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Position Paper, HB 116, pg. 2

Raising the standard of liability to gross negligence or reckless or intentional misconduct would strike an appropriate balance between the need to reduce the potential

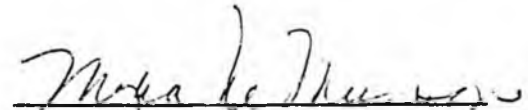
liability exposure of those involved in the protective custody process and the rights of intoxicated individuals to recover for injuries incurred because they are or are not taken into protective custody.

The Department suggests that the following changes be made to HB 116.

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 AS 47.37.170(g) is repealed and reenacted to read:

(g) A person may not bring a civil action for damages regarding the decision whether or not to take an intoxicated or incapacitated person into, or to release a person from, protective custody under this section, or for injuries incurred in protective custody. However, this subsection does not preclude liability for civil damages caused by gross negligence or reckless or intentional misconduct.

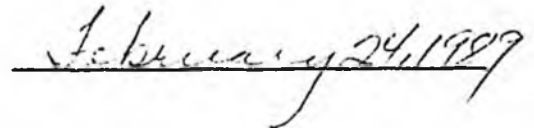
Approved by:



Myra M. Munson
Commissioner

Department of Health and
Social Services

Date:



Alaska MUNICIPAL League

TELEPHONE
(907) 586-1325
FAX 463-5480

217 SECOND STREET, SUITE 200
JUNEAU, ALASKA 99801

TO: Representative Eileen Maclean, Chair
Members of House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director

DATE: January 24, 1989

SUBJECT: HB 116 - Immunity for Treatment of Intoxicated Persons

The Alaska Municipal League supports HB 116. 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 123 municipalities the AML represents directly. The AML believes the Court misinterpreted the intent of the Legislature in AS 47.37.170(g) and the resulting implications of liability have created an unnecessary and unintentional burden on our law enforcement officials and our correctional facilities. HB 116, 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.

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. HB 116 accomplishes the desired intent of the AML position on the Court's misinterpretation of AS 47.37. I have also attached copies of relevant AML resolutions passed by the AML membership at their annual conference in November.

Governor Cowper introduced HB 406 last year which would have provided 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" by adding a legal test of "maliciousness". This is inappropriate and unnecessary. No problem or complaint existed before Busby. 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.

The AML supports HB 116, appreciates the efforts of the sponsor to correct the problem it is causing in our communities, and urges the Committee to pass the bill out as introduced.

Attachments

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

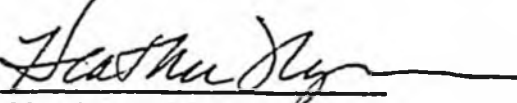
WHEREAS, little latitude is available to local governments under this statute to deal with the problem, and

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



City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

RECEIVED

FEB 07 1989

February 2, 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.



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

P.O. Box V
State Capitol
Juneau, Alaska 99811

MEMORANDUM

Dave
TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Representative Eileen P. MacLean, Chairman
House Community and Regional Affairs *Eileen P. MacLean*

DATE: February 2, 1989

RE: Scheduling Request - HB 116

House Bill 116, "An Act relating to immunity for treatment of intoxicated persons; and providing for an effective date," has passed from the House Community and Regional Affairs Committee to the House Labor and Commerce Committee. The bill received a do pass recommendation with no dissenting recommendations.

I would like to respectfully request that you schedule House Bill 116 for committee hearing at your earliest convenience. House Bill 116 is of great importance to all municipalities in the state. This legislation would prevent legal actions against the state, a municipality, a peace officer, or member of an emergency service patrol for the failure to take into protective custody a person who is intoxicated or otherwise incapacitated.

This legislation is the result of the Alaska Supreme Court's ruling in *Busby vs Municipality of Anchorage*. The case involved Mr. Busby who was intoxicated and walking in an Anchorage street. An officer stopped him and after conversation determined that while he had been drinking he was not incapacitated. Mr. Busby was later returned to the street and was hit by a car. Mr. Busby sued the municipality of Anchorage on the grounds that the officer had a duty to take him into protective custody. The supreme court ruled in favor of Mr. Busby.

This ruling has taken away the use of discretion in placing intoxicated persons in protective custody. As a result there has been a great increase in the number of people taken into protected custody. Jails and social systems are being overcrowded. In some areas the increases have been three or four-fold since the supreme court ruling.

