HB

77

<TARGET><BILL>HB 77</BILL><SUBJECT>HB
77</SUBJECT><COMM>SSTA29</COMM></TARGET>

SENATE COMMITTEE REPORT

DATE: 4/1/16

FURTHER: Finance

DATE TURNED IN TO OFFICE: APR 0 7 2016

State Affairs Committee considered CS FOR HOUSE BILL NO. 77(FIN)

HB 77-DISABILITY:ID/LICENSE AND TRAINING RQMTS.

"An Act relating to training regarding disabilities for police officers, probation officers, parole officers, correctional officers, and village public safety officers; relating to guidelines for drivers when encountering or being stopped by a peace officer; relating to driver's license examinations; and relating to a voluntary disability designation on a state identification card and a driver's license."

and recommends:

[ ] be **replaced** with **SCS** _____ (_____) *[ ] Same Title [ ] Technical Title Change [ ] New Title/SCR No._____*

[ ] adopt **previous SCS** _____ (_____) *[ ] Same Title [ ] Technical Title Change [ ] New Title/SCR No._____*

[ ] attached amendment(s)

[ ] adopt _____Letter of Intent

[ ] further referral to _____Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)

Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)

Dept.	Fiscal	Indet.	Zero	FN #
ADM			✓	3

[ ] **APPROPRIATION - no fiscal note**

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	COGHILL	✓			
	HUGGINS	✓			
	McGUIRE	✓			
	WIELECHOWSKI	✓			
CHAIR:	STOLTZE	✓			

ALASKA STATE LEGISLATURE

Session:
State Capitol Building
Juneau, Alaska 99801-2186
Phone (907) 465-3004
Toll Free: (877) 465-3004

Interim:
1292 Sadler Way
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Toll Free: (877) 465-3004

REPRESENTATIVE STEVE THOMPSON

Sponsor Statement CSHB 77 (29-LS0072\P - "An Act relating to training regarding disabilities for police officers, probation officers, parole officers, correctional officers, and village public safety officers; relating to guidelines for drivers when encountering or being stopped by a peace officer; relating to driver's license examinations; and relating to a voluntary disability designation on a state identification card and a driver's license."

When people with non-apparent disabilities interact with peace officers and corrections officers, elements of their disabilities often brush against officers' protocols and may result in serious misunderstanding or even tragedy. The goal of HB77 is to improve communications between law enforcement and corrections professionals who interact with people who have non-apparent disabilities, whether these disabled individuals encounter the "systems" as victims, witnesses, or alleged perpetrators.

The first part of HB 77 focuses on training regarding interactions with people with non-apparent disabilities. The bill requires the implementation of a non-apparent disability awareness training component for Alaska peace officers, corrections officers and parole/probation officers. The Alaska Police Standards Council, has established a basic course at the academy level. The training instructs officers how to engage in appropriate interactions with individuals who experience a non-apparent disability. The course instructs officers and the guidelines will stress understanding of the different manner in which people with non-apparent disabilities process sensory stimuli and language.

The bill also requires that the Department of Motor Vehicles (DMV) add a section to the Passenger Vehicle Driver Handbook that instructs drivers as to their responsibilities when interacting with a peace officer. Basic instruction will be added to the driver's manual and one or more questions will be added to the written driver's license test. Awareness training for both police officers and the public will aid in increasing the safety of most encounters.

Another component of HB 77 is to implement a statewide voluntary identification system where a discrete marker will be placed on an Alaska Driver's license or an Alaska ID card. The marker would indicate that the individual has a disability that may not be apparent. The police or corrections officer, having taken the disability awareness training, will be able to understand and more appropriately interact with the individual.

If a person's disability is not recognized during an encounter, it may affect the outcome of that encounter. This bill would push to improve communication between peace officers, corrections officers and parole/probation officers when interacting with people who have non-apparent disabilities. The hope of this bill is to reduce the potential for tragic encounters in our state.

