

LEG. FINANCE - BILLS 1985 - 1986 2404

HB 463 - HB 465 2404

**HOUSE  
COMMITTEE REPORT**

(11)

Date referred: 3/21/86

FURTHER REFERRALS:

DATE: 4-3-86

The FINANCE Committee has considered HB 463

"An Act relating to criminal trials and restitution."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- \_\_\_\_\_  new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note(s) (2)

SIGNING DO PASS:

Albert G. Adams  
[Signature]  
[Signature]  
[Signature]  
Ronald L. Taylor  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

Albert G. Adams  
Chairman

# STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : HB463  
 Title : "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."  
 Sponsor : Thompson, Jenkins, Uehling, et al  
 Requestor : House Finance  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected. Public Safety  
 BRU : Council on Domestic Violence and Sexual Assault  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
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REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir. *BKM*  
 Division : CDVSA

Phone : 465-4356  
 Date : 3/25/86

Approved by Commissioner : [Signature]  
 Agency : Dept. of Public Safety

Date : 3/25/86

Distribution (by Agency preparing fiscal note) :

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. HB 463  
 Title: "An Act relating to Criminal trials and restitution."  
 Sponsor: Repr. Thompson  
 Requestor: Repr. Thompson  
 Date of Request: February 7, 1986

**FISCAL DETAIL**

Agency Affected: Department of Law  
 BRU: Prosecution  
 Components: \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues Phone: 465-3672  
 Division: Administrative Services Division Date: 2/12/86  
 Approved by Commissioner: Richard I. Pegues (for) Date: 2/12/86  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 463

This bill expands the exceptions to the authority to compromise misdemeanors for which a victim has a civil action, under AS 12.45.120, to except certain family members and certain others having a past or present living relationship with a defendant. The bill also provides that a court may order restitution to a public or nonprofit organization that has provided counseling, medical or shelter services to the victim. Neither of these new provisions will have a fiscal impact on the Department of Law.

Introduced: 1/13/86  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY THOMPSON

2

HOUSE BILL NO. 463

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal trials and restitution."

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

8 \* Section 1. AS 12.45.120 is amended to read:

9           Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
10 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a  
11 charge of misdemeanor for which the person injured by the act consti-  
12 tuting the crime has a remedy by a civil action, the crime may be  
13 compromised except when it was committed

14           (1) by or upon a peace officer, judge, or magistrate while  
15 in the execution of the duties of that office;

16           (2) riotously;

17           (3) with an intent to commit a felony;

18           (4) larcenously;

19           (5) by assault against

20                       (A) a spouse or a former spouse of the defendant;

21                       (B) a parent, grandparent, child, or grandchild of the  
22 defendant;

23                       (C) a member of the social unit comprised of those  
24 living together in the same dwelling as the defendant; or

25                       (D) a person who is not a spouse or former spouse of  
26 the defendant but who previously lived in a spousal relationship  
27 with the defendant.

28 \* Sec. 2. AS 12.55.045(a) is amended to read:

29           (a) The court may order a defendant convicted of an offense to

1        make restitution as provided in this section, including restitution to  
2        a public or private nonprofit organization that has provided counsel-  
3        ing, medical, or shelter services to the victim or as otherwise au-  
4        thorized by law. [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF  
5        RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES  
6        OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IM-  
7        POSE.]

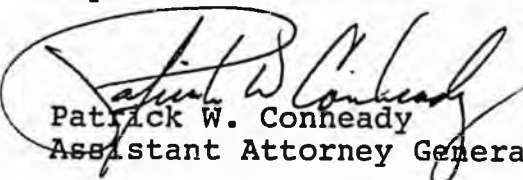
8        \* Sec. 3. AS 12.55.051(a) is amended to read:

9            (a) If the defendant defaults in the payment of a fine or any  
10        installment or of restitution or any installment, the court may order  
11        the defendant to show cause why the defendant should not be sentenced  
12        to imprisonment for nonpayment. If the defendant fails to establish  
13        [COURT FINDS] by a preponderance of the evidence that the defendant  
14        did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN  
15        INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the  
16        fine or restitution, the court may order the defendant imprisoned  
17        until the order of the court is satisfied. A term of imprisonment  
18        imposed under this section may not exceed one day for each \$50 of the  
19        unpaid portion of the fine or restitution or one year, whichever is  
20        shorter. Credit shall be given toward satisfaction of the order of  
21        the court for every day a person is incarcerated for nonpayment of a  
22        fine or restitution.

# MEMORANDUM

# State of Alaska

TO: LuAnn Cutler  
Legislative Assistant to  
Representative Al Adams

FROM:   
Patrick W. Conheady  
Assistant Attorney General

DATE: April 2, 1986

FILE NO:

TELEPHONE NO: 465-3678

SUBJECT: CSHB 463 (Jud)

The House Judiciary committee substitute incorporates a method of drafting which could present problems in the future. In Section 1 of the bill, AS 12.45.120 is amended by deleting existing language in subsection 4 (larcenously) and inserting new language regarding domestic assaults. If the old subsection 4 - larcenously, is to be deleted, the subparagraph 4 designation should remain, and a new subparagraph 5, containing the additional language on domestic assaults should be added. This method will preclude any confusion in the future with prior court decisions that have cited AS 12.45.120, or with any statutory cross-reference which may exist to the current language in AS 12.45.120. This is the preferred method of drafting referred to in previous editions of the Legislative Drafting Manual.

Therefore, I would recommend to the committee that Section 1 of the bill read as follows:

\* Section 1. AS 12.45.120 is amended to read:

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge, or magistrate while in the execution of the duties of that office;

(2) riotously;

(3) with an intent to commit a felony;

(4) [LARCENOUSLY;]

(5) by assault against

(A) the spouse of the defendant, unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued;

(B) a former spouse of the defendant;

(C) a parent, grandparent, child, or grandchild of the defendant;

(D) a member of the social unit comprised of those living together in the same dwelling as the defendant; or

LuAnn Cutler  
Legislative Assistant to  
Representative Al Adams

April 2, 1986  
Page 2

(E) a person who is not a spouse or former spouse of the defendant but who previously lived in a spousal relationship with the defendant

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:76

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS HB 463 (Judiciary)

March 25, 1986

Support

CSHB 463 - "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

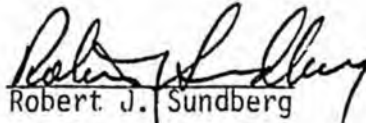
The Council on Domestic Violence and Sexual Assault supports CSHB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has provided counseling, medical or shelter services to a victim of an offense.

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.

  
Robert J. Sundberg

11 E 1

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSHB463 (JUD)  
 Title : "An Act Relating to Criminal Trials and Restitution"  
 Sponsor : Rep. David Thompson  
 Requestor : House Judiciary  
 Date of Request : \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Council on Domestic Violence and Sexual Assault  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

Prepared by : Barbara Miklos, Exec. Dir. Phone : 465-4356  
 Division : Council on DV and SA Date : 1/31/86  
 Approved by Commissioner : [Signature] Date : 2/3/86  
 Agency : Dept. of Public Safety

Distribution (by Agency preparing fiscal note) :

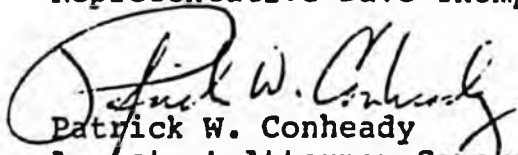
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

MEMORANDUM  
10 Helen Fisher  
Legislative Assistant to  
Representative Dave Thompson

DATE: March 12, 1986

FILE NO:

TELEPHONE NO: 465-3678

FROM:   
Patrick W. Conheady  
Assistant Attorney General  
Chief, Pretrial Services

SUBJECT: Proposed CSHB 463  
(Judiciary);  
3/11/86 version

You have requested my analysis of the March 11 version of HB 463. In addition to the pertinent comments contained in my March 7 memorandum, I would like to add the following:

In Section 1 of the bill, new language has been added providing an exception to the prohibition on civilly compromising domestic assaults. That exception is contained in proposed AS 12.45.120(4)(A) and provides "unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued." This department opposes this new provision as contrary to our stated position against compromising domestic assaults.

Such an exception will not facilitate divorce proceedings as the battering spouse will have motivation to assert the necessity of a civil compromise as a precondition to a less contentious divorce. Furthermore, fear of lapsing spousal privilege causing divorce proceedings to drag on with the pendency of a criminal assault prosecution are unfounded as the spousal privilege does not apply when one spouse is the victim of the other spouse's criminal act. See Rule 505(a)(2)(D)(i) of the Alaska Rules of Evidence.

Section 1 of the bill also contains the drafting error referred to in my initial memorandum.

Prior Section 2, facilitating payment of restitution to victim has been deleted from the bill.

Sections 2 and 3 of this version mirror section 3 and 4 of the version I prepared on March 7.

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:62

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - HB 463

January 31, 1986

Support

HB 463 - "An Act relating to criminal trials and restitution."

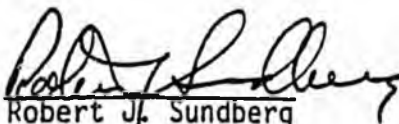
The Council on Domestic Violence and Sexual Assault supports HB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has ~~provided counseling, medical or shelter services to a victim of an offense.~~

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.

  
Robert J. Sundberg

March 28, 1986

Louann Cutler  
Legislative Aide  
Office of Representative Al Adams  
Pouch "V"  
Juneau, Alaska 99811

RE: House Bill 463

Dear Ms. Cutler:

I recently became aware of efforts on the part of certain special interest groups within our state aimed at the revision of AS 12.45.120. As you know, that statute permits judges, in the exercise of their discretion and after a full review of the facts as presented by all interested parties, to dismiss many misdemeanor actions. Dismissals are, of course, permissible only where a victim determines that he or she no longer wishes to pursue the action.

The proposed amendments to AS 12.45.120 are aimed at undercutting the authority of our judges to dismiss cases involving allegations of domestic violence, even though the persons directly involved in such matters are supportive of dismissal. Presumably, those pressing for revision of the law are concerned about the ongoing dynamics of families in which violence has occurred. In many instances, concerns with regard to continuing patterns of violence within the home are justified. The problem with the proposed revision is its failure to make allowances for situations where there is no evidence of a "cycle of violence" within a home.