Police have hundreds of contacts daily with people in varying stages of intoxication. I am concerned that this court ruling has placed a great financial burden on our communities and is hampering our police from performing their duties.

**Municipality
of
Anchorage**



OFFICE OF THE MAYOR

P.O. BOX 196650
ANCHORAGE, ALASKA 99519-6650
(907) 343-4431

TOM FINK,
MAYOR

January 27, 1989

Representative Sam Cotten
P.O. Box 296
Eagle River 99577

Subject: Senate Bill 66/House Bill 116 - "Busby" Relief

Dear Representative Cotten:

I would like to take this opportunity to urge your support of Senate Bill 66 and House Bill 116 which offers local government's much needed relief from the "Busby" decision. I am sure you are aware of how the "Busby" decision has handicapped the day-to-day operations of our police and emergency services personnel, as well as the increased liability it imposes on state and local public safety agencies.

Sincerely,

Tom Fink
Mayor

"It is not the desire of the legislature that peace officers neglect their duty to provide protective custody to those that are incapacitated, but to prevent litigation that may arise from the inability to properly determine incapacitation."

Possible letter of intent
suggested by sponsor if
deemed necessary to allay
fears that police will shirk
~~on~~ their duties.

of the budget committee... the panel of Minnesota... the panel's ranking... said he believed Bush had presented... a pretty complete budget picture within 14 days of the inauguration.

Darman told the Senate budget... and new black...

panel on... the best way for Bush... and the Democratic-controlled Congress... to work out a budget was by negotiating.

But Darman ran into a torrent of criticism over the budget, that Bush presented to Congress on Feb. 9.

Much of it focused on what is becoming known as the budget's "black box" - a collection of more than 1,000 programs, mostly in domestic areas, that the president wants to hold to the same \$1 billion spending total in effect for this year.

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High court rules states don't have to protect people

By JAMES H. RUBIN

WASHINGTON - The Supreme Court ruled today that public officials may not be sued when their alleged gross negligence permits a child to be abused by a parent.

By a 5-3 vote, the justices said a state does not have a constitutional duty to protect people, including abused children, who are not in the state's custody.

Chief Justice William H. Rehnquist, writing for the court, said, "As a general matter... we conclude that a state's failure to protect an individual against private violence simply does not constitute a violation of the (Constitution's) due process clause."

In other matters taken up today:

- The court, appearing eager to guard the line between church and state, rigorously questioned attorneys who defended holiday-time religious displays in two public buildings.
- The court ruled that states may not prohibit political party leaders from endorsing primary election candidates.
- The justices sidestepped deciding whether a criminal defendant's right to be tried by his peers is violated when prosecutors disqualify potential jurors based on their race.

In the child-abuse case, the court rejected an appeal on behalf of a Wisconsin boy, Joshua DeShaney, who since age 4 has been seriously and permanently brain damaged from beatings by his father.

In an unusual emotional dissent, Justice Harry A. Blackmun ex-

claimed, "Poor Joshua! It is a sad commentary upon American life and constitutional principles... that this child, Joshua DeShaney, now is assigned to live out the remainder of his life profoundly retarded" and without an opportunity to sue the state.

Social workers were accused of violating Joshua's constitutional rights by failing to come to his rescue after they had repeated evidence he was being beaten.

But Rehnquist said the state's awareness of the boy's plight does not mean it has a duty to protect him.

Only "when the state takes a person into its custody and holds him there against his will" does the Constitution require officials to take responsibility for the individual's safety and well-being, Rehnquist said.

"While the state may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation nor did it do anything to render him any more vulnerable to them," he said.

Nor does the fact that the boy was once in the state's custody change the situation, the chief justice added. "The state does not become the permanent guarantor of an individual's safety by having once offered him shelter," he said.

Joining Rehnquist were Justices Byron R. White, John Paul Stevens, Sandra Day O'Connor, Antonin Scalia and Anthony M. Kennedy. Justices William J. Brennan and Thurgood Marshall joined Blackmun in dissent.

Crimes on reservations

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to immunity for treatment of intoxicated persons..."
Sponsor: MacLean & Swackhammer
Requestor: House C&RA

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

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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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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)

House Bill 116 would prevent lawsuits against the State, the Department, and its officers, employees, and agents for discretionary decisions regarding incapacitated (intoxicated) persons. Passage of this bill may eliminate future liability, but would have no fiscal impact on the Department's present budget.