E-Mail: Representative.Steve.Thompson@akleg.gov
Website: www.housemajority.org/thompson/index.php

ALASKA STATE LEGISLATURE

Session:
State Capitol Building
Juneau, Alaska 99801-2186
Phone (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Interim:
1292 Sadler Way
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

REPRESENTATIVE STEVE THOMPSON

Sectional HB 77 (29-LS0072\W) - "An Act relating to training regarding disabilities for police officers, probation officers, parole officers, correctional officers, and village public safety officers; relating to guidelines for drivers when encountering or being stopped by a peace officer; relating to driver's license examinations; and relating to a voluntary disability designation on a state identification card and a driver's license."

Section 1. Amends AS 18.65.220 to include statutory language that expands the duties of the police standards council's training program to include training in recognizing and interacting with a person with disabilities, as well as familiarization with resources that are available to those with hidden disabilities.

Section 2. Adds a new subsection to AS 18.65.310. Providing that a person may voluntarily designate on their state identification card that the person has a disability and the proof required for the designation.

Section 3. Amends AS 18.65.670(c) to include disability training to village public safety officers.

Section 4. Amends AS 28.05.011 by adding a new subsection to include the duties and responsibilities of drivers when encountering or being stopped by a peace officer be included in the driver's manual.

Section 5. Amends AS 28.15.081(a) to include the duties and responsibilities of drivers when encountering or being stopped by a peace officer on the driver's test examination.

Section 6. AS 28.15.111 is amended by adding a new subsection (d), providing that a person may voluntarily designate on their Alaska Driver's License a disability designation, proof required for the designation and fees that may be charged.

E-Mail: Representative.Steve.Thompson@akleg.gov
Website: www.housemajority.org/thompson/index.php

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSHB 77(FIN)
Fiscal Note Number:	3
(H) Publish Date:	3/25/2016

Identifier: HB077CS-DOA-DMV-03-11-16
Title: DISABILITY:ID/LICENSE AND TRAINING RQMTS.
Sponsor: THOMPSON
Requester: House Finance

Department: Department of Administration
Appropriation: Motor Vehicles
Allocation: Motor Vehicles
OMB Component Number: 2348

Expenditures/Revenues

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

(Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates				
OPERATING EXPENDITURES	**FY 2017**	**FY 2017**	**FY 2018**	**FY 2019**	**FY 2020**	**FY 2021**	**FY 2022**
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
Total Operating	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Fund Source (Operating Only)							
None							
Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
Positions							
Full-time							
Part-time							
Temporary							
Change in Revenues							

Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No
If yes, by what date are the regulations to be adopted, amended or repealed?

Why this fiscal note differs from previous version:

Updated to reflect committee substitute bill version. No other changes.

Prepared By: Amy Erickson, Director
Division: Motor Vehicles
Approved By: Sheldon Fisher, Commissioner
Agency: Department of Administration

Phone: (907)269-5574
Date: 03/11/2016 01:00 PM
Date: 03/11/16

REPORTED OUT OF HFC 03/24/2016

Printed 3/25/2016

Control Code: FHGCk

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2015 LEGISLATIVE SESSION

Analysis

This bill will require DMV to add a voluntary designator to an identification card or driver's license that will signify the person has a cognitive, mental, neurological, or physical disability. DMV may charge a $5 fee, in addition to the standard duplicate identification card or driver's license fee, to add or remove the designator.

DMV will also need to update the driver manual to include the duties and responsibilities of drivers with an identified disability when they encounter a law enforcement agent.

DMV can provide these services for little additional resources. Therefore, a zero fiscal note is submitted.

(Revised 10/30/2014 OMB)

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Health and Social Services

Governor's Council on Disabilities & Special Education

3601 C Street, Suite 740
Anchorage, Alaska 99503
Main: 907.269.8990
Fax: 907.269.8995

March 14th, 2016

Representative Steve Thompson
Alaska State Legislature
Capitol Building, Room 515
Juneau, Alaska 99801

RE: HB77: Disability Training and Identification Bill

Dear Representative Thompson,

The Governor's Council on Disabilities and Special Education (the Council) would like to extend its support for HB 77. Your sponsorship of this bill is greatly appreciated as we feel that it will positively impact Alaska's most vulnerable populations, including individuals with disabilities.