I am an attorney in the Fairbanks area. During the time that I've spent in practice, I have handled several cases where dismissal pursuant to AS 12.45.120 has been sought. Admittedly, I advocated dismissal of these matters; but I have never been an advocate of a complete "hands off" approach toward incidents of domestic violence. None of the judges to whom such cases have been presented would find such a laissez faire approach even marginally convincing. Each of the judicial officers with whom I have dealt have taken great pains to insure that dismissals do not occur where there is evidence of an ongoing problem within a family unit.

In summary, there is a very real need for a case-by-case review of the need for continuing governmental intervention in domestic settings where incidents of violence have occurred. The existing law creates a vehicle through which such a review can be conducted. The proponents of the revision of AS 12.45.120 ignore the fact that governmental intervention can often be extremely disruptive of families. They seek a law which ignores the desires of those most directly involved, and assume their dogmatic approach is best in

The attorney (Public Defender) ~~was~~ who represented the defendant in the Nelles case.

each and every case which arises.

I am supportive of vesting continued discretion in our judiciary to determine how to proceed in individual cases. The family members involved in such cases have been almost uniformly happy with our trial court's application of the existing law. It is, as a result, my hope that the members of our legislature will not adopt the simplistic approach to family problems advocated by those who seek revision of AS 12.45.120.

Thank you for this opportunity to express my views on this matter.

Sincerely,

*Geoffrey B. Wildridge*  
Geoffrey B. Wildridge

912 Barnette  
FBX 99701  
452-1601

Alaska Women's Commission

Testimony  
Suzanne Lombardi

HB 463

The legislative committee of the Alaska Women's Commission met February 12, 1986 and expressed support of HB 463, an act relating to Criminal Trials and Restitution.

Section I

The Commission believes that domestic violence is a violent crime that should be handled as any other assault would be by the Judiciary system.

By adding domestic violence to the list of crimes that cannot be compromised by civil action, the Alaska State Legislature is continuing to send the message that this crime is clearly unacceptable.

Although, the compromise statute is not often used, a court opinion was handed down recently that reinforces the Commission's concern. In the Court of Appeals - State of Alaska vs. Nelles the court upheld the dismissal of charges and the defendant paid \$100 restitution to a victim who required four stitches in her mouth due to a blow with a fist. The court said "certainly the state has a valid concern: that domestic assaults go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur."...."an ammendment to create additional exceptions is clearly a matter of legislative rather than judicial concern."

Section II

This section allows restitution to be provided to an organization that has provided counseling, medical, or shelter services to the victim.

Many women have no insurance and suffer permanent physical as well as emotional handicaps because of lack of proper medical or counseling services. Furthermore, with the severe funding cutbacks, many shelters are in great need of additional support and this bill will assure that vital services are provided to the victim.

Section III

If the defendant fails to pay restitution he must prove his inability to comply was neither intentional nor in bad faith.

The Alaska Women's Commission believes this bill is another positive step in the direction of eradicating violence in Alaska.

not in  
J.W.  
C.S.

# ALASKA NETWORK ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

130 Seward, No. 501 • Juneau, Alaska 99801 • (907) 586-3650

Abused Women - Aid in Crisis (AWAIC);  
Advocates for Victims of Violence (AVV);  
Aiding Women in Abuse and Rape Emergencies (AWARE);  
Alaska Women's Resource Center (AWRC); Arctic Women in Crisis (AWIC);  
Bering Sea Women's Group (BSWG);  
Cordova Women's Resource Center (CWRC); Emmonak Women's Shelter;  
Kodiak Women's Resource & Crisis Center (KWRC); MLN, Inc.;  
Men's Support Network (MSN); Safe & Fear-Free Environment (SAFE);  
Siklaks Against Family Violence (SAFV);  
Southwestern Alaska Council for the  
Prevention of Child Sexual Assault (SWACPSA);  
South Peninsula Women's Services (SWPS);  
Tundra Women's Coalition (TWC); Valley Women's Resource Center (VWRC);  
Women in Crisis Counseling & Assistance (WICCA);  
Women in Safe Homes (WISH); Women's Resource & Crisis Center (WRCC)

## POSITION PAPER: HB 463

The Alaska Network on Domestic Violence and Sexual Assault is a non-profit membership organization composed of twenty domestic violence and sexual assault programs throughout the state. The Network strongly supports HB 463 for the following reasons:

Section 1: As you are aware, on February 7, 1987, the Court of Appeals affirmed a decision made by Judge Crutchfield to dismiss a misdemeanor assault charge against Bruce Nelles pursuant to the misdemeanor civil compromise statute in the case STATE OF ALASKA vs. BRUCE NELLES. In this case, the Court of Appeals found that AS 12.45.120 and 12.45.130 expressly authorize the court to compromise misdemeanors and that the the court's power to dismiss is in no way conditioned upon the agreement of the prosecutor.

In the case of STATE vs. NELLES, Nelles struck his girlfriend, Mary Henry, on the mouth with his fist causing a cut which required four stitches. She stated that he had never assaulted her on any other occasion during their year together, there were no medical expenses, no loss of wages, and that she did not want civil compensation. Since the state had not suggested there was any ongoing danger to the victim, the Appeals Court found that Judge Crutchfield had not abused his discretion in dismissing the case.

The civil compromise statutes have been rarely used in the courts in domestic violence cases. Only within recent past have we seen these statutes employed for this purpose; and, until now, only in a few cases. The Network is very concerned that in light of this recent opinion, civil compromise in domestic violence cases will begin to be utilized more regularly. We strongly urge you to adopt this provision of the bill and create an additional exception to exempt domestic disputes from these statutes.

Our experience in this field tells us several things:

-With couples who are violent, there occurs what is most often referred to as a "continuum of violence. The violence starts with a minor offense and then becomes more frequent and more intense. A recent study in Minneapolis showed there was a substantial decrease in second time offenders when a mandatory arrest policy was adopted by that community. These results agree with the work

completed by the Dodbashes, two other highly regarded researchers in the field. They have found that the messages society gives the batterer about what is permissible behavior, in the form of sanctions, has a significant impact of their future behavior. For these reason, the Municipality of Anchorage has recently adopted a no drop policy for domestic violence cases. We must send a message to batterers and their victims that domestic violence is unacceptable in any form.

-Many domestic violence cases precipitate divorce and child custody cases. Typically, battered women are afraid of what will happen to them outside of the courtroom and are therefore reluctant to testify. The batterer is in the position of power within the relationship. The Network is very concerned that the pressure for the woman to agree to civilly compromise the case could in some cases be enormous. Victims of domestic violence are not in a position to negotiate an equitable civil compromise.

Section II: We very much support this section as it would clarify that restitution could be paid to programs that offer services to victims. The Network's programs are understaffed and underfunded, and additional sources of revenue are very much needed. We feel it is entirely appropriate that some of these costs be borne by the perpetrators of these crimes.

Section III: We feel that it should be the Court's responsibility to determine the amount of restitution that should be paid by the defendant, but not whether he is able to pay. If the defendant defaults and then proves that it was neither intentional or in bad faith then the Court can adjust the amount of restitution due. It is our hope that this change will increase the amount of restitution actually paid.

not  
in  
law  
C.S.

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS  
FY 84**

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	953	1,701	1,114	1,086	220	5,074
Barrow	4	27	8	47	5	91
Bethel	11	28	29	68	---	136
Fairbanks	294	613	217	345	20	1,489
Juneau	117	181	56	119	17	490
Kenai	67	190	66	91	11	425
Ketchikan	76	113	75	63	5	332
Kodiak	43	71	37	41	4	196
Kotzebue	16	16	28	48	---	108
Nome	20	6	32	23	---	81
Palmer	71	172	86	98	15	442
Sitka	48	44	24	34	2	152
Wrangell/ Petersburg	26	32	11	13	4	86
<b>TOTAL</b>	<b>1,746</b>	<b>3,194</b>	<b>1,783</b>	<b>2,076</b>	<b>303</b>	<b>9,102</b>
<b>% OF TOTAL</b>	<b>19%</b>	<b>35%</b>	<b>20%</b>	<b>23%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT**

First	267	370	166	229	28	1,060
Second	40	49	68	118	5	280
Third	1,134	2,134	1,303	1,316	250	6,137
Fourth	305	641	246	413	20	1,625

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 82/83

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,008	1,596	1,230	914	169	4,917
Barrow	11	18	10	24	3	65
Bethel	16	33	53	58	0	160
Fairbanks	303	543	270	211	6	1,333
Juneau	112	167	95	90	1	465
Kenai	85	149	59	56	5	354
Ketchikan	69	97	79	69	7	321
Kodiak	77	58	36	43	2	217
Kotzebue	14	13	28	25	2	82
Nome	17	17	39	18	2	93
Palmer	73	134	66	34	7	314
Sitka	58	28	33	17	9	145
Wrangell/ Petersburg	24	39	9	8	0	80
<b>TOTAL</b>	<b>1,867</b>	<b>2,892</b>	<b>2,007</b>	<b>1,567</b>	<b>213</b>	<b>8,546</b>
<b>% OF TOTAL</b>	<b>22%</b>	<b>34%</b>	<b>23%</b>	<b>18%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

First	263	331	216	184	17	1,011
Second	42	48	77	67	7	240
Third	1,243	1,937	1,391	1,047	183	5,802
Fourth	319	576	323	269	6	1,493

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 81/82

COURT	CASE TYPE					TOTAL
	DIVORCE	DISS. OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,295	1,541	1,643	539	162	5,180
Barrow	25	14	13	27	11	90
Bethel	14	13	49	37	4	117
Fairbanks	325	486	266	170	48	1,295
Juneau	271	3	79	50	13	416
Kenai	171	33	75	53	9	341
Ketchikan	190	-	105	51	9	355
Kodiak	89	-	43	23	3	158
Kotzebue	22	-	31	31	3	87
Nome	29	3	33	7	9	81
Sitka	76	1	38	14	8	137
<b>TOTAL</b>	<b>2,507</b>	<b>2,094</b>	<b>2,375</b>	<b>1,002</b>	<b>279</b>	<b>8,257</b>
<b>% OF TOTAL</b>	<b>30%</b>	<b>25%</b>	<b>29%</b>	<b>12%</b>	<b>.3%</b>	<b>100%</b>

Fiscal Year July 1 - June 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

First	537	4	222	115	30	908
Second	51	3	64	38	12	168
Third	1,555	1,574	1,761	615	174	5,679
Fourth	364	513	328	234	63	1,502

FEB 11 1986

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,	)	
	)	
Appellant,	)	File No. A-995
	)	
v.	)	<u>O P I N I O N</u>
	)	
BRUCE NELLES,	)	
	)	
Appellee.	)	[No. 578 - February 7, 1986]

Appeal from the District Court of the State of Alaska, Fourth Judicial District, Fairbanks, H. E. Crutchfield, Judge.

