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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(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:

McAteeny

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>Mark Boyer</i>		X	
<i>Carl ...</i>		X	
<i>Lyons ...</i>		X	
<i>Drew ...</i>		X	
<i>David ...</i>		X	
<i>D.G. ...</i>		X	

David ...

Chairman's signature

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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 AS 47.37.170(g) is repealed and reenacted to read:

(g) A person may not bring an action for damages against the state, a municipality, officers, agents, or employees of the state or a municipality, a peace officer, or members of the emergency service patrol, based on the performance of or failure to perform a duty imposed under this section. This subsection does not apply to an action against (1) the state or a municipality based on gross negligence, or reckless or intentional misconduct; or (2) an ^{INDIVIDUAL} officer, ^{PERSON} agent, or employee of the state or a municipality, a peace officer, or member of the emergency service patrol based on gross negligence or reckless or intentional misconduct arising from protective custody, or based on reckless or intentional misconduct arising from a failure to perform a duty imposed under this section. In this subsection "municipality" has the meaning given in AS 01.10.060 and includes a public corporation established by a municipality.

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

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

Original sponsors: Halford, Kelly,
Faiks, and Jones

1 IN THE SENATE BY THE RULES COMMITTEE

2 CS FOR SENATE BILL NO. 66 (Rules)

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 based on the
12 decision under this section to take or not to take an intoxicated or
13 incapacitated person into protective custody, or to release a person
14 from protective custody. This subsection does not apply to an action
15 for damages caused by intentional misconduct. ^{OR GROSS NEGLIGENCE}

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).

Introduced: 1/25/89
Referred: Community & Regional
Affairs, Labor & Commerce and
Judiciary

6-0624A

1 IN THE HOUSE

BY MACLEAN AND SWACKHAMMER

2

HOUSE BILL NO. 116

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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11 state, a municipality, officers, agents, or employees of the state or
12 a municipality, a peace officer, or members of the emergency service
13 patrol, based on the performance or failure to perform a duty imposed
14 under this section. In this subsection "municipality" has the meaning
15 given in AS 01.10.060 and includes a public corporation established by
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18 the effective date of this Act.

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RECEIVED

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 66 (Rates) 1989
PUBLISH DATE: 2/3/89 OFFICE OF

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-
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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)

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
Division: Office of the Commissioner

Phone: 465-4322
Date: 2/28/89

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

Date: 2-28-89

NEGLIGENCE

"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., 677.

"Negligence" is not synonymous with "incompetency." Hence the competent may be negligent. *Alabama City, G. & A. Ry. Co. v. Bessiere*, 190 Ala. 59, 66 So. 805, 806; *Barclay v. Wetmore & Morse Granite Co.*, 92 Vt. 195, 102 A. 493, 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. 877, 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 Okl. 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.

Mutual Contributory Negligence. Exists when injury would not have happened but for negligence of both parties. *Alexander v. Missouri, K. & T. R. Co. of Texas*, *Tax.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 willful 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. Lumber 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, 172 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. 412, 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. 518, 141 N.E. 585, 586. 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. 481.