Individuals with a hidden Intellectual or Developmental Disability who find themselves in a situation where it is necessary to effectively communicate with an authority figure may be at a disadvantage because of communication barriers, situational unawareness, and preconceptions authority figures may hold. Sadly, there have been instances in the past where Officers of the Law were unaware of an individual's disability and consequently misinterpreted the individual's actions as suspect and/or criminal, resulting in either injury or imprisonment for the individual. The Council feels that a training program is needed to improve communication skills between police officers, corrections officers and parole/probation officers who interact with people who experience non-apparent disabilities, whether these disabled individuals encounter the "systems" as victims, witnesses, or alleged perpetrators.

The Council strongly supports HB77 and the awareness that could potentially be fostered by providing law enforcement officials with the proper information and sensitivity training regarding individuals who experience a disability. By implementing a training course for law enforcement officials and having the option for an individual to include a discreet marker on their state identification card that conveys their disability to an Officer, the Council believes that HB77 will greatly decrease accidents that could have been prevented in the past by increasing hidden disability awareness throughout Alaska. Passing HB 77 will provide a framework for a future in which a person's hidden disability will not be interpreted as uncooperative or unlawful and will prevent needless misunderstandings that can lead to violence and arrest. Thank you for working to ensure that Alaskans with disabilities are safe and understood by the people that work hard to protect them.

Sincerely,

Patrick Reinhart

Patrick Reinhart
Executive Director
Governor's Council on Disabilities and Special Education

THE STATE of ALASKA
GOVERNOR BILL WALKER

Department of Health and Social Services
ALASKA COMMISSION ON AGING
P.O. Box 110693
Juneau, Alaska 99811-0693
Main: 907 465.3250
Fax: 907.465.1398

March 22, 2016

Representative Steve Thompson
Alaska Capitol, Room 515
Juneau, Alaska 99801-1182

Regarding: Support CSHB 77, Training Regarding Non-Apparent Disabilities & Voluntary Disability Designations on State Identification Cards and Driver's License

Dear Representative Thompson:

The Alaska Commission on Aging (ACoA) is pleased to renew our support for CSHB 77, as authored by you and co-sponsored by Representatives Gara, Kawasaki, Kito, Saddler, Vazquez, Lynn, Stutes, Wilson, Wool, Keller, Millett, and Neuman. Although this legislation addresses the needs of all Alaskans with disabilities, the ACoA will focus on the "safety" benefits we perceive for older Alaskans from this legislation, particularly those with concealed impairments that may result from physical or cognitive sources.

Older people who experience concealed disabilities are often impacted by the manner in which they respond to sensory stimuli and process information. This behavior can sometimes be misunderstood as resulting from being under the influence of an intoxicant or as purposefully disruptive. For example, hearing loss can result in problems understanding the spoken language and performing complex tasks. Those with anxiety disorders have a tendency to selectively focus and interpret even ambiguous events in a highly threatening way – which can be observed as disruptive behavior. Wandering outside unattended and unprotected is a significant personal safety risk for persons living with Alzheimer's disease and related dementias. Drivers with early stage memory changes are especially likely to minimize the complexity of driving and overestimate their abilities that can lead to unsafe driving. They may also find themselves lost even in familiar surroundings due to diminished short-term memory. Not only do these disabling conditions affect personal safety and the safety of others nearby, but may also impact the outcome of an encounter between a person with a disability and a public safety officer.