Appearances: Jeffery O'Bryant, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Harold M. Brown, Attorney General, Juneau, for Appellant. Raymond Funk, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

The state appeals from a district court dismissal of a misdemeanor assault charge against Bruce Nelles. Judge H.E. Crutchfield dismissed the charge pursuant to the misdemeanor civil compromise statute. We affirm.

BACKGROUND

While intoxicated, Nelles struck his girlfriend, Mary M. Henry, on the mouth with his fist. Henry's injury required four stitches. She filed a citizen arrest form seeking Nelles' arrest.

Court: Okay.

...

Court: You're not frightened of Mr. Nelles I take it then, you, he didn't try to talk you into doing this or threatening you in any way?

Henry: No.

Judge Crutchfield initially denied Nelles' motion to dismiss. After Nelles moved for reconsideration, however, Judge Crutchfield ordered the case dismissed "pursuant to the civil compromise provisions" and "upon payment of \$100 costs." The state has appealed the order of dismissal.

#### DISCUSSION

"In theory there should be no compromises of criminal cases." Miller, The Compromise of Criminal Cases, 1 So. Cal. L. Rev. 1 (1927). And in practice, "the civil and criminal law operate independently of one another so that resolution of a victim's civil rights and remedies has no effect upon criminal prosecution." People v. Moulton, 182 Cal. Rptr. 761, 766 (Cal. App. Dep't. Super. Ct. 1982). "An exception to this principle exists, however, where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of certain conduct." Annot., 42 A.L.R.3d 315, 318, § 2[a]. Many states, including Alaska, have adopted such statutes, allowing judicially-sanctioned compromises and dismissals of criminal charges.<sup>1</sup>

---

<sup>1</sup>. AS 12.45.120-.140; Ariz. Rev. Stat. Ann. § 13-3981 (1978); Cal. Penal Code § 1377-79 (West 1982); Idaho Code Ann. § 19-3401-3403

(footnote continued)

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

FEB 11 1986

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THE COURT OF APPEALS OF THE STATE OF ALASKA

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Appellant,	)	File No. A-995
	)	
v.	)	<u>O P I N I O N</u>
	)	
BRUCE NELLES,	)	
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Appellee.	)	[No. 578 - February 7, 1986]

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Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

The state appeals from a district court dismissal of a misdemeanor assault charge against Bruce Nelles. Judge H.E. Crutchfield dismissed the charge pursuant to the misdemeanor civil compromise statute. We affirm.

BACKGROUND

While intoxicated, Nelles struck his girlfriend, Mary M. Henry, on the mouth with his fist. Henry's injury required four stitches. She filed a citizen arrest form seeking Nelles' arrest.

At a bail hearing before Judge Crutchfield, Nelles' attorney moved for dismissal. He submitted a statement titled "Compromise of Criminal Action," which was signed by Henry and stated:

Comes now the injured party in the above-entitled action, Mary Henry, and hereby acknowledges that he/she has received satisfaction for the injury to his/her person and further states that he/she does not wish to proceed with this action, since he/she has received satisfaction for injury to his/her person from the Defendant, Bruce Nelles.

The state opposed Nelles' motion for dismissal. The court allowed Nelles' counsel to examine Henry under oath. Henry testified that she and Nelles intended to marry, that he had never assaulted her on any other occasion during their one year together, that none of her clothes had been torn, that she had not incurred any medical expenses, that she was unemployed at the time of the assault, had lost no wages, and that she did not want any civil compensation from Nelles.

Judge Crutchfield further questioned Henry:

Court: (to witness) I don't know whether Mr. Wildridge, in taking this written statement from you, explained the provisions of Title 12.45.120-130, which I'm obviously looking at. And, I think the basis for this is to not prosecute some cases but by the same time the legislature recognizes that the court system and the police, and the prosecutor should not be some type of a buffer zone and have their time ta' up with boy-girl relations, okay?

Henry: I understand.

Court: And, there's some provisions for costs and I've never been clear about who the costs should be assessed against, whether it's the defendant or the witness who brings the charges, and, then -- you are aware, of course, that there's a possibility that if I grant it, that I may, based upon the court's time and everybody's time, I may have to assess some costs -- before it would be dismissed? Did you understand that?

Henry: (inaudible)

Court: Okay.

...

Court: You're not frightened of Mr. Nelles I take it then, you, he didn't try to talk you into doing this or threatening you in any way?

Henry: No.

Judge Crutchfield initially denied Nelles' motion to dismiss. After Nelles moved for reconsideration, however, Judge Crutchfield ordered the case dismissed "pursuant to the civil compromise provisions" and "upon payment of \$100 costs." The state has appealed the order of dismissal.

#### DISCUSSION

"In theory there should be no compromises of criminal cases." Miller, The Compromise of Criminal Cases, 1 So. Cal. L. Rev. 1 (1927). And in practice, "the civil and criminal law operate independently of one another so that resolution of a victim's civil rights and remedies has no effect upon criminal prosecution." People v. Moulton, 182 Cal. Rptr. 761, 766 (Cal. App. Dep't. Super. Ct. 1982). "An exception to this principle exists, however, where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of certain conduct." Annot., 42 A.L.R.3d 315, 318, § 2[a]. Many states, including Alaska, have adopted such statutes, allowing judicially-sanctioned compromises and dismissals of criminal charges.<sup>1</sup>

---

<sup>1</sup>. AS 12.45.120-.140; Ariz. Rev. Stat. Ann. § 13-3981 (1978); Cal. Penal Code § 1377-79 (West 1982); Idaho Code Ann. § 19-3401-3403

(footnote continued)

It appears that Alaska's civil compromise statutes derived from the same source as most other similar statutes, a 1813 New York statute that read:

That in all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, or not being an infamous crime, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate who may have taken the recognisance, or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate in his discretion to discharge the recognisance, &c. or for the court also in their discretion, to order a nolle prosequi to be entered on the indictment.<sup>2</sup>

---

(footnote 1 continued)

(1979); Mass. Gen. Laws Ann. ch. 276, § 55 (West 1972); Nev. Rev. Stat. § 178.564-568 (1983); Okla. Stat. Ann. tit. 22, § 1291-94 (West 1958); Or. Rev. Stat. § 135.703-709 (1983); Pa. Stat. Ann. tit. 19, 26 (Purdon 1964); Utah Code Ann. §§ 77-50-1 to -3 (1978).

<sup>2</sup>. In large part, the laws of Alaska are derived from those of Oregon. F. Brown, The Sources of the Alaska and Oregon Codes, Part I, 2 U.C.L.A.-Alaska L. Rev. 15, 16 (1972). The Alaska civil compromise statutes appear to first have been adopted in 1900 and to have been derived from the Oregon Civil Compromise Statutes. See Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) (the Alaska statute refers to the Oregon law, presumably as its source). See infra. n.3. The Alaska statutes also had virtually identical wording to the Oregon statutes. Compare Ann. Alaska Codes, Pt. II, ch. 28, §§ 253-256 (Carter 1900) with Gen. Laws of Or., Code of Crim. Proc., ch. XXX, §§ 315-318 (Deady 1845-1864); renumbered, Ann. Laws of Or., Crim. Code. tit. I, ch. XXX, §§ 1519-1522 (Hill 1892); renumbered, Or. Laws, tit. XVIII, ch. XV, §§ 1696-1699 (Lord 1910).

The laws of Oregon, and therefore Alaska, are derived in large part from those of New York. Although, "[t]he major borrowing took place in Oregon in 1853-1854 . . . Oregon's celebrated Judge Matthew P. Deady and others reworked the Oregon law in 1862-1864, using as their major sources the 1854 codes and the draft codes prepared for New York by a commission by David Dudley Field. The Field Commission had also relied heavily on the older New York statutes . . . ." F. Brown, The

(footnote continued)

1 N.Y.R.L. § 19 (1813), quoted in People v. Moulton, 182 Cal. Rptr. 761, 765 (Cal. App. Dep't. Super. Ct. 1982). The purpose of the statute was to encourage the amicable resolution of disputes that were primarily private in nature:

The policy underlying compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849 as follows:

There are many cases, which are technically public offenses, but which are in reality rather of a private than a public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise . . . ; a policy which has been carried by the courts, still further than the terms of the statute.

People v. Moulton, 182 Cal. Rptr. at 766 (citations omitted).

Alaska's civil compromise statutes are contained in AS 12.45.120-12.45.140, which state:

Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;

---

(footnote 2 continued)

Sources of the Alaska and Oregon Codes, Part II, 2 U.C.L.A. - Alaska L. Rev. 87 (1973).

- (2) riotously;
- (3) with an intent to commit a felony;
- (4) larcenously.

Sec. 12.45.130. Acknowledgment of satisfaction by injured party. If the party injured appears before the court in which the defendant is bound to appear, at any time before trial, and acknowledges in writing that satisfaction has been received for the injury, the court may, on payment of the costs incurred, order the prosecution dismissed and the defendant discharged. The order is a bar to another prosecution for the same crime.

Sec. 12.45.140. Compromise or stay upon compromise by other means prohibited. A crime may not be compromised or the prosecution or punishment upon a compromise dismissed or stayed except as provided by law.<sup>3</sup>

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<sup>3</sup>. The statutes, as originally adopted in 1900, read:

Sec. 253. What crimes may be compromised. That when a defendant is held to answer on a charge of misdemeanor, for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised, as provided in the next section, except when it was committed--

First. By or upon an officer of justice while in the execution of the duties of his office;

Second. Riotously; or

Third. With an intent to commit a felony; or

Fourth. Larcenously.

Laws. Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1519.

Sec. 254. Compromise by permission of the court; order thereon. That if the party injured appear before the court at which the defendant is bound to appear, at any time before trial on an indictment for the crime, and acknowledge in writing that he has received satisfaction for the injury, the court may, in its discretion, on payment of the costs and expenses incurred, order all further proceedings to be stayed upon the prosecution and the defendant to be discharged therefrom; but the order and the reasons therefor must be entered on the journal.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s.

(footnote continued)

In this case, the state initially contends that these statutes violate the separation of powers doctrine. The state relies upon State v. Carlson, 555 P.2d 269, 271-72 (Alaska 1976), and Public Defender Agency v. Superior Court, 534 P.2d 947, 951-52 (Alaska 1975). It argues that the district court's order of dismissal amounts to "a usurpation of the executive power residing in the state district attorney's office to bring charges and determine their disposition." We find this argument to be without merit.

