

HB

34

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 5/14/99

FURTHER: 5/18/99

DATE TURNED
IN TO OFFICE: 18 May 1999

Finance Committee considered

CS FOR HOUSE BILL NO. 34(FIN)

"An Act relating to the crime of failure to report the commission or attempted commission of certain crimes against children."

and recommends:

be replaced with _____ CS _____ (_____)

adopt previous _____ CS _____ (_____)

attached amendment(s)

adopt Letter of Intent by _____ Committee

further referral to the _____ Committee

Senate Bill:

same title

new title

House Bill:

same title

technical title

new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	✓	<i>[Signature]</i>	✓		
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
<i>[Signature]</i>	✓				
Co-Chair: <i>[Signature]</i>	✓	Co-Chair:			
Co-Chair:		Co-Chair:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Public Defender	4/29/99		*
Law	4/2/99		*

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill

FISCAL NOTE

Bill Version: CSHB 34 (FIN)
 (H) Publish Date: 5/3/99

STATE OF ALASKA
 1999 LEGISLATIVE SESSION

5/18/99

Revision Date: _____
 Title: "An Act relating to the crime of misprision of a crime against a child"
 Sponsor: Representative Dyson
 Requestor: (H)FIN

Department Affected: Administration
 BRU: Legal and Advocacy Services
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING EXPENDITURES	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES	**	**	**	**	**	**
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	**	**	**	**	**	**

CAPITAL EXPENDITURES	**	**	**	**	**	**
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CHANGE IN REVENUES ()	**	**	**	**	**	**
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FUND SOURCE: (Thousands of Dollars)

1002 Federal Receipts	**	**	**	**	**	**
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
OTHER						
TOTAL	**	**	**	**	**	**

Estimate of any current year (FY 98) cost: \$ _____

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

See attached.

Prepared by: Barbara Brink, Director
 Division: Public Defender Agency

Phone: (907) 264-4414
 Date: _____

Approved by Commissioner: Robert Poe Jr.
 Agency: Department of Administration

Date: 4/26/99

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FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. CSHB 34(JUD)

ANALYSIS: (continued)

This bill makes it a crime if a person witnesses a serious crime against a child, but fails to report it. The crime is a class A misdemeanor.

Under current law, it is illegal to "render assistance" to someone who has committed a crime. (Hindering Prosecution, AS 11.56.770-.780) Rendering assistance is broadly defined and includes providing or aiding in transportation or providing other means of avoiding discovery or apprehension. Under this bill, for the first time in Alaska, a witness could be found guilty for failing to report a crime.

It is impossible to predict the number of cases that may arise under this bill. However, there are certain to be complicated and difficult legal challenges that the Public Defender Agency would be obligated to raise.

For example, if there is a "reasonable possibility" that a person may face criminal charges, the privilege against self-incrimination would apply. The applicability of privileges to this statute would have to be litigated. Also, there may equal protection problems. A person who is criminally responsible would be able to ignore this law, but an innocent person could end up facing charges.

Therefore, although there may be few cases brought, the cases would present difficult and time-consuming legal challenges for Public Defender attorneys.



Alaska State Legislature

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REPRESENTATIVE FRED DYSON

CSHB 34 Sponsor Statement

"An Act relating to the crime of misprision of a crime against a child."

Recently, in a Las Vegas casino, a 7-year-old child was assaulted and then murdered in a public restroom. The perpetrator's friend left the restroom as the assault was taking place yet did nothing to assist the victim. In New Jersey, a 31-year-old woman was beaten with a baseball bat while the perpetrators' three friends watched from a nearby car.

Six states have "Good Samaritan" laws, South Dakota, West Virginia, Vermont, Minnesota, Rhode Island and Massachusetts. Nevada and New Jersey do not; the witnesses to the above crimes could not be charged.

HB 34 makes it a Class A misdemeanor to **not** report a completed or attempted murder, kidnapping, or sexual penetration of a child. This also includes assaults that cause serious physical injury. Of course, we all hope that all citizens would immediately go to the aid of that child. However, some citizens are intimidated by violence and might be afraid of retribution. HB 34 would set the minimum standard of reporting the crime-in-progress to public safety officials who would then be able to come to that child's aid.

The law does many things in our culture, not the least of which is the function of stating and defining our cultural values and standards. I do not expect this proposed law to be used often, but it will send the message that it is not acceptable to stand by and do nothing when a child is being beaten, raped, or killed. A few well-publicized prosecutions of flagrant violators who refuse to help a child will have a salutary affect in our culture.