The Commission strongly agrees that preserving personal safety and dignity of individuals with disabilities would be greatly improved by having trained public safety officials able to recognize the signs of a person with a disability and have the skills to respond appropriately to them. We greatly appreciate the new requirement as proposed by CSHB 77 for the Alaska Police Standards Council to amend its training curriculum requirements to include training that will enable Alaska police officers, correctional officers, probation officers, and parole officers to recognize people with disabilities, including disabilities that are hidden, to know how to respond appropriately, and possess knowledge about relevant resources that can provide assistance. Disability awareness training will advance use of the "Silver Alert"

system and promote greater awareness among public safety officers about the needs of Alaskans with Alzheimer's disease and other cognitive impairments who have a tendency to wander and become lost, sometimes finding themselves in life-threatening situations. Public safety officers trained in disability awareness will be better able to recognize the signs of a person with dementia in the community and respond appropriately to bring that person to safety.

We thank you for your leadership on CSHB 77 to enhance public safety awareness, improve communication, and increase protection for Alaskans with disabilities.

Sincerely,

Mary E. Shields
Chair, Alaska Commission on Aging

Sincerely,

Denise Daniello
ACoA Executive Director

Cc: Representative Les Gara
Representative Scott Kawasaki
Representative Sam Kito
Representative Dan Saddler
Representative Liz Vazquez
Representative Charisse Millett
Representative Bob Lynn
Representative Louise Stutes
Representative Tammie Wilson
Representative Adam Wool
Representative Wes Keller
Representative Mark Neuman

Dear Representative Thompson,

Thank you for sponsoring HB77, the Disability Training and ID Bill. I strongly support HB77 because this bill will make sure that law enforcement professionals will be educated about disabilities and how a disability affects a person's everyday life. These professionals will become better equipped to interact with people who experience either an apparent or non-apparent disability.

I also support HB77 because it will enable people who experience a disability to voluntarily have a discreet marker placed on an Alaska Driver's License or ID card. This marker will help a professional recognize that the person in front of them has a disability, even though it may not be initially apparent to the professional.

I am a Wallbuster and have been working with other Wallbuster's and your office from the beginning on this legislation. I have always believed in its importance and need but in 2014 had a personal experience that really brought the reality of the changes that needed to be made to my own doorstep. It became very apparent to me the need for additional training for law enforcement and how they interact with people with disabilities, especially non apparent disabilities. Because of a domestic issues state troopers were called to our home in 2014 in the middle of the night. I told the 911 operator that my husband was legally blind and repeated the same thing to the two troopers that responded to the call and came to our home. At no time did the officers acknowledge my information or ask or act in any way to show they understood how this disability would affect the way they communicated with my husband during the event that took place. I believe the interaction had a potential to become explosive due to this lack of understanding/action.

I believe this bill legislation will go a long way toward safer encounters between people with disabilities and law enforcement. The training will help officers better understand and safeguard the right of people with disabilities. HB77 will help improve the lives of Alaskans with both apparent and non-apparent disabilities and improve the quality of law enforcement officers throughout the state.

Again, thank you for your support,

Juanita Webb

Dear Representative Thompson,

Thank you for sponsoring HB77, the Disability Training and ID Bill. I strongly support HB77 because this bill will make sure that law enforcement professionals will be educated about disabilities and how a disability affects a person's everyday life. These professionals will become better equipped to interact with people who experience either an apparent or non-apparent disability.

I also support HB77 because it will enable people who experience a disability to voluntarily have a discreet marker placed on an Alaska Driver's License or ID card. This marker will help a professional recognize that the person in front of them has a disability, even though it may not be initially apparent to the professional.

I also support Hb77 because

I believe this bill legislation will go a long way toward safer encounters between people with disabilities and law enforcement. The training will help officers better understand and safeguard the right of people with disabilities. HB77 will help improve the lives of Alaskans with both apparent and non-apparent disabilities and improve the quality of law enforcement officers throughout the state.

Again, thank you for your support,

I support the creation of this legislation in defense of citizens inflicted with a variety of hidden disabilities. I hope it will also increase awareness and understanding of the occasional special circumstance those with disabilities, obvious or not, must contend. Thank you for supporting HB77!