In State v. Carlson, the defendant was indicted for murder, but the trial court, against the state's opposition, agreed to accept a guilty

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(footnote 3 continued)

1520; Saxon v. Hill, 6 Oreg., 383.

Sec. 255. Order a bar to another prosecution. That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.

Sec. 256. No crime can be compromised, except. That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

The statutes appear unchanged from the original version in Comp. L. Ann., tit. XV, ch. 28, §§ 2362-2365 (1913); Comp. L. Ann., §§ 5431-5434 (1933), and Comp. L. Ann., tit. 66, ch. 18, §§ 66-18-1 to 66-18-4 (1948). In 1962, a number of minor amendments were made to the language of the statutes. See SLA, ch. 34, § 6.13 (1962). Additionally, the first exception in Sec. 253 was expanded from the original "an officer of justice" to "a peace officer or magistrate," in 1962, SLA, ch. 34, § 6.13 (1962), and expanded to "a peace officer, judge or magistrate," in 1971. SLA, ch. 8, § 15 (1971). Also, Sec. 255 was consolidated with Sec. 254 in 1962. SLA, ch. 34, § 6.13 (1962).

plea to the lesser offense of manslaughter. No statute or rule permitted the trial court to accept such a plea. The supreme court reversed, finding that the trial court's decision would "usurp the executive function of choosing which charge to initiate. . . ." 555 P.2d at 272. In Public Defender Agency v. Superior Court, the trial court ordered the state to prosecute a civil action for child support. The supreme court similarly concluded that the separation of powers doctrine had been violated, holding that "the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding." 534 P.2d at 950.

In the present case, there was no judicial interference with the prosecution's initial decision to charge Nelles. Judge Crutchfield did subsequently exercise his discretion to dismiss the case. Yet this dismissal was expressly authorized by the legislature. AS 12.45.120, 12.45.130. There is no suggestion in the civil compromise statutes that the court's power to dismiss is conditioned upon the agreement of the prosecutor. In fact, the contrary appears to be the case. See Annot., 42 A.L.R.3d 315, 319 (a common condition precedent under compromise statutes is the consent of either the court or the prosecutor). See also Hoines v. Barney's Club, Inc., 170 Cal Rptr. 42, 47 (Cal. 1980) (in explaining the civil compromise statute, the court stated that the prosecutor has no role in a dismissal of civil compromise). The state has cited no case purporting to hold that prosecutorial consent to a civil compromise is necessary as a matter of constitutional law, and we are aware of none. Because the court's authority to compromise misdemeanors has been expressly conferred by the legislature, we find the present case readily distinguishable from State v. Carlson and Public Defender Agency

v. Superior Court, and we conclude that there is no separation of powers violation made out here.

The state's next argument is that crimes arising from domestic disputes should not be amenable to civil compromise. Certainly, the state has a valid concern: that domestic assaults not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur. However, the state cites no support for the argument that public policy mandates a judicially created exception to the civil compromise statute. The statute, in its current form, does not exempt domestic disputes. Amendment to create additional exceptions is clearly a matter of legislative, rather than judicial, concern.<sup>4</sup>

Moreover, we note that, under the Alaska civil compromise statute, the decision whether to dismiss or prosecute is vested in the sound discretion of the trial court, and no right to dismissal is conferred upon the accused. In cases of domestic violence that appear to involve a continuing danger of injury to the victim, it could well be an abuse of discretion for the trial court to order dismissal. In the present case, however, the state has not suggested any ongoing danger to the victim, and the record contains nothing to indicate that Judge Crutchfield abused his discretion in this regard.

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<sup>4</sup>. We note that California has amended the civil compromise statute to create an exception barring civil compromise when the injury arises from a second willful and knowing violation of a restraining order imposed to prevent domestic violence. Cal. Penal Code § 1377 (West 1982) (statute amended 1979). It should also be noted that any willful infliction of physical injury resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal. Penal Code § 273.5 (West 1970) (adopted 1977).

The state further argues that the civil compromise statute engenders conflict with the Alaska Code of Professional Responsibility, Disciplinary Rule 7-105(A), which states that "[a] lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." See, e.g., MacDonald v. Musick, 425 F.2d 373 (9th Cir. 1970) (prosecutorial misconduct where charge of resisting arrest was introduced as "bludgeon" behind the attempt to defeat a possible civil action by the arrestee for false arrest). This rule is plainly inapplicable here. Dismissal of a case upon civil compromise simply does not imply that the case was prosecuted "solely to obtain an advantage in a civil matter."<sup>5</sup>

Judge Crutchfield's dismissal of the case is AFFIRMED.

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<sup>5</sup>. The state has also argued that Alaska's civil compromise statute is unconstitutionally vague. We find this argument to be frivolous.

Offered: 3/21/86  
Referred: Finance

Original sponsors: Thompson, Jenkins,  
Uehling, et al

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 463 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the authority to compromise  
7 certain misdemeanors and to the payment of restitu-  
8 tion."

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

10 \* Section 1. AS 12.45.120 is amended to read:

11 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
12 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a  
13 charge of misdemeanor for which the person injured by the act consti-  
14 tuting the crime has a remedy by a civil action, the crime may be  
15 compromised except when it was committed

16 (1) by or upon a peace officer, judge, or magistrate while  
17 in the execution of the duties of that office;

18 (2) riotously;

19 (3) with an intent to commit a felony;

20 (4) by assault against

21 (A) the spouse of the defendant, unless the court  
22 finds that a divorce is pending between the individuals and a  
23 restraining order against further assaultive behavior has been  
24 issued;

25 (B) a former spouse of the defendant;

26 (C) a parent, grandparent, child, or grandchild of the  
27 defendant;

28 (D) a member of the social unit comprised of those  
29 living together in the same dwelling as the defendant; or

1                   (E) a person who is not a spouse or former spouse of  
2                   the defendant but who previously lived in a spousal relationship  
3                   with the defendant [LARCENOUSLY].

4 \* Sec. 2. AS 12.55.045(a) is amended to read:

5                   (a) The court may order a defendant convicted of an offense to  
6                   make restitution as provided in this section, including restitution to  
7                   a public or private nonprofit organization that has provided counsel-  
8                   ing, medical, or shelter services to the victim or as otherwise au-  
9                   thorized by law. In determining the amount and method of payment of  
10                   restitution, the court shall take into account the financial resources  
11                   of the defendant and the nature of the burden its payment will impose.

Introduced: 1/13/86  
Referred: Judiciary and  
Finance

1 IN THE HOUSE

BY THOMPSON

2

HOUSE BILL NO. 463

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to criminal trials and restitution."

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

8 \* Section 1. AS 12.45.120 is amended to read:

9 Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH  
10 VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a  
11 charge of misdemeanor for which the person injured by the act consti-  
12 tuting the crime has a remedy by a civil action, the crime may be  
13 compromised except when it was committed

14 (1) by or upon a peace officer, judge, or magistrate while  
15 in the execution of the duties of that office;

16 (2) riotously;

17 (3) with an intent to commit a felony;

18 (4) larcenously;

19 (5) by assault against

20 (A) a spouse or a former spouse of the defendant;

21 (B) a parent, grandparent, child, or grandchild of the  
22 defendant;

23 (C) a member of the social unit comprised of those  
24 living together in the same dwelling as the defendant; or

25 (D) a person who is not a spouse or former spouse of  
26 the defendant but who previously lived in a spousal relationship  
27 with the defendant.

28 \* Sec. 2. AS 12.55.045(a) is amended to read:

29 (a) The court may order a defendant convicted of an offense to

1 make restitution as provided in this section, including restitution to  
2 a public or private nonprofit organization that has provided counsel-  
3 ing, medical, or shelter services to the victim or as otherwise au-  
4 thorized by law. [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF  
5 RESTITUTION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES  
6 OF THE DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IM-  
7 POSE.]

8 \* Sec. 3. AS 12.55.051(a) is amended to read:

9 (a) If the defendant defaults in the payment of a fine or any  
10 installment or of restitution or any installment, the court may order  
11 the defendant to show cause why the defendant should not be sentenced  
12 to imprisonment for nonpayment. If the defendant fails to establish  
13 [COURT FINDS] by a preponderance of the evidence that the defendant  
14 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN  
15 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the  
16 fine or restitution, the court may order the defendant imprisoned  
17 until the order of the court is satisfied. A term of imprisonment  
18 imposed under this section may not exceed one day for each \$50 of the  
19 unpaid portion of the fine or restitution or one year, whichever is  
20 shorter. Credit shall be given toward satisfaction of the order of  
21 the court for every day a person is incarcerated for nonpayment of a  
22 fine or restitution.

COMMITTEE REPORT  
SENATE

FURTHER:

4/25/86

Date 5/9/86

Mr. President

The Committee on FINANCE considered CSHB 463(R1s)am  
relating to the authority to compromise certain misdemeanors and  
to the payment of restitution.

and (a majority of the committee) (the committee) reports it back with  
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation OK law  
& T.S.
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

Paul Frick NRC

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[Signature]

Co - Chairman

No Pass

Chairman recommendation

Offered: 4/15/86  
For Today's Calendar

Original sponsors: Thompson, Jenkins,  
Uehling, et al

1 IN THE HOUSE

BY THE RULES COMMITTEE

2

CS FOR HOUSE BILL NO. 463 (Rules) am

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the authority to compromise

7

certain misdemeanors and to the payment of restitu-

8

tion."

9

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

10

\* Section 1. AS 12.45.120 is amended to read:

11

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH

12

VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a

13

charge of misdemeanor for which the person injured by the act consti-

14

tuting the crime has a remedy by a civil action, the crime may be

15

compromised except when it was committed

16

(1) by or upon a peace officer, judge, or magistrate while

17

in the execution of the duties of that office;

18

(2) riotously;

19

(3) with an intent to commit a felony;

20

(4) larcenously;

21

(5) by assault against

22

(A) a spouse or a former spouse of the defendant;

23

(B) a parent, grandparent, child, or grandchild of the

24

defendant;

25

(C) a member of the social unit comprised of those

26

living together in the same dwelling as the defendant; or

27

(D) a person who is not a spouse or former spouse of

28

the defendant but who previously lived in a spousal relationship

29

with the defendant.