Prepared by: Captain C. Roger McCoy, Special Assistant
Division: Office of the Commissioner

Phone: 465-4322
Date: 1/27/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: -30-89

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: "An Act relating to immunity for treatment of intoxicated persons."
 Sponsor: Rep. MacLean & Swackhammer
 Requestor: _____

Agency Affected: Department of Corrections
 BRU: _____
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

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
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REVENUE	0	0	0	0	0	0
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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						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Susan E. Knighton

Prepared by: Susan E. Knighton, Director
 Division: Administrative Services

Susan Humphrey-Barnett

Approved by Commissioner
 Agency: Department of Corrections

Phone: 465-3376
 Date: 1-30-89
 Date: 1-30-89

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

6-0624E

Ford
3/2/89

Original sponsors: MacLean, Swackhammer,
and Foster

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 116 (L&C)

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 or 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 against the
12 state, a municipality, officers, agents, or employees of the state or
13 a municipality, a peace officer, or members of the emergency service
14 patrol, based on the performance of or failure to perform a duty
15 imposed under this section. This subsection does not apply to an
16 action against (1) the state or a municipality based on gross
17 negligence, or reckless or intentional misconduct; or (2) an officer,
18 agent, or employee of the state or a municipality, a peace officer, or
19 member of the emergency service patrol based on gross negligence or
20 reckless or intentional misconduct arising from protective custody, or
21 based on reckless or intentional misconduct arising from a failure to
22 perform a duty imposed under this section. In this subsection "munic-
23 ipality" has the meaning given in AS 01.10.060 and includes a public
24 corporation established by a municipality.

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

27 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
28
29

of the department, considers this an effective and economical course to follow. Contracting under this subsection is governed by AS 36.30 (State Procurement Code). (§ 1 ch 207 SLA 1972; am § 5 ch 150 SLA 1980; am § 62 ch 106 SLA 1986; am E.O. No. 71, § 21 (1988))

Effect of amendments. — The 1986 amendment, effective January 1, 1988, added the last sentence in subsection (g).

The 1988 amendment, effective July 1, 1988, in subsection (a), substituted "alcoholics, intoxicated persons, and drug

abusers" for "alcoholics and intoxicated persons" in the first sentence and "and, when feasible, programs must" for "and when feasible, programs shall" in the third sentence.

Sec. 47.37.150. Acceptance for treatment. The coordinator shall adopt regulations for the admission of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, and drug abusers. In adopting the regulations the coordinator shall be guided by the following standards:

(1) if possible a patient must be treated on a voluntary rather than an involuntary basis;

(2) a patient must be initially assigned or transferred to outpatient or intermediate treatment, unless the patient is found to require inpatient treatment;

(3) a person may not be denied treatment solely because the person has withdrawn from treatment against medical advice on a prior occasion or because the person has relapsed after earlier treatment;

(4) an individualized treatment plan must be prepared and maintained on a current basis for each patient;

(5) provision must be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will use other appropriate treatment and facilities. (§ 1 ch 207 SLA 1972; am E.O. No. 71, § 22 (1988))

Effect of amendments. — The 1988 amendment, effective July 1, 1988, substituted "alcoholics, intoxicated persons, and drug abusers" for "alcoholics and intoxicated persons" in the first sentence in the

introductory paragraph, "must" for "shall" in paragraphs (1), (2), (4), and (5), "may" for "shall" in paragraph (3), and "use" for "utilize" in paragraph (5).

Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to the person's home, an approved public

treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, the person may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers the person shall arrange for transportation.

(d) A person who, after medical examination, is found to be incapacitated by alcohol at the time of admission or to have become incapacitated at any time after admission, may not be detained at a facility after the person is no longer incapacitated by alcohol. A person may not be detained at a facility if the person remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless the person is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, the patient's family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, the patient's request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until the person is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service or a detention facility, is taking the person into protective custody and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270(9) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1-4 ch 101 SLA 1976)

Editor's notes. — This section is set out above to correct a minor error in subsection (j) in the main pamphlet.

NOTES TO DECISIONS

Actionable duty imposed on municipality. — This section imposes upon a municipality an actionable duty to take persons incapacitated by alcohol in a public place into protective custody. *Bushy v. Municipality of Anchorage*, Sup. Ct. Op. No. 3214 (File No. S-1580), 741 P.2d 230 (1987).