Frank of Ruin 2-19-15

Daniel George

From: Art Delaune <adelaune@accessalaska.org>
Sent: Wednesday, April 06, 2016 10:05 AM
To: Sen. Bill Stoltze
Subject: HB77

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Senator Stoltz:

Access Alaska supports the passage of House Bill 77. Alaskans with disabilities, especially those disabilities that are not readily apparent, have the right to be treated fairly and respectfully by police officers, corrections officers and parole/probation officers. Sometimes recognizing that a person has a disability can be challenging. Disability awareness training will help an officer recognize unintentional behavior that may not be viewed as "normal "and secondly, teach them ways to effectively and appropriately interact with people with non-apparent disabilities. Almost half of the police shootings in the United States involve individuals who experience non-apparent disabilities.

House Bill 77 has 3 components. First the bill requires a standardized disability awareness training for law enforcement and corrections officers. The bill also includes training for the general public so Alaskan citizens understand their responsibilities for appropriately interacting with law enforcement. Finally, the bill includes a voluntary and discrete method for people to disclose that they have a disability on an Alaskan drivers' license or ID card. With the passage of HB 77 we hope to reduce potential conflicts between Alaskans with disabilities and law enforcement and make these encounters safer for all parties involved.

Title II of the Americans with Disabilities Act (ADA) (1990) protects individuals with disabilities from discrimination in services, programs and activities provided by State and local government. In 1992 Governor Wally Hickel issued Administrative Order 129, requiring all Alaska public entities comply with the ADA. Each time a law enforcement or corrections officer treats an individual with a disability inappropriately or unfairly, they are at risk of violating the ADA, thus placing the village, municipality or state in a precarious and potentially libelous situation.

This bill is about accommodation and inclusion. It is a bill that reinforces individual choice and individual rights. We are advocating for this bill because it is another tool for law enforcement to use to reach that goal. The purpose of HB77 is to protect, not only people with disabilities but also our valued public servants in law enforcement and corrections. This bill will help make interactions with the general public safer for everyone involved. We have seen that, time after time, when barriers are removed for people with disabilities, everyone in the community benefits.

We appreciate any support you can give to the passage of HB77; a bill whose goal is to make communications better between law enforcement and the public.

In this very difficult political climate, we are grateful for your hard work and service to Alaska and support your efforts to make Alaskan communities safer for everyone.

To demonstrate the need for HB77 we would like to point out an incident that occurred a few months ago in Kodiak. Nicholas Pletnikoff was checking the mail in September when members of the Kodiak Police Department responding to a 911 call that ended up with him on the ground, handcuffed and pepper sprayed.

The city of Kodiak reported that the man **didn't appear developmentally disabled, and he failed to obey police commands**, very common behaviors associated with autism. Nicholas was not charged, but his family is suing the Kodiak police department, the city and two law enforcement officials for $100,000 because of that incident. Soldotna-based consultant Greg Russell later determined officers responded appropriately**, but also recommended further use-of-force training in the department.**

This incident could have been handles better, Nicholas was not seriously injured, although he was emotionally traumatized. It appears obvious that these officers did not used de-escalating techniques; techniques that are in the training required in House Bill 77

HB77 requires law enforcement and corrections officials be trained to treat EVERYONE with respect and dignity so that these incidents become a thing of the past.

Sincerely,

Art Delaune

Independent Living Services Supervisor

Access Alaska

Work: 907-479-7940

Fax: 907-474-4052

adelaune@accessalaska.net

Training in recognizing non-apparent disabilities.

Provide training that instructs peace officers in the recognition of a person with a non-apparent disability and appropriate interaction with a person with a non-apparent disability.

Stress positive responses to such individuals, de-escalating potentially dangerous situations, and understanding of the different manner in which such individuals' process sensory stimuli and language, and appropriate methods of interrogation. **Where appropriate, the training presenters shall include experts on non-apparent disabilities.**

Techniques for differentiating between an individual with a non-apparent disability from an individual who is belligerent, uncooperative, or otherwise displaying traits similar to the characteristics of an individual with a non-apparent disability.