1 \* Sec. 2. AS 12.55.045(a) is amended to read:

2 (a) The court may order a defendant convicted of an offense to  
3 make restitution as provided in this section, including restitution to  
4 a public or private nonprofit organization that has provided counsel-  
5 ing, medical, or shelter services to the victim, or as otherwise au-  
6 thorized by law. Before an order of restitution is entered the defen-  
7 dant may have an opportunity to establish by a preponderance of the  
8 evidence the inability to pay restitution during the term of the  
9 sentence [IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF RESTITU-  
10 TION, THE COURT SHALL TAKE INTO ACCOUNT THE FINANCIAL RESOURCES OF THE  
11 DEFENDANT AND THE NATURE OF THE BURDEN ITS PAYMENT WILL IMPOSE].

12 \* Sec. 3. AS 12.55.051(a) is amended to read:

13 (a) If the defendant defaults in the payment of a fine or any  
14 installment or of restitution or any installment, the court may order  
15 the defendant to show cause why the defendant should not be sentenced  
16 to imprisonment for nonpayment. If the defendant fails to establish  
17 [COURT FINDS] by a preponderance of the evidence that the defendant  
18 did not intentionally refuse or fail [DEFAULT WAS ATTRIBUTABLE TO AN  
19 INTENTIONAL REFUSAL OR FAILURE] to make a good faith effort to pay the  
20 fine or restitution, the court may order the defendant imprisoned  
21 until the order of the court is satisfied. A term of imprisonment  
22 imposed under this section may not exceed one day for each \$50 of the  
23 unpaid portion of the fine or restitution or one year, whichever is  
24 shorter. Credit shall be given toward satisfaction of the order of  
25 the court for every day a person is incarcerated for nonpayment of a  
26 fine or restitution.

27

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: HB 463 #2  
Title: "An Act relating to criminal trials and restitution."

Sponsor: Repr. Thompson  
Requestor: Repr. Thompson  
Date of Request: February 7, 1986

FISCAL DETAIL

Agency Affected: Department of Law  
BRU: Prosecution

Components: \_\_\_\_\_

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME		-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

-Please see attached analysis.-

Prepared by: Richard I. Pegues Phone: 465-3672  
 Division: Administrative Services Division Date: 2/12/86  
 Approved by Commissioner: Richard I. Pegues/for Date: 2/12/86  
Harold A. Brown, Attorney General  
 Agency: Department of Law

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

PB

## STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : \_\_\_\_\_

**REQUEST**

Bill/Resolution No. : CSHB463(Rules)  
 Title : "An Act relating to the authority to compromise certain misdemeanors..."  
 Sponsor : Thompson, Jenkins, Uehling  
 Requestor : Senate Judiciary  
 Date of Request : 4/24/86

**FISCAL DETAIL**

Agency Affected : Public Safety  
 BRU : Council on Domestic Violence and Sexual Assault  
 Components : \_\_\_\_\_

**EXPENDITURES/REVENUES : (Thousands of Dollars)**

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING : (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS :**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** Attach a separate page if necessary

*Kikila*  
 Prepared by : Barbara Miklos, Exec. Dir.  
 Division : Council on Domestic Violence & S.A.

Phone : 465-4356

Date : 4/22/86

Approved by Commissioner : *[Signature]*  
 Agency : Dept. of Public Safety

Date : 4/22/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

*Senate*  
4/25 10/25/85

#3

DEPARTMENT OF PUBLIC SAFETY  
POSITION PAPER - CS HB 463 (Rules)

April 22, 1986

Support

CSHB 463 (Rules) - "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

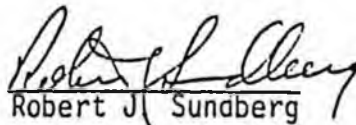
The Council on Domestic Violence and Sexual Assault supports CSHB 463 (Rules). Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

Section II. Allows providing restitution to an organization that has provided counseling, medical or shelter services to a victim of an offense.

Since many agencies that provide services to victims have inadequate funding, additional financial support is needed. It is difficult to determine if this provision will engender much money for domestic violence programs because its use may not be appropriate in most cases. Domestic violence programs cannot reveal clients' identities without the express permission of the victim and guarantee for the victim's safety. However, there may be instances where this could be accomplished and the batterer should be held accountable to the victim and pay for harm done to her as well as services received.

  
Robert J. Sundberg

CS FOR HOUSE BILL NO. 463 (Rules) am  
Sectional Analysis

An act relating to the authority to compromise certain misdemeanors and to the payment of restitution.

Section 1. AS 12.45.120 is amended by adding domestic violence offenses to the list of criminal acts that may not be civilly compromised.

Section 2. AS 12.55.045 is amended to allow the court the ability to order defendants convicted of offenses to make restitution to organizations which have provided counseling, medical, or shelter services to victims. Defendants are given the opportunity to establish their inability to pay.

Section 3. AS 12.55.051 is amended to provide that if defendants fail to establish that they did not intentionally refuse or fail to make a good faith effort to pay a fine or restitution, the court may order them imprisoned until the order is satisfied.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CS HB 463 (Judiciary)

March 25, 1986

Support

CSHB 463 - "An Act relating to the authority to compromise certain misdemeanors and to the payment of restitution."

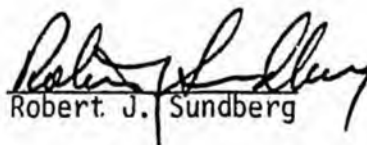
The Council on Domestic Violence and Sexual Assault supports CSHB 463. Following are comments about the bill.

Section I. Adds domestic violence to the list of exceptions to remedy by a civil compromise.

Many battered women do not have the money to obtain legal counsel to protect their rights under Alaska statute. They may be unknowingly led to believe that a civil compromise is the answer to "the problem" by a perpetrator's attorney. The victim believes that this is the appropriate course of action because a lawyer says so. Civil compromise gives the batterer the message that it is acceptable to use violence to solve problems with anger and frustration, because there are no long term consequences. Domestic violence cases should not be compromised in this manner.

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Robert J. Sundberg

# MEMORANDUM

# State of Alaska

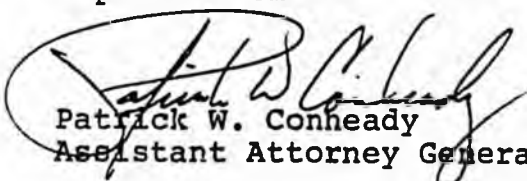
TO: LuAnn Cutler  
Legislative Assistant to  
Representative Al Adams

DATE: April 2, 1986

FILE NO:

TELEPHONE NO: 465-3678

FROM:

  
Patrick W. Conheady  
Assistant Attorney General

SUBJECT: CSHB 463 (Jud)

The House Judiciary committee substitute incorporates a method of drafting which could present problems in the future. In Section 1 of the bill, AS 12.45.120 is amended by deleting existing language in subsection 4 (larcenously) and inserting new language regarding domestic assaults. If the old subsection 4 - larcenously, is to be deleted, the subparagraph 4 designation should remain, and a new subparagraph 5, containing the additional language on domestic assaults should be added. This method will preclude any confusion in the future with prior court decisions that have cited AS 12.45.120, or with any statutory cross-reference which may exist to the current language in AS 12.45.120. This is the preferred method of drafting referred to in previous editions of the Legislative Drafting Manual.

Therefore, I would recommend to the committee that Section 1 of the bill read as follows:

\* Section 1. AS 12.45.120 is amended to read:

Sec. 12.45.120. AUTHORITY TO COMPROMISE MISDEMEANORS FOR WHICH VICTIM HAS CIVIL ACTION. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge, or magistrate while in the execution of the duties of that office;

(2) riotously;

(3) with an intent to commit a felony;

(4) [LARCENOUSLY;]

(5) by assault against

(A) the spouse of the defendant, unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued;

(B) a former spouse of the defendant;

(C) a parent, grandparent, child, or grandchild of the defendant;

(D) a member of the social unit comprised of those living together in the same dwelling as the defendant; or

LuAnn Cutler  
Legislative Assistant to  
Representative Al Adams

April 2, 1986  
Page 2

(E) a person who is not a spouse or former spouse of the defendant but who previously lived in a spousal relationship with the defendant

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:76

March 28, 1986

Louann Cutler  
Legislative Aide  
Office of Representative Al Adams  
Pouch "V"  
Juneau, Alaska 99811

RE: House Bill 463

Dear Ms. Cutler:

I recently became aware of efforts on the part of certain special interest groups within our state aimed at the revision of AS 12.45.120. As you know, that statute permits judges, in the exercise of their discretion and after a full review of the facts as presented by all interested parties, to dismiss many misdemeanor actions. Dismissals are, of course, permissible only where a victim determines that he or she no longer wishes to pursue the action.

The proposed amendments to AS 12.45.120 are aimed at undercutting the authority of our judges to dismiss cases involving allegations of domestic violence, even though the persons directly involved in such matters are supportive of dismissal. Presumably, those pressing for revision of the law are concerned about the ongoing dynamics of families in which violence has occurred. In many instances, concerns with regard to continuing patterns of violence within the home are justified. The problem with the proposed revision is its failure to make allowances for situations where there is no evidence of a "cycle of violence" within a home.

I am an attorney in the Fairbanks area. During the time that I've spent in practice, I have handled several cases where dismissal pursuant to AS 12.45.120 has been sought. Admittedly, I advocated dismissal of these matters; but I have never been an advocate of a complete "hands off" approach toward incidents of domestic violence. None of the judges to whom such cases have been presented would find such a laissez faire approach even marginally convincing. Each of the judicial officers with whom I have dealt have taken great pains to insure that dismissals do not occur where there is evidence of an ongoing problem within a family unit.

In summary, there is a very real need for a case-by-case review of the need for continuing governmental intervention in domestic settings where incidents of violence have occurred. The existing law creates a vehicle through which such a review can be conducted. The proponents of the revision of AS 12.45.120 ignore the fact that governmental intervention can often be extremely disruptive of families. They seek a law which ignores the desires of those most directly involved, and assume their dogmatic approach is best in

The attorney (Public Defender) ~~was~~ who represented the defendant in the Nelles case.

each and every case which arises.

I am supportive of vesting continued discretion in our judiciary to determine how to proceed in individual cases. The family members involved in such cases have been almost uniformly happy with our trial court's application of the existing law. It is, as a result, my hope that the members of our legislature will not adopt the simplistic approach to family problems advocated by those who seek revision of AS 12.45.120.

Thank you for this opportunity to express my views on this matter.

