Al Adams".

Al Adams, Chair
Community and Regional Affairs Committee

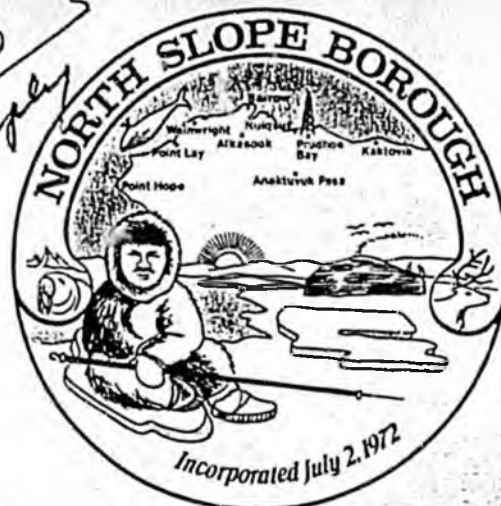
NORTH SLOPE BOROUGH

OFFICE OF THE MAYOR

P.O. Box 69
Barrow, Alaska 99723

Phone: 907-852-2611

George N. Ahmaogak, Sr., Mayor



March 15, 1989

Senator Al Adams
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Adams:

Enclosed for your information, and for any action that you may recommend, is the North Slope Borough's position on Senate Bill #66. Any assistance that you may be able to give the Borough in stating its position would be greatly appreciated.

Thank you for your continued support in representing the people of the North Slope.

Sincerely,

George N. Ahmaogak, Sr.

George N. Ahmaogak, Sr.
Mayor

Enclosure

cc: Government Affairs
Dennis Packer, NSB Director, Public Safety
SLI/File

North Slope Borough

P O S I T I O N

Bill or Resolution: SB#66 - An Act Relating To Immunity For Treatment of Intoxicated Persons

Date: March 1, 1989

The North Slope Borough, Department of Public Safety fully supports Senator Halford's SB#66 offering complete immunity for cities and municipalities and their employees in dealing with intoxicated individuals. The "Busby" decision directly affects police officers and others who come into daily contact with intoxicated individuals. In the "bush" areas of the State, we are at a disadvantage when handling those who are intoxicated.

Below are a few factors to consider in support of Senator Halford's proposed legislation and why the Borough supports it:

1. In Barrow there is no detoxification facility other than the jail in which to place intoxicated individuals.
2. During 1988 the North Slope Borough, Department of Public Safety "detoxed" 700 individuals in the jail in Barrow under Title 47. The officers used their own discretion and follow department policy and procedure in dealing with intoxicated persons.
3. The North Slope Borough, Department of Public Safety operates a State contracted jail facility, however, the State does not reimburse the Department for detaining individuals under Title 47, which is a State imposed law. Nor does the State assume any of the liability for detaining these individuals in our jail.
4. The State has imposed a law under Title 47, made an interpretation of that law based on the "Busby" decision, and is willing to have the municipalities and cities of the State be responsible, above and beyond what is reasonable, for acting in good faith in their attempts to address the problems associated with intoxicated persons.

The "Busby" decision has resulted in the police picking up all individuals suspected of drinking and putting them in jail to avoid a lawsuit. This puts an unnecessary strain on our police department as well as on the correction facility.

North Slope Borough

P O S I T I O N (Continued)

Bill or Resolution: SB#66 - An Act Relating To Immunity For Treatment of Intoxicated Persons

Date: March 1, 1989

5. Our Village Officers often detain individuals for "detox". When doing this the officer is then committed to watching the individual until released. By doing so the officer cannot leave the individual alone for any reason, thus reducing the officer's ability to respond to other calls if necessary in the village.
6. In conclusion, I have attached a copy of the position statement from the Alaska Chiefs of Police, Alaska Peace Officers Association and the FBI Academy Associates on this legislation, which the Department of Public Safety fully supports.

I hope that this information will be helpful and any further information is needed please contact Dennis O. Packer, Director, Department of Public Safety.

Attachments

\wp\betsy\Mpos.dps

— Position Statement —

ALASKA CHIEFS OF POLICE ASSOCIATION
ALASKA PEACE OFFICERS ASSOCIATION
FBI NATIONAL ACADEMY ASSOCIATES



Concerning Legislative Proposals

before the

Sixteenth Alaska Legislature

January 1989

INDEMNIFICATION FOR GOVERNMENT EMPLOYEES

We have made indemnification for Public Employees our number one priority. It has been given our highest priority because we see no other single issue that has greater potential impact for both law enforcement and other government workers as well.

It has long been accepted that government must be held responsible for what it does. When the government takes, or fails to take action, courts have held that the government is liable for its actions, and injured parties have, through law suits or claims, received compensation for the wrongs done to them. Generally, when a law suit is filed, it is filed against the government and the suit names employees of the government as parties to the action. Traditionally, employees have not been held personally liable for actions they have taken at the behest of their employer, unless those employees were clearly working outside the scope of their authority.

Recent court rulings have led to the current trend that holds public employees personally responsible for actions that they have taken in their jobs. This trend now places public employees in a position where their own personal assets and savings are at risk whenever law suits are filed, even though that employee was working within the scope of their employment without any intent of causing harm.

This places all public employees at risk from the highest level policy makers to the lowest level of workers where those policies are carried out. The social workers, the road maintenance supervisor, the police officer, the medic, the fireman, and the department manager, are all vulnerable. We in law enforcement believe this is an undue burden upon public employees and it carries great potential for the workings of government to become bogged down, because employees fear that decisions they make in good faith may result in the loss of their personal assets.

When employees are doing the work of the government within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to law suits. Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgements they make can result in the loss of their homes, cars and savings or other assets.

REMOVAL OF MUNICIPAL LIABILITY IMPOSED BY BUSBY DECISION

The Busby decision arose from a case in Anchorage involving an inebriate who was contacted, but not taken into custody, by a police officer and who was later struck by a motor vehicle. Busby sued the municipality for not having taken him into custody. The case reached the Supreme Court, which found in Busby's favor.

The Court interpreted the intent of the legislature in enacting the Uniform Alcoholism and Intoxication Treatment Act, AS 47.37.170 (b), to create a duty for municipalities to take incapacitated persons into custody. The purpose of the statute is for municipalities to help those in need. The Court apparently interpreted this as a responsibility which imposes upon municipalities substantial obligations, including placing such persons in a treatment facility or in a state or local correctional facility.

Some communities, especially those in outlying areas with very small police departments or remote state trooper posts have no treatment or correctional facilities. They only have a holding facility, or local jail, with no professional person to provide suitable treatment.

We encourage and support legislation which would remove the liability from municipalities and their officers for acting in good faith and making a decision not to take an inebriated person into custody. With this kind of liability attached, the impact upon the municipalities and the ability for officers to make good common sense decisions about a person's liberty is great.