Some Non Apparent disabilities:
Cognitive:

Autism, FASD, Intellectual Disability, Aspergers, etc.

Mayhave/be:

- Limited vocabulary
- Difficulty understanding/answering questions
- Mimics answers/responses
- Unable to communicate events clearly in his/her own words
- Unable to understand complicated instructions or abstract concepts
- Not understand consequences of situations
- Unaware of seriousness of situations
- Easily led or persuaded by others
- Naïve eagerness to confess or please authority figures
- Unaware of social norms and appropriate social behavior
- Acts younger than actual age, may display childlike behavior
- Displays low frustration tolerance and/or poor impulse control
- "Act out", become emotional, or try to leave if under pressure
- Difficulty performing tasks
- Inability to read or write
- Inability to tell time
- Difficulty staying focused and easily distracted
- Awkward/poor motor coordination
- Difficulty recalling facts/details
- Impulsive actions (try to run, fight, etc.)
- Over-willing to confess
- Hides disability
- Says what others want to hear
- Frustration

- Not make eye contact. Don't misinterpret limited eye contact as deceit.
- Not talk (nonverbal).
- Communicate with sign language, picture cards or gestures
- Have a delayed response to your question.
- May be prone to seizures.
- Exhibit odd behaviors such as flapping hands or pacing. Don't try to stop these behaviors which may be the person's way of calming him/her

Traumatic or Acquired Brain Injury (TABI)

- Caused by external forces or internal events that impair physical, neurological, psychological, intellectual, emotional, and behavioral functioning.
- Changes following a brain injury can affect how the person experiences life, interprets events and responds behaviorally.
- Has trouble processing or remembering information, may not follow instructions and may be perceived as belligerent or unmotivated.
- Experiences headaches and fatigue, level of frustration tolerance may be low causing them to act out in anger.
- Has difficulty perceiving how their behavior affects others, important relationships can become strained.
- Has difficulty with impulsivity, he may do or say things that are not always socially appropriate (e.g. sexual acting out).
- Experiences emotional volatility, he may have outbursts of anger, aggression, or crying.

Mental Health

POSSIBLE INDICATORS OF MENTAL ILLNESS

Verbal Cues

Illogical thoughts
Sharing a combination of unrelated or abstract topics
Expressing thoughts of greatness
Indicating ideas of being harassed or threatened
Exhibiting a preoccupation with death, germs, guilt, or other similar ideas
Unusual speech patterns
Nonsensical speech or chatter
Word repetition
Pressured speech
Extremely slow speaking
Verbal hostility or excitement
Talking excitedly or loudly
Being argumentative, belligerent, or unreasonably hostile
Threatening harm to self or others