Sincerely,


*Geoffrey B. Wildridge*  
Geoffrey B. Wildridge

912 Barnette  
FBX 99701  
452-1621

TO Helen Fisher  
Legislative Assistant to  
Representative Dave Thompson

DATE March 12, 1986

FILE NO:

FROM   
Patrick W. Conheady  
Assistant Attorney General  
Chief, Pretrial Services

TELEPHONE NO: 465-3678

SUBJECT: Proposed CSHB 463  
(Judiciary);  
3/11/86 version

You have requested my analysis of the March 11 version of HB 463. In addition to the pertinent comments contained in my March 7 memorandum, I would like to add the following:

In Section 1 of the bill, new language has been added providing an exception to the prohibition on civilly compromising domestic assaults. That exception is contained in proposed AS 12.45.120(4)(A) and provides "unless the court finds that a divorce is pending between the individuals and a restraining order against further assaultive behavior has been issued." This department opposes this new provision as contrary to our stated position against compromising domestic assaults.

Such an exception will not facilitate divorce proceedings as the battering spouse will have motivation to assert the necessity of a civil compromise as a precondition to a less contentious divorce. Furthermore, fear of lapsing spousal privilege causing divorce proceedings to drag on with the pendency of a criminal assault prosecution are unfounded as the spousal privilege does not apply when one spouse is the victim of the other spouse's criminal act. See Rule 505(a)(2)(D)(i) of the Alaska Rules of Evidence.

Section 1 of the bill also contains the drafting error referred to in my initial memorandum.

Prior Section 2, facilitating payment of restitution to victim has been deleted from the bill.

Sections 2 and 3 of this version mirror section 3 and 4 of the version I prepared on March 7.

If I can be of further assistance, do not hesitate to contact me.

PWC:ejf:62

Alaska Women's Commission

Testimony  
Suzanne Lombardi

HB 463

The legislative committee of the Alaska Women's Commission met February 12, 1986 and expressed support of HB 463, an act relating to Criminal Trials and Restitution.

Section I

The Commission believes that domestic violence is a violent crime that should be handled as any other assault would be by the Judiciary system.

By adding domestic violence to the list of crimes that cannot be compromised by civil action, the Alaska State Legislature is continuing to send the message that this crime is clearly unacceptable.

Although, the compromise statute is not often used, a court opinion was handed down recently that reinforces the Commission's concern. In the Court of Appeals - State of Alaska vs. Nelles the court upheld the dismissal of charges and the defendant paid \$100 restitution to a victim who required four stitches in her mouth due to a blow with a fist. The court said "certainly the state has a valid concern: that domestic assaults go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur."...."an ammendment to create additional exceptions is clearly a matter of legislative rather than judicial concern."

Section II

This section allows restitution to be provided to an organization that has provided counseling, medical, or shelter services to the victim.

Many women have no insurance and suffer permanent physical as well as emotional handicaps because of lack of proper medical or counseling services. Furthermore, with the severe funding cutbacks, many shelters are in great need of additional support and this bill will assure that vital services are provided to the victim.

Section III

If the defendant fails to pay restitution he must prove his inability to comply was neither intentional nor in bad faith.

The Alaska Women's Commission believes this bill is another positive step in the direction of eradicating violence in Alaska.

not in  
Jud.  
C.S.

NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE COURT OF APPEALS OF THE STATE OF ALASKA

STATE OF ALASKA,	)	
	)	
Appellant,	)	File No. A-995
	)	
v.	)	<u>O P I N I O N</u>
	)	
BRUCE NELLES,	)	
	)	
Appellee.	)	[No. 578 - February 7, 1986]

Appeal from the District Court of the State of Alaska, Fourth Judicial District, Fairbanks, H. E. Crutchfield, Judge.

Appearances: Jeffery O'Bryant, Assistant District Attorney, Harry L. Davis, District Attorney, Fairbanks, and Harold M. Brown, Attorney General, Juneau, for Appellant. Raymond Funk, Assistant Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for Appellee.

Before: Bryner, Chief Judge, Coats and Singleton, Judges.

BRYNER, Chief Judge.

The state appeals from a district court dismissal of a misdemeanor assault charge against Bruce Nelles. Judge H.E. Crutchfield dismissed the charge pursuant to the misdemeanor civil compromise statute. We affirm.

BACKGROUND

While intoxicated, Nelles struck his girlfriend, Mary M. Henry, on the mouth with his fist. Henry's injury required four stitches. She filed a citizen arrest form seeking Nelles' arrest.

Court: Okay.

...

Court: You're not frightened of Mr. Nelles I take it then, you, he didn't try to talk you into doing this or threatening you in any way?

Henry: No.

Judge Crutchfield initially denied Nelles' motion to dismiss. After Nelles moved for reconsideration, however, Judge Crutchfield ordered the case dismissed "pursuant to the civil compromise provisions" and "upon payment of \$100 costs." The state has appealed the order of dismissal.

#### DISCUSSION

"In theory there should be no compromises of criminal cases." Miller, The Compromise of Criminal Cases, 1 So. Cal. L. Rev. 1 (1927). And in practice, "the civil and criminal law operate independently of one another so that resolution of a victim's civil rights and remedies has no effect upon criminal prosecution." People v. Moulton, 182 Cal. Rptr. 761, 766 (Cal. App. Dep't. Super. Ct. 1982). "An exception to this principle exists, however, where a statute specifically authorizes a compromise of the criminal, as well as the civil, liability arising out of certain conduct." Annot., 42 A.L.R.3d 315, 318, § 2[a]. Many states, including Alaska, have adopted such statutes, allowing judicially-sanctioned compromises and dismissals of criminal charges.<sup>1</sup>

---

<sup>1</sup>. AS 12.45.120-.140; Ariz. Rev. Stat. Ann. § 13-3981 (1978); Cal. Penal Code § 1377-79 (West 1982); Idaho Code Ann. § 19-3401-3403

(footnote continued)

1 N.Y.R.L. § 19 (1813), quoted in People v. Moulton, 182 Cal. Rptr. 761, 765 (Cal. App. Dep't. Super. Ct. 1982). The purpose of the statute was to encourage the amicable resolution of disputes that were primarily private in nature:

The policy underlying compromise statutes was explained by the New York Commissioners on Practice and Pleading in 1849 as follows:

There are many cases, which are technically public offenses, but which are in reality rather of a private than a public nature, and where the public interests are better promoted by checking than by encouraging criminal prosecutions. Of this class are libels, and simple assaults and batteries; or those which according to [the civil compromise statute], are not committed by or upon an officer of justice, while in the execution of the duties of his office, or riotously, or with an intent to commit a felony. With these exceptions, cases of this nature have by the policy of our statutes, always been considered fit subjects of compromise . . . ; a policy which has been carried by the courts, still further than the terms of the statute.

People v. Moulton, 182 Cal. Rptr. at 766 (citations omitted).

Alaska's civil compromise statutes are contained in AS 12.45.120-12.45.140, which state:

Sec. 12.45.120. Authority to compromise misdemeanors for which victim has civil action. When a defendant is held to answer on a charge of misdemeanor for which the person injured by the act constituting the crime has a remedy by a civil action, the crime may be compromised except when it was committed

(1) by or upon a peace officer, judge or magistrate while in the execution of the duties of that office;

---

(footnote 2 continued)

Sources of the Alaska and Oregon Codes, Part II, 2 U.C.L.A. - Alaska L. Rev. 87 (1973).

In this case, the state initially contends that these statutes violate the separation of powers doctrine. The state relies upon State v. Carlson, 555 P.2d 269, 271-72 (Alaska 1976), and Public Defender Agency v. Superior Court, 534 P.2d 947, 951-52 (Alaska 1975). It argues that the district court's order of dismissal amounts to "a usurpation of the executive power residing in the state district attorney's office to bring charges and determine their disposition." We find this argument to be without merit.

In State v. Carlson, the defendant was indicted for murder, but the trial court, against the state's opposition, agreed to accept a guilty

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(footnote 3 continued)

1520; Saxon v. Hill, 6 Oreg., 383.

Sec. 255. Order a bar to another prosecution.  
That the order authorized by the last section, when made and entered, is a bar to another prosecution for the same crime.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1521.

Sec. 256. No crime can be compromised, except.  
That no crime can be compromised, nor can any proceeding for the prosecution or punishment thereof be stayed upon a compromise, except as provided in this chapter.

Laws Oreg., Oct. 19, 1864; Hill's Ann. Laws, s. 1522.

The statutes appear unchanged from the original version in Comp. L. Ann., tit. XV, ch. 28, §§ 2362-2365 (1913); Comp. L. Ann., §§ 5431-5434 (1933), and Comp. L. Ann., tit. 66, ch. 18, §§ 66-18-1 to 66-18-4 (1948). In 1962, a number of minor amendments were made to the language of the statutes. See SLA, ch. 34, § 6.13 (1962). Additionally, the first exception in Sec. 253 was expanded from the original "an officer of justice" to "a peace officer or magistrate," in 1962, SLA, ch. 34, § 6.13 (1962), and expanded to "a peace officer, judge or magistrate," in 1971. SLA, ch. 8, § 15 (1971). Also, Sec. 255 was consolidated with Sec. 254 in 1962. SLA, ch. 34, § 6.13 (1962).

v. Superior Court, and we conclude that there is no separation of powers violation made out here.

The state's next argument is that crimes arising from domestic disputes should not be amenable to civil compromise. Certainly, the state has a valid concern: that domestic assaults not go unpunished merely because the victims wish to withdraw their complaints in the hope that no further abuse will occur. However, the state cites no support for the argument that public policy mandates a judicially created exception to the civil compromise statute. The statute, in its current form, does not exempt domestic disputes. Amendment to create additional exceptions is clearly a matter of legislative, rather than judicial, concern.<sup>4</sup>

Moreover, we note that, under the Alaska civil compromise statute, the decision whether to dismiss or prosecute is vested in the sound discretion of the trial court, and no right to dismissal is conferred upon the accused. In cases of domestic violence that appear to involve a continuing danger of injury to the victim, it could well be an abuse of discretion for the trial court to order dismissal. In the present case, however, the state has not suggested any ongoing danger to the victim, and the record contains nothing to indicate that Judge Crutchfield abused his discretion in this regard.

---

<sup>4</sup>. We note that California has amended the civil compromise statute to create an exception barring civil compromise when the injury arises from a second willful and knowing violation of a restraining order imposed to prevent domestic violence. Cal. Penal Code § 1377 (West 1982) (statute amended 1979). It should also be noted that any willful infliction of physical injury resulting in a "traumatic" condition upon a cohabitant of the opposite sex is a felony under California law. Cal. Penal Code § 273.5 (West 1970) (adopted 1977).