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National Conference of State Legislatures
1560 Broadway #700 Denver CO 80202-5140 303/830-2200

December 1998

State Laws with regard to "Duty to Assist" in Crime Situation

State	Cite	Provisions/Criminal penalties
California	Pending legislation	December 1998: Assemblyman Torlakson introduced the Sherrice Iverson Good Samaritan Law, making it a crime to fail to notify police of a violent crime. In most states, it is not against the law in California or Nevada to see a crime and not report it. Nevada lawmakers were expected to introduce a similar measure next month.
Florida	Fla. Stat. § 794.027	Law is specific to a person who observes the commission of the crime of <u>sexual battery</u> and who has ability but fails to seek assistance even though he/or she could do without threat of physical harm. Violation is a first degree misdemeanor, punishable in that state by up to one year imprisonment and \$1,000 fine.
Massachusetts	Mass. Chapter 268 §40	Requires that a person who knows that another person is a victim of aggravated rape, rape, murder, manslaughter or armed robbery and is at the scene of said crime must, to the extent that said person can do so without danger or peril to herself/himself or others, report the crime to an appropriate law enforcement official as soon as reasonably practicable. Violation subject to a fine of not less than \$500 nor more than \$2500.
Minnesota	Minn. Statutes § 604A.01	Incorporated in the "good Samaritan" tort liability law. Adds that a person is guilty of a petty misdemeanor if at the scene of an emergency (not specific to crime scene) another person is exposed to or suffering grave physical harm and one can assist but fails to do so. Reasonable assistance may include obtaining or attempting to obtain aid from law enforcement or medical personnel. A petty offense in Minnesota does not constitute a crime, but can carry a fine up to \$100.
Ohio	Ohio Rev. Code 2921.22	No person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities. A person who violates this law is guilty of failure to report a crime, a fourth degree misdemeanor.
Rhode Island	R.I. Gen. Laws § 11-56-1	Refers to giving assistance at scene of an emergency (not specific to crime scene). Requires a person who knows that another person is exposed to or suffered grave physical harm to assist is he/she can do so without danger to him/herself or others. Violation is a petty misdemeanor subject to imprisonment up to six months and/or fine of \$500.
Rhode Island	R.I. Gen Laws § 11-37-3.1	Refers to duty to report sexual assault. Requires that a person who knows or has reason to know that a sexual assault is taking place must immediately notify police. Failure to report is a misdemeanor with possible imprisonment up to one year and/or a fine of \$500.
Vermont	Vt. Stat. Ann. § 519	Incorporated in section on civil liability, adds that if a person knows another is exposed to grave physical harm and can do so without danger or peril to self or others, should give reasonable assistance. Violation carries fine up to \$100.

Washington	Rev. Code of Wash. 9.69.100	A person who witnesses the actual commission of certain crimes shall as soon as reasonably possible notify the prosecuting attorney, law enforcement, medical assistance, or other public officials.
Wisconsin	Wis. Stat. § 940.34	Refers to duty or aid victim or report crime. Person who knows that a crime is being committed and that a victim is exposed to bodily harm must summon law enforcement or provide other assistance. Violation is a Class C misdemeanor, carrying a possible penalty of 30 days imprisonment and/or \$500. Section also provides civil liability in emergency care situations.

Referenced in a few laws, above, all states currently have "good Samaritan-type laws that protect from civil liability a person who is in good faith aiding another in emergency or accident. A few states also were found to have laws providing a duty to assist, upon request, a law enforcement officer. It also relevant to note that, with regards to children, state laws broadly and generally establish a duty to report by professionals and other who work with, supervise or care for children, in cases of suspected child abuse or neglect.

A search of state criminal codes for "criminal bystander," a term suggesting less than accessory involvement in a crime but perhaps more than a passive witness, did not identify any such language/laws at this time.

In NCSL's Denver office, for more information on criminal laws, call Donna Lyons; for more information on tort/civil liability, call Kelly Fox; and for information on child abuse/neglect reporting and related law, call Nina Williams-Mbengue.

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Help Your Neighbor—It's the Law

After a particular heinous crime during which a young man stood by while a child was murdered, lawmakers in many states are considering "duty to assist" laws.

By Donna Lyons

Good Samaritans who come to the aid of a crime victim have long enjoyed immunity from civil liability under state laws. A new twist on altruism is being considered in at least five states this year with bills introduced that would punish the person who sees a crime being committed and fails to report it or assist or summon help for the victim. Most of the proposals specify serious crimes that put a victim in peril of serious bodily injury; some specify child victims.