Behavioral Cues

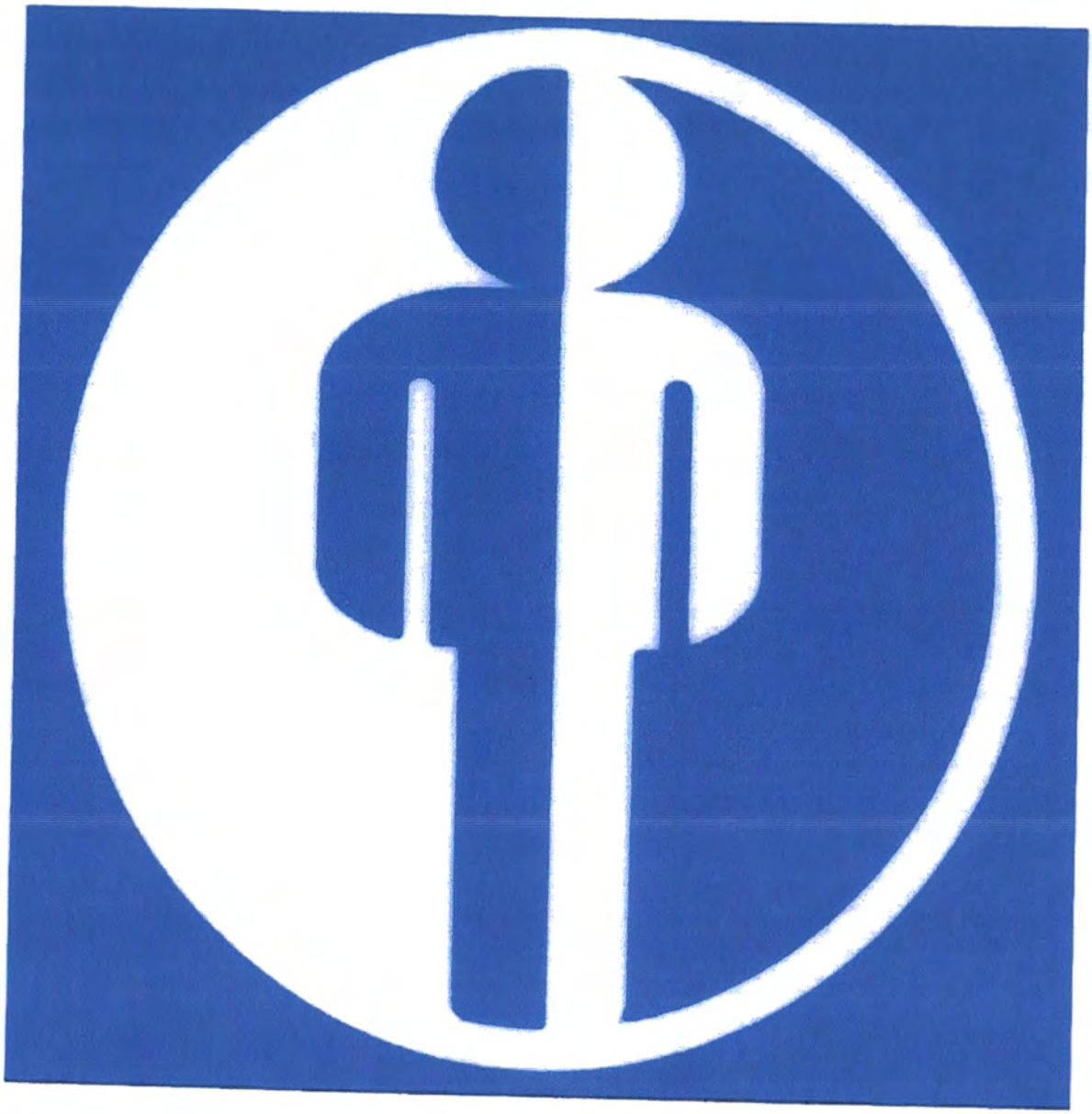
Physical appearance
Inappropriate to environment
Bizarre clothing or makeup (taking into account current trends)
Bodily movements
Strange postures or mannerisms
Lethargic, sluggish movements
Pacing, agitation
Repetitive, ritualistic movements
Seeing, smelling, or hearing things that cannot be confirmed
Confusion about or unawareness of surroundings
Lack of emotional response
Causing injury to self
Nonverbal expressions of sadness or grief
Inappropriate emotional reactions
Overreacting to situations in an overly angry or frightening way
Reacting with the opposite of expected emotion

Environmental Cues

Decorations-Strange trimmings, misuse of household items
Waste matter/trash
"Packratting" – accumulation of trash
Presence of feces or urine on the floor or walls
Childish objects

Posttraumatic stress disorder, or PTSD, can occur after someone goes through, sees, or learns about a traumatic event:

- feel tense or afraid
- be agitated and jumpy
- feel on alert
- overreact to small misunderstandings
- drink, use drugs, or smoke too much
- drive aggressively
- avoid certain people or situations
- hyper vigilance, or a heightened awareness of external stimuli like police lights or sirens