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS  
FY 84**

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	953	1,701	1,114	1,086	220	5,074
Barrow	4	27	8	47	5	91
Bethel	11	28	29	68	---	136
Fairbanks	294	613	217	345	20	1,489
Juneau	117	181	56	119	17	490
Kenai	67	190	66	91	11	425
Ketchikan	76	113	75	63	5	332
Kodiak	43	71	37	41	4	196
Kotzebue	16	16	28	48	---	108
Nome	20	6	32	23	---	81
Palmer	71	172	86	98	15	442
Sitka	48	44	24	34	2	152
Wrangell/ Petersburg	26	32	11	13	4	86
<b>TOTAL</b>	<b>1,746</b>	<b>3,194</b>	<b>1,783</b>	<b>2,076</b>	<b>303</b>	<b>9,102</b>
<b>% OF TOTAL</b>	<b>19%</b>	<b>35%</b>	<b>20%</b>	<b>23%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT**

First	267	370	166	229	28	1,060
Second	40	49	68	118	5	280
Third	1,134	2,134	1,303	1,316	250	6,137
Fourth	305	641	246	413	20	1,625

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 82/83

COURT	CASE TYPE					TOTAL
	DIVORCE	DISSOLUTION OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,008	1,596	1,230	914	169	4,917
Barrow	11	18	10	24	3	65
Bethel	16	33	53	58	0	160
Fairbanks	303	543	270	211	6	1,333
Juneau	112	167	95	90	1	465
Kenai	85	149	59	56	5	354
Ketchikan	69	97	79	69	7	321
Kodiak	77	58	36	43	2	217
Kotzebue	14	13	28	25	2	82
Nome	17	17	33	18	2	93
Palmer	73	134	66	34	7	314
Sitka	58	28	33	17	9	145
Wrangell/ Petersburg	24	39	9	8	0	80
<b>TOTAL</b>	<b>1,867</b>	<b>2,892</b>	<b>2,007</b>	<b>1,567</b>	<b>213</b>	<b>8,546</b>
<b>% OF TOTAL</b>	<b>22%</b>	<b>34%</b>	<b>23%</b>	<b>18%</b>	<b>3%</b>	<b>100%</b>

FISCAL YEAR JULY 1 - JUNE 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

First	263	331	216	184	17	1,011
Second	42	48	77	67	7	240
Third	1,243	1,937	1,391	1,047	183	5,802
Fourth	310	576	323	269	6	1,493

**SUPERIOR COURTS  
DOMESTIC RELATIONS CASES  
COMPOSITION OF FILINGS**

FY 81/82

COURT	CASE TYPE					TOTAL
	DIVORCE	DISS. OF MARRIAGE	RECIPROCAL SUPPORT	DOMESTIC VIOLENCE	OTHER	
Anchorage	1,295	1,541	1,643	539	162	5,180
Barrow	25	14	13	27	11	90
Bethel	14	13	49	37	4	117
Fairbanks	325	486	266	170	48	1,295
Juneau	271	3	79	50	13	416
Kenai	171	33	75	53	9	341
Ketchikan	190	-	105	51	9	355
Kodiak	89	-	43	23	3	158
Kotzebue	22	-	31	31	3	87
Nome	29	3	33	7	9	81
Sitka	76	1	38	14	8	137
<b>TOTAL</b>	<b>2,507</b>	<b>2,094</b>	<b>2,375</b>	<b>1,002</b>	<b>279</b>	<b>8,257</b>
<b>% OF TOTAL</b>	<b>30%</b>	<b>25%</b>	<b>29%</b>	<b>12%</b>	<b>3%</b>	<b>100%</b>

Fiscal Year July 1 - June 30

**BY JUDICIAL DISTRICT INCLUDING SERVICE AREAS**

First	537	4	222	115	30	908
Second	51	3	64	38	12	168
Third	1,555	1,574	1,761	615	174	5,679
Fourth	364	513	328	234	63	1,502

COMMITTEE REPORT  
SENATE

FURTHER: FINANCE

4/16/86

Date 4/24/86

Mr. President

The Committee on JUDICIARY considered CSHB 463(RLS)am  
~~relating to the authority to compromise certain misdemeanors and to the~~  
payment of restitution.

and (a majority of the committee) (the committee) reports it back with  
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation Ø
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

Don N/R  
Tom Kelly N/R  
Rich Halford N/R  
Ziegler N/R

Patrick Rodery  
 Chairman  
Chris Rodery  
 Chairman recommendation

**HOUSE  
COMMITTEE REPORT**

(11)

Date referred: 2/21/86

FURTHER REFERRALS:

DATE: \_\_\_\_\_

The FINANCE Committee has considered HB 465

"An Act relating to fiscal matters involving the state and persons doing business in the Republic of South Africa; and providing for an effective date."

and recommends:

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- replace with \_\_\_\_\_  new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal note
  - zero fiscal note

**SIGNING DO PASS:**

\_\_\_\_\_  
\_\_\_\_\_  
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**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Chairman

HOUSE  
COMMITTEE REPORT

2/21

Date referred: 1/13/86

FURTHER REFERRALS: FINANCE

DATE: 2/19/86

The STATE AFFAIRS Committee has considered HB 465

"An Act relating to fiscal matters involving the state and persons doing business in the Republic of South Africa; and providing for an effective date."

and recommends: individual recommendation

- do pass
- do not pass
- do pass with attached amendment(s)
- no recommendation
- replace with \_\_\_\_\_  same title
- replace with \_\_\_\_\_  new title

and recommends \_\_\_\_\_

further referral to the \_\_\_\_\_ Committee

- and attaches:
- letter of intent
  - first fiscal note
  - new fiscal notes
  - zero fiscal note w/analysis
- } Sup # 89  
} Sup # 89

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Katie Hurley  
Mr. Miller

Roger Jordan No Rec  
Betty Cato No Rec

Katie Hurley  
Chairman

Cook  
1364

Cook

Introduced: 1/13/86  
Referred: State Affairs and  
Finance

1 IN THE HOUSE

BY CLOCKSIN AND KOPONEN

2 HOUSE BILL NO. 465

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to fiscal matters involving the  
7 state and persons doing business in the Republic of  
8 South Africa; and providing for an effective date."

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

10 \* Section 1. AS 37 is amended by adding a new chapter to read:

11 CHAPTER 24. FISCAL MATTERS RELATING TO SOUTH AFRICA.

12 Sec. 37.24.010. PROHIBITED INVESTMENTS AND DEPOSITS. (a) An  
13 agency may not

14 (1) deposit an asset in a bank or financial institution  
15 that directly or through a subsidiary has outstanding loans to the  
16 Republic of South Africa or an instrumentality of the Republic of  
17 South Africa; or

18 (2) invest an asset in the stocks, bonds, securities or  
19 other obligations of a company engaged directly or through a  
20 subsidiary in manufacturing, assembling, warehousing, or other  
21 substantial business operations within the Republic of South Africa.

22 (b) For purposes of this section "asset" means any asset of the  
23 state including money in the general fund, the permanent fund, or  
24 other fund of the state or an agency.

25 Sec. 37.24.020. DIVESTMENT OR WITHDRAWAL OF DEPOSITS. An agency  
26 with an investment or deposit that is prohibited under AS 37.24.010  
27 shall sell, redeem, divest or withdraw the investment or deposit as  
28 soon as possible consistent with sound investment policy and, in any  
29 case, no later than December 31, 1988.

1           Sec. 37.24.030. EXERCISE OF VOTING RIGHTS. An agency with an  
2 investment that is prohibited under AS 37.24.010 shall exercise share-  
3 holder voting rights and take other action as feasible to encourage  
4 the company to curtail its business involvement in the Republic of  
5 South Africa.

6           Sec. 37.24.040. ANNUAL REPORTS. (a) An agency with investments  
7 or deposits prohibited under AS 37.24.010 shall by January 15 of each  
8 year file a report with the legislature

9                   (1) identifying each prohibited investment or deposit  
10 together with its value; and

11                   (2) describing all actions taken during the previous year  
12 in accordance with AS 37.24.030.

13           (b) The governor shall by March 1 of each year file a report  
14 with the legislature indicating the extent to which progress has been  
15 made toward eliminating the system of apartheid in the Republic of  
16 South Africa. The report may include recommendations for changes in  
17 legislation relating to the Republic of South Africa.

18           Sec. 37.24.050. PURCHASING AND CONTRACTING. (a) An agency may  
19 not purchase an article or product that has been wholly manufactured  
20 or produced within the Republic of South Africa.

21           (b) In considering the awarding of a contract for goods or  
22 services to a person, an agency shall review the business involvement  
23 of the person in the Republic of South Africa. The agency may decline  
24 to award a contract to an otherwise qualified person if it determines  
25 that the person engages in substantial business within the Republic of  
26 South Africa.

27           Sec. 37.24.060. CONFLICTING LAWS INAPPLICABLE. To the extent  
28 that the provisions of this chapter conflict with the provisions of  
29 other state law, the provisions of this chapter prevail.

1           Sec. 37.24.100. DEFINITION. In this chapter "agency" means a  
2 state agency or public corporation of the state, other than a munic-  
3 ipality, and includes the University of Alaska.

4           \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
5 10.070(c).

2/21/86  
SOP 8/9

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Page 1 of 2

Revision Date: \_\_\_\_\_

**REQUEST**  
Bill/Resolution No: HB 465 No. 1  
Title: State and Persons Doing Business  
in the Republic of South Africa  
 \_\_\_\_\_  
Sponsor: Clocksin  
Requestor: House State Affairs  
Date of Request: February 11, 1986

**FISCAL DETAIL**  
Agency Affected: \_\_\_\_\_  
BRU: \_\_\_\_\_  
 \_\_\_\_\_  
Components: \_\_\_\_\_  
 \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
<b>OPERATING</b>						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
<b>TOTAL OPERATING</b>	-	-	-	-	-	-
<b>CAPITAL</b>	-	-	-	-	-	-
<b>REVENUE</b>	-	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	-	-	-	-	-	-
<b>TOTAL</b>	-	(1,000)	(1,000)	(1,000)	(1,000)	(1,000)

**POSITIONS:**

FULL-TIME	-	-	-	-	-	-
PART-TIME	-	-	-	-	-	-
TEMPORARY	-	-	-	-	-	-

**ANALYSIS:** See attached analysis.

Prepared By: Milt Barker MB  
 Division: Treasury

Phone: 465-2350  
 Date: February 12, 1986

Approved by Commissioner: [Signature]  
 Agency: Department of Revenue

Date: 2/12/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

HB 465 No. 1 Page 2 of 2  
Fiscal Note Analysis

HB 465 is also estimated to reduce retirement fund earnings as described in the attached memo. The effect on the General Fund and municipalities' finances from the higher required employer contributions would require actuarial evaluation.