A little girl who was murdered last summer in a casino near the Nevada-California border has become something of a poster child for these measures. Seven-year-old Sherrice Iverson was molested and strangled in a restroom stall at the Primadonna Casino in Primm, Nev. Jeremy Strohmeyer, a 19-year-old student from California, pled guilty to the crime and is now serving a life sentence without possibility of parole.

Disgust at this heinous crime against a child became outrage when it was reported that a friend of Strohmeyer's, David Cash Jr., was with him at the casino that night and apparently knew the crime was taking place but did nothing to avert the tragedy. California and Nevada are among states now considering legislation that would give the state a chargeable offense in such a case.

Legislation being sponsored by Nevada Assemblyman Richard Perkins is patterned after the state's law requiring that certain professionals report suspected child abuse. The new law would extend that duty to report to everyone who observes crimes against children. The assemblyman said that supporters would review the criminal code definition for "principal to a crime" to consider how a David Cash could be charged with the same crime as the perpetrator under that law.

A measure introduced in the California Assembly would make it a felony to observe and fail to report crimes of murder, manslaughter, rape, sexual assault or any assault that appears reasonably likely to

cause serious bodily harm. And a Senate bill in California specifies minor victims as those for whom a duty to assist would exist under state law. Other states that early this year had similar measures introduced include Florida, New Jersey, New York and Texas.

Traditionally, the American legal system has not required people to assist victims. Good Samaritan laws found in every state provide civil immunity for those individuals who do jump in to help at the scene of a crime or emergency. The duty to render aid under state law generally has been limited to special relationships between the injured and observing parties—driver of a vehicle and passenger, owner of property and a visitor; school official and student.

And state laws have, of course, broadly established a duty to report by professionals and others who work with, supervise and care for children, in cases of suspected child abuse or neglect. A few states have included misdemeanor offenses under duty to render aid in certain other circumstances. Wisconsin law, for example, provides a penalty for failing to render aid to a peace officer; and Minnesota has incorporated in its "good Samaritan" tort law wording that makes it a petty misdemeanor to fail to provide reasonable

assistance at the scene of an emergency.

The proposed laws have sparked debate over whether creating a duty to assist in criminal law can prompt desirable behavior. Duty-to-assist legislation and the situations to which such measures might apply are likely to be too ambiguous to be a practical response, suggests Washington, D.C., attorney Elisabeth Semel, a member of the board of directors of the National Association of Criminal Defense Lawyers.

"As a society, we have increasingly and wrongly come to believe the only response to morally offensive behavior is to criminalize it," she said.

But to proponents, such a law to protect children from danger does not go too far. "As human beings we have a fundamental duty to protect those who cannot protect themselves," said Nevada Assemblyman Perkins. "Children are certainly high on that list."



Donna Lyons is the criminal justice expert at NCSL. Kelly Fox contributed to this article.

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Representative Dyson
Alaska State Legislature
State Capital
Juneau, Alaska 99801-1182

February 19, 1999

FEB 23 1999

Dear Representative Dyson,

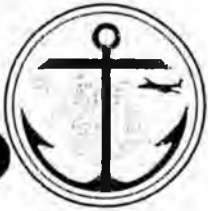
At a recent meeting of the APOA Board of Directors, we unanimously agreed to endorse HB 34.

Please contact us if there is anything we can do to assist you with this bill as it proceeds through the legislative process. You may contact us at the APOA office in Anchorage at 277-0515.

Thank you for sponsoring this legislation.

Sincerely,

John Charbonneau
State President
Alaska Peace Officers Association



Rick Mjstrom.
Mayor

ANCHORAGE POLICE DEPARTMENT

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Telephone (907) 786-8500

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Duane Udland
Chief

April 12, 1999

APR 19 1999

Representative Fred Dyson
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear Representative Dyson:

This letter is written in support of House Bill 34, *Misprision of a Crime Against a Child*. Each year, the Anchorage Police Department investigates crimes against children which had gone unreported by another adult who was aware of the crime at the time it occurred. As a result, the affected children are sometimes traumatized beyond help while the pattern of abuse is allowed to continue or even escalate.

We believe this law will encourage reporting by those who waver in their responsibility to protect children, and will punish those who knowingly allow the abuse to take place.

Sincerely,

Duane S. Udland
Chief of Police

APR 26 1999

COPY

Dear Mr. Fred Bryson,

My name is Andrew DeLoose and I am writing this letter for "Luvanna" which is an organization that is run by my church. This letter will help me get my patriotism badge.

