

HB

34

FISCAL NOTE

Bill Version: CSHB 34 (JUD)

(H) Publish Date: 4/21/99

**STATE OF ALASKA
1999 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction)	Dept. Affected	Law
Title	BRU	Criminal Division; Civil Division
of a crime against a child.	Component	1st-4th Judicial Districts; Criminal Appeals/Special Lit; Human Services
Sponsor	Requester	Component Serial No.
Representative Dyson	House Judiciary Committee	2198/99/2261/79/01/03/08

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

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 ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 34 would make witnessing the commission of a listed offense against a minor, and not reporting it to law enforcement immediately, itself a crime.

The Department of Law has no way to estimate how many cases this new offense might generate. Anytime a new crime is created, there is a cost for prosecution. How much that is, however, depends on the volume of new cases. Until some experience is gained, the department cannot estimate the fiscal impact of this bill.

Prepared by Joan M. Kasson *Joan M. Kasson*
 Division Attorney General's Office
 Approved by Commissioner Bruce M. Botelho, Attorney General
 Agency Department of Law

Phone 465-5370
 Date/Time 4/2/99, 9:53 AM
 Date 4/2/99

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FISCAL NOTE

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

STATE OF ALASKA

1999 LEGISLATIVE SESSION

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 ()	**	**	**	**	**	**
------------------------	----	----	----	----	----	----

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.

SENATE COMMITTEE REPORT

DATE: 5/10/99

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary 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>Richard Halford</i>	✓	<i>J. S. Ellis</i>	X		
CHAIR: <i>Christ Taylor</i>	✓	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

Department	Date	Zero	Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Department	Date	Zero	Fiscal
<i>DOA</i>	<i>4/26</i>		✓
<i>DOLA</i>	<i>4/2</i>		✓

APPROPRIATION -- no fiscal note

*include fiscal notes accompanying Governor's bill



Alaska State Legislature

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REPRESENTATIVE FRED DYSON

CSHB 34 Sponsor Statement

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

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.

- E-mail -
Representative_Fred_Dyson
@Legs.state.ak.us

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<http://www.akrepublicans.org>

105TH CONGRESS
2D SESSION

S. 2452

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 1998

Mrs. BOXER introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To amend the Child Abuse Prevention and Treatment Act to require States receiving funds under section 106 of such Act to have in effect a State law providing for a criminal penalty on an individual who fails to report witnessing another individual engaging in sexual abuse of a child.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Sherrice Iverson Act".

1 SEC. 2. REQUIREMENT ON STATES RECEIVING GRANTS FOR
2 CHILD ABUSE AND NEGLECT PREVENTION
3 AND TREATMENT PROGRAMS.

4 (a) IN GENERAL.—Section 106(b)(2) of the Child
5 Abuse Prevention and Treatment Act (42 U.S.C.
6 5106a(b)(2)) is amended—

7 (1) in subparagraph (C), by striking “and” at
8 the end;

9 (2) in subparagraph (D), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following:

12 “(E) an assurance in the form of a certifi-
13 cation by the chief executive officer of the State
14 that the State has in effect and is enforcing a
15 State law providing for a criminal penalty on an
16 individual 18 years of age or older who fails to
17 report to a State or local law enforcement offi-
18 cial that the individual has witnessed another
19 individual in the State engaging in sexual abuse
20 of a child.”.

21 (b) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect on December 31, 2004.

○

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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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

APR 26 1999

COPY

Dear Mr. Fred Bryson,

My name is Andrew DeLoose and I am writing this letter for Awana's 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 Chuckaloon
Eagle River, Alaska

99577

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."





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 if 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.

§61-5-18. Officer not liable for act done under statute or executive order afterward declared unconstitutional.

No officer in the lawful exercise or discharge of his official duty under any act of the Legislature, or any order or proclamation of the governor of this state, shall be held personally responsible therefor in any action, suit, prosecution or proceeding, civil or criminal, by reason of such act, order or proclamation being afterwards adjudged by any court of this state to be unconstitutional. Nor shall his official bond be liable in any civil proceeding therefor.

§61-5-19. Compounding offenses and misprison; penalties.

West Virginia

If any person, knowing of the commission of an offense, take any money, or reward, or an engagement

APR-08-99 THU 09:56 AM LEG RESEARCH SERVICES

FAX NO. 9074633351

P. 04/04

state_code\finisheddata\chap61.asp - First Document

http://129.71.161.254/scripts/as_web.exe?state_code\finisheddata\chap61.asp+F

therefor, upon an agreement or undertaking, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense be a felony, be guilty of a misdemeanor, and, upon conviction, be confined in jail not more than one year and fined not exceeding five hundred dollars; and if such offense be not a felony, unless it be punishable merely by a forfeiture to him, he may be confined in jail not more than six months, and shall be fined not exceeding one hundred dollars.

APR-08-99 THU 09:55 AM LEG RESEARCH SERVICES

FAX NO. 9074633351

P. 02/04

22.11.12

South Dakota

http://www.stnc.sd.us/state/legis/lrc/statutes/22/11/001200M.htm

22-11-12. Misprison of felony. Any person who, having knowledge, which is not privileged, of the commission of a felony, conceals the same, or does not immediately disclose such felony, with the name of the perpetrator thereof, and all the facts in relation thereto, to the proper authorities, shall be guilty of misprison of a felony. Misprison of a felony is a Class 1 misdemeanor. There is no misprison of misdemeanors or petty offenses.

• Comments:

Several states have laws about misprison, but most seem to be "misprison of treason" laws. South Dakota and West Virginia are the only states we found which have "misprison of a felony" laws. (California, Florida, Illinois, Louisiana, Michigan, Minnesota, Nevada, Rhode Island, Vermont, Virginia, and Washington all have "misprison of treason" laws.)

Attached are a copies of the statutes South Dakota and West Virginia.

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 restroom.

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.