Sec. 47.37.270. Definitions. In this chapter

(1) "alcoholic" means a person who habitually lacks self-control in using alcoholic beverages, or uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered, or the person's social or economic function is substantially disrupted;

(2) "approved private treatment facility" or "private facility" means a private agency meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(3) "approved public treatment facility" or "public facility" means a treatment agency operating under the direction and control of the office or providing treatment under AS 47.37.010 — 47.37.270 through a contract with the office under AS 47.37.130(g) or through a grant awarded under AS 47.30.475, and meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(4) [Repealed, § 23 ch 71 SLA 1988.]

(5) "commissioner" means the commissioner of health and social services;

(6) "coordinator" means the coordinator of the office of alcoholism and drug abuse;

(7) "department" means the Department of Health and Social Services;

(8) "emergency service patrol" means a patrol established under AS 47.37.230;

(9) "incapacitated by alcohol" means a person who is unconscious or whose judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to a need for treatment, as evidenced objectively by extreme physical debilitation, physical harm or threats of harm to others or chronic inability to hold regular employment;

(10) "incompetent person" means a person who has been adjudged incompetent by the appropriate court;

(11) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(12) "office" means the office of alcoholism and drug abuse within the Department of Health and Social Services;

(13) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care which may be extended to alcoholics and intoxicated persons, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling;

(14) "work therapy"

(A) means an activity that involves a patient in basic employment skills and assists the patient in reintegration into a community;

(B) does not include

(i) activities such as personal housekeeping chores or cooperative responsibilities expected of each patient in the program; or

(ii) work that produces goods or services for sale or distribution, the proceeds of which would be returned to the owners, operators, or businesses of the rehabilitation program. (§ 1 ch 207 SLA 1972; am § 4 ch 116 SLA 1978; am §§ 15 — 18 ch 150 SLA 1980; am § 3 ch 58 SLA 1983; am § 69 ch 37 SLA 1986; am E.O. No. 71 § 23 (1988))

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

WHEREAS, many standard municipal insurance policies specifically exclude "custodial care" from coverage, and

WHEREAS, a special alcohol tax would seem to make sense in that it would place the cost of the problem on the source of the problem, and

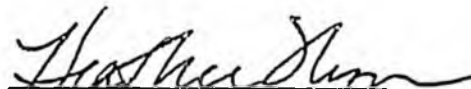
WHEREAS, AS 4.21.010 specifically prohibits municipalities from imposing such a tax, and

WHEREAS, barring this avenue for funding a State-mandated responsibility and liability, municipalities must look to the State for relief from the burden imposed on municipalities by AS 47.37 and the State Supreme Court;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that:

1. The Alaska State Legislature is hereby urged to provide direct funding to municipalities to offset the cost of complying with the provisions of AS 47.37; and
2. The Alaska State Legislature is further urged to amend AS 4.21.010 to allow local governments to impose a special tax on alcohol to fund mandated programs and procedures to deal with alcohol abuse within local communities and to fund substance abuse education.

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


Heather Flynn, President

ATTEST:


Scott A. Burgess, Executive Director

Position Paper

HB 116

For An Act Entitled: " An Act Relating to immunity of treatment for intoxicated persons...

This legislation would provide that a person may not bring an action for damages against the state, a municipality (or officers, agents, or employees of the municipality or state), a peace officer or members of the emergency services patrol based on the performance or failure to perform a duty imposed under AS 47.37.170. AS 47.37.170 provides that (1) an individual who is intoxicated in public may be taken into protective custody by a peace officer or member of the emergency services patrol and (2) that an individual who is incapacitated by alcohol shall be taken into protective custody by a peace officer or member of the emergency services patrol.

In 1987, the Alaska Supreme Court in Busby v. Municipality of Anchorage, found that AS 47.37.170 creates an affirmative and mandatory duty for law enforcement personnel to place persons who are incapacitated into protective custody. According to the court, failure to take an incapacitated person into protective custody creates a cause for action for damages against peace officer (or member of an emergency service patrol who decides not to do so, for injuries that occur as a result. The Busby decision has increased municipalities fear of potential liability.

Department Position

The Department of Health and Social Services does not support the granting of absolute immunity to municipalities with regard to their actions under AS 47.37.170. Absolute immunity would shield all action, however improperly motivated, and would deny individuals traditional tort recourse.

The Department believes that conditional liability, based on the standard of gross negligence, would preserve the rights of individuals while at the same time protecting Municipalities from lawsuits.