I see you are supporting HB 34, the Good Samaritan Law. I see you must like children because you have many foster kids.

I hope you will support HB 70 that says parents must approve questionnaires taken by school by children.

Thank you for serving our community.

Your Friend

Andy

Andy DeLoose
10120 Chickaloon
Eagle River, Alaska
99577

Teen gets life for murdering girl, 7, in casino

By TIM DAHLBERG

The Associated Press

LAS VEGAS — A former honor student avoided the death penalty by pleading guilty Tuesday to molesting and strangling a 7-year-old girl in a casino toilet stall.

Under a plea bargain, Jeremy Strohmeyer, 19, will go to prison for the rest of his life for the 1997 slaying of Sherrice Iverson.

The Long Beach, Calif., teen-ager agreed to the plea bargain hours before he was to go on trial, admitting that he sexually assaulted the girl with his fingers and choked her over the Memorial Day weekend at the Primadonna Casino on the California-Nevada state line.

Not only did prosecutors have his confession, but video surveillance cameras had captured Strohmeyer going into the bathroom with the little girl in a game of hide-and-seek.

District Attorney Stewart Bell said that "death verdicts are always hard to get" and that the plea assures Strohmeyer will be off the street. Strohmeyer will be sentenced next month to life in prison without parole.

Defense attorney Leslie Abramson called Strohmeyer a good boy until seven months before the killing, when "evil influences" took over his life. She listed drugs, Internet

pornography and friends like David Cash Jr., whom she suggested "is not a witness but a co-perpetrator in this case."

Cash, 19, told authorities he entered the restroom a few minutes after his friend, peered over the wall of an adjoining stall and saw Strohmeyer with his hand over Sherrice's mouth, muffling her screams. Cash said he told Strohmeyer to let her go and then left the rest room.

Cash was not charged because Nevada has no "Good Samaritan" law requiring someone who witnesses a crime to try to stop it or to seek help from law enforcement.

Sherrice's mother, angered by Cash's inaction, led a petition drive that gathered more than 30,000 signatures in support of a Good Samaritan law scheduled to be introduced in Congress on Wednesday.

The case also drew attention to the safety of children in casinos. The Los Angeles girl had been left in the casino arcade with her older brother while their father, LeRoy Iverson, gambled in the early-morning hours.

Security guards said that three times, they found the girl alone and told her father to come get her.



JIM LAURIE / Las Vegas Review Journal

Former honor student Jeremy Strohmeyer, with attorney Leslie Abramson at his side, pleaded guilty Tuesday hours before his trial was to begin.



OCT 28 1998

LAS VEGAS REVIEW JOURNAL

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Wednesday, September 30, 1998

Iverson slaying prompts 'good Samaritan' bill

Associated Press

TRENTON, N.J. -- An assemblyman joined a growing chorus of state and federal lawmakers who want to make witnessing a violent crime and not reporting it to police a criminal act.

Assemblyman William Payne, D-Essex, introduced on Tuesday the "good Samaritan" bill.

Payne said the bill was inspired by Sherrice Iverson, a 7-year-old California girl who was raped and strangled in a restroom stall of a Nevada casino in May 1997.

Jeremy Strohmeyer, 19, of Long Beach, Calif., pleaded guilty to kidnapping, sexually assaulting and killing Iverson at the Primm Valley hotel, 43 miles south of Las Vegas.

Strohmeyer's friend David Cash Jr. witnessed the girl's kidnapping but left the restroom as Strohmeyer assaulted her.

The case has spurred public interest in "good Samaritan" laws, which would require bystanders to call police if they witness a violent crime.

The case also has prompted federal legislation. A Texas congressman, Democrat Nick Lampson, on Sept. 9 introduced the Sherrice Iverson Act.

The federal bill would require states to enact criminal penalties against witnesses who do not report sexual crimes against children.

Nevada authorities said they could not charge Cash because to witness a crime and do nothing about it is not illegal in the state.

Four states -- Vermont, Massachusetts, Rhode Island and Minnesota -- have good Samaritan laws, Payne said.

The Assembly bill is identical to a state Senate bill introduced Sept. 17.

The Senate bill stems from an August attack in New Jersey.

Two men beat a 31-year-old Woodbridge woman with a baseball bat and threatened her with a gun in an attempt to steal her car from her mother's driveway.

While the two men pummeled the woman, three of their friends sat in another car and watched.

Give us your [FEEDBACK](#) on this or any story.

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10/27/98 4:03 PM