Provided by Rep. Thompson for HB 77 in SSTA

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 11, 2016

SUBJECT: State liability disability designation
(CSHB 77(FIN); Work Order No. 29-LS0072\P)

TO: Representative Steve Thompson
Attn: Lynette Bergh

FROM: Hilary V. Martin
Legislative Counsel

You have asked whether the training requirements and disability designation on an identification card or license could result in increased liability to the state.[1]

CSHB 77(FIN) requires the Police Standards Council (Council) to train peace officers in recognizing people with disabilities, appropriate interactions with persons with disabilities, to make resources available to persons with disabilities and to those interacting with persons with disabilities, and the requirements of Title II of the Americans with Disabilities Act. The CS also allows a person with a disability to voluntarily designate on an identification card or driver's license that the person has a disability.

AS 09.50.250 sets out the types of actions that may be brought against the state. Specifically, the statute limits the types of claims that can be brought, and prevents claims if the claim

> (1) is an action for tort, and is based upon an act or omission of an employee of the state exercising due care in the execution of a statute or regulation, whether or not the statute or regulation is valid; or is an action for tort, and based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a state agency or an employee of the state, whether or not the discretion involved is abused;
>
> (2) is for damages caused by the imposition or establishment of, or the failure to impose or establish, a quarantine or isolation, or by other actions, by the state or its agents, officers, or employees under AS 18.15.355 - 18.15.395, except for damages caused by negligent medical

[1] Please be aware that any litigation based on actions of peace officers will be highly fact specific and it is impossible to predict how a court might rule on a specific case.

> treatment provided under AS 18.15.355 - 18.15.395 by a state employee, or except that, if a state employee quarantines or isolates a person with gross negligence or in intentional violation of AS 18.15.385, the state shall pay to the person who was quarantined or isolated a penalty of $500 for each day of the improper quarantine;
>
> (3) arises out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights;
>
> (4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c); or
>
> (5) arises out of injury, illness, or death of a seaman that occurs or manifests itself during or in the course of, or arises out of, employment with the state; AS 23.30 provides the exclusive remedy for such a claim, and no action may be brought against the state, its vessels, or its employees under the Jones Act (46 U.S.C. 30104 - 30105), in admiralty, or under the general maritime law.

For actions of peace officers, a number of claims would be barred under this language.[2] The key consideration is if a peace officer exercised due care in the execution of the peace officer's duties and whether there is a duty to act. In analyzing whether the officer exercised due care, a court will likely look at and analyze the required training under this bill and whether the peace officer's acts were consistent with the training. If the officer failed to follow the training in a manner that causes damages or injury, a court could find that the officer did not exercise due care, or acted negligently, and the state could be liable for that peace officer's actions.

Whether the state or a peace officer owes a duty to a person that could give rise to liability is a highly fact-specific finding. In *City of Kotzebue v. McLean*, for example, the Alaska Supreme Court found that the City owed a duty to a victim who was injured after the police department ignored a call regarding a life-threatening situation and did not respond in a timely manner, leading to injury to the victim.[3] The court stated that when analyzing whether a duty of care exists under particular circumstances, the following factors apply:

> [T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of

---

[2] You should be aware that while state troopers are state employees, municipal police officers are municipal employees and their actions would not give rise to a claim of liability against the state. Municipal immunity is laid out in AS 09.65.070.

[3] 702 P.2d 1309, 1314 - 1315 (Alaska 1985).

> the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost and prevalence of insurance for the risk involved.[4]

Therefore, while the criteria for whether the state would be immune from suit if HB 77 is adopted is not changed by this bill, the factors that a court will consider in a case to determine if a peace officer exercised due care and if the state owed a duty to a person injured would include whether a peace officer acted in line with the training regarding disability that the officer received.

If I may be of further assistance, please advise.

HVM:lem
16-340.lem

---

[4] *Id.* at 1314.