The estimated effects of HB 465 on retirement fund earnings stem in large part from certain inherent restrictions on the flexibility of the funds to be restructured in line with divestment requirements. Even if South Africa-free securities were to offer higher returns in the future than those of firms doing business in South Africa, the requirements of fiduciary duty, fund size, and Alaska statutes would so affect the restructuring of the investment portfolios that there would still be reductions in overall earnings.

More specifically, the five year earnings loss for the retirement funds, estimated in the attached memo to be \$178 million, would still be a loss of approximately \$107 million if one assumed that South Africa-free stocks earned the same rate of return as South Africa-related stocks.

South Africa-free stocks would have to earn approximately 19.3 percent under the divestment scenario shown in the table attached to the memo to eliminate any loss. Such a rate on South Africa-free stocks would imply a 10.1 percent return on South Africa-related stocks to produce the average 15.0 percent return assumed in the no-divestment scenario. A spread of 9.2 percent for South Africa-free stocks over South Africa-related stocks would be highly improbable over any sustained period of time.

The restructuring of the portfolio, as described in the memo, would be done to avoid increasing the risk of the portfolio, which otherwise would result from replacing blue chip common stocks with stocks of smaller, less diversified corporations. This avoidance of excessive risk would be required by the prudent investor rule as well as specific statutory restraints such as the prohibition on purchase of stocks which have not paid dividends for the last three years. The restructuring also would be necessary because it would be difficult to invest funds of this size in a smaller group of stocks with much smaller market values without affecting the prices at which they are purchased.

STATE OF ALASKA  
DEPARTMENT OF REVENUE

HB 465-701

MEMORANDUM

*Page 1*  
TO: Milt Barker *MB*  
Deputy Commissioner

FROM: James R. Wilson  
State Investment Officer

DATE: September 9, 1985

RE: South African Divestment Effects

The proposed divestment of investments in companies doing business in South Africa would have the effect of removing

62% of the 50 largest U.S. companies,  
57% of the Fortune 100 companies,  
47% of the S & P 500 companies, and  
35% of the Wilshire 5000 companies

and would constitute avoiding, to name a few,

91% of international oil companies,  
90% of office equipment companies,  
89% of drug companies,  
88% of chemical companies, and  
87% of automobile manufacturers.

The common stock portfolios would have to avoid most of the large, heavily capitalized, successful, and relatively secure U.S. companies and would have to concentrate on utility, transportation, and retail stocks. Because the smaller companies in which investments would have to be made are inherently riskier on a credit basis, they also have more volatile stock prices and hold a greater chance of losing money on the investments. The non-South African S & P 265 (what is left of the 500) has been shown to be 1.84 times more volatile on the upside but 2.27 times more volatile on the downside. This translates to a drop of 18.9% in the probable rate of return over long periods of time. For large funds like the Alaska Retirement Systems, common stock holdings would have to be excessively diversified into too many small holdings. It has been demonstrated that common stock portfolios approaching 100 or more stocks have virtually no chance of surpassing the general stock market's average performance -- ergo, a lower

Milt Barker  
September 9, 1985  
Page 2

HB 465 #1

Page 2

return than we currently enjoy. Consequently, we would find it necessary to reduce our potential risk by reducing what otherwise would be the size of our common stock portfolios.

The divestment would also affect our bond and money market portfolios by removing much of our potential investment universe; i.e.,

77% of commercial paper issuers,  
87% of bank issued paper, and  
60% of industrial corporate bonds.

The loss of money opportunities would reduce our yield by .25% in those areas, but the loss of most of the best credits in the corporate bond area would have more pronounced effects. Because the remaining industrial bonds would be substantially more risky, we would have to maintain a smaller, relative position -- although it would cost us 1.1% in yield. Prudence would also demand a smaller utility bond position as well so we would not be overly weighted in that riskier and less call protected area.

Divestment would have similar but somewhat reduced effects on the State's General Fund and on the Public School and University of Alaska Funds. These endowment funds would lose their only equity investments (convertibles) and more than half of their high yielding corporate bonds. The General Fund would be practically trapped into only U.S. Treasury issues for a give-up of about \$1 million a year.

In order to quantify the effects on the Retirement Systems' investments, I have calculated their probable average positions and rates of return for each of the next five fiscal years. Then, after allowing for the divestment effects on the portfolio's positions and yields -- as previously noted in this memorandum -- I have recalculated the rates of return for the same five fiscal years. The results of these calculations are shown in the attached table. The divestment portfolios have smaller common stock and corporate bond positions and larger U.S. Treasury positions, and yields on common stocks are lower. The net result for the sum of the five years is a reduction in returns on investments totalling \$177,890,000.

JRW/gb

Attachment

Combined Retirement Systems' Investments  
Average Assets & Yields During Fiscal Years  
(\$ Millions)

KB 465, 2/21/1  
Page 3

	1986		1987		1988		1989		1990		Sum of 5 Years
	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield	Amount	Yield	
Common Stocks	\$ 517.9	15.00%	\$ 716.6	15.00%	\$ 913.2	15.00%	\$ 1,137.1	15.00%	\$ 1,352.6	15.00%	
Industrial Bonds	97.8	12.00	162.2	12.00	251.9	12.00	345.4	12.00	416.2	12.00	
Utility Bonds	69.1	12.25	162.2	12.25	231.9	12.25	345.4	12.25	416.2	12.25	
Treasury Bonds	658.4	10.90	727.4	10.90	691.2	10.90	667.2	10.90	715.9	10.90	
Honey Market	262.4	9.20	162.2	9.20	188.9	9.20	218.1	9.20	249.7	9.20	
R. E. Equities	168.0	14.00	202.8	14.00	242.5	14.00	287.2	14.00	331.0	14.00	
Mortgages	529.5	12.50	570.5	12.50	609.3	12.50	645.4	12.50	678.4	12.50	
Total	\$2,303.1	12.31%	\$2,703.9	12.60%	\$3,148.9	12.73%	\$3,635.8	12.83%	\$4,162.0	12.88%	\$2,027.58
Return	\$283.51		\$140.69		\$100.85		\$166.47		\$156.06		

Divestment Effects (Less 47% stocks, 60% Industrial bonds, 87% of CD's, BA's, & 77% of com. paper)

Common Stock	\$ 274.6	12.15%	\$ 379.8	12.15%	\$ 484.0	12.15%	\$ 597.4	12.15%	\$ 717.1	12.15%	
Industrial Bonds	39.2	12.00	64.9	12.00	100.8	12.00	138.2	12.00	166.5	12.00	
Utility Bonds	34.5	12.25	64.9	12.25	100.8	12.25	138.2	12.25	166.5	12.25	
Treasury Bonds	994.9	10.90	1,258.8	10.90	1,422.6	10.90	1,611.3	10.90	1,850.8	10.90	
Honey Market	262.4	9.10	162.2	9.10	188.9	9.10	218.1	9.10	249.7	9.10	
R. E. Equities	168.0	14.00	202.8	14.00	242.5	14.00	287.2	14.00	331.0	14.00	
Mortgages	529.5	12.50	570.5	12.50	609.3	12.50	645.4	12.50	678.4	12.50	
Total	\$2,303.1	11.48%	\$2,703.9	11.60%	\$3,148.9	11.61%	\$3,635.8	11.62%	\$4,162.0	11.61%	\$1,819.69
Return	\$284.40		\$113.64		\$165.59		\$422.48		\$481.58		
Divestment Loss	- \$19.11		- \$27.05		- \$35.26		- \$43.99		- \$52.48		- \$177.89

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST Page 1 of 2 FISCAL DETAIL

Bill/Resolution No.: HB 465 No. 2 Agency Affected: A11

Title: An act relating to fiscal matters BRU: \_\_\_\_\_

involving the State and persons doing

business in the Republic of South Africa..

Sponsor: Clocksia and Koponen Components: A11

Requestor: House State Affairs

Date of Request: February 12, 1986

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
<b>OPERATING</b>						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

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 See Attached

Prepared By: Kenneth E. Bischoff Phone: 465-2200

Division: Finance Date: \_\_\_\_\_

Approved by Commissioner: Eleanor Andrews Date: 3-12-86

Agency: Department of Administration

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 465 No. 2

Page 2 of 2

SUBJECT OF PROPOSED BILL:

An act relating to fiscal matters involving the State and persons doing business in the Republic of South Africa . . . .

SUMMARY/EXPLANATION OF INTENT:

The Department of Administration (DOA) is only directly impacted by one section of this bill, Section 37.24.050 as it relates to DOA's general oversight responsibility for statewide purchasing and contracting defined elsewhere in AS 37.

It is difficult to measure the fiscal impact, if any, that this bill may produce on State contracting and procurement activities. We do not feel that the potential impact will be significant if this bill is passed.

A schedule is attached showing FY 86 payments made by the State of Alaska to businesses who have been identified as having business interests within the Republic of South Africa.

ESTIMATED FISCAL IMPACT:

Capital:

Operating:

ALASKA STATE LEGISLATURE

14th Legislature SECOND Session

HOUSE BILL NO. 465

By CLOCKSIN AND KOPONEN

"An Act relating to fiscal matters involving the state and persons doing business in the Republic of South Africa; and providing for an effective date."

South Africa business.

Introduced in the House 1/13, 1986

HISTORY IN THE HOUSE

1986	Read first time and referred to Committee on										
Jan 13	STATE AFFAIRS AND FINANCE Reported back with recommendation that										
	Read second time and										
	Read third time and										
	<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reconsideration										
	<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reported correctly engrossed										
	Signed by Speaker										
	Sent to Senate										
	CHIEF CLERK OF THE HOUSE										

HISTORY IN THE SENATE

19	Read first time and referred to Committee on										
	Reported back with recommendation that										
	Read second time and										
	Read third time and										
	<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reconsideration										
	<table border="0"> <tr> <td>PASS</td> <td>Effective Date</td> </tr> <tr> <td>Yeas</td> <td>Yeas</td> </tr> <tr> <td>Nays</td> <td>Nays</td> </tr> <tr> <td>Absent</td> <td>Absent</td> </tr> <tr> <td>Excused</td> <td>Excused</td> </tr> </table>	PASS	Effective Date	Yeas	Yeas	Nays	Nays	Absent	Absent	Excused	Excused
PASS	Effective Date										
Yeas	Yeas										
Nays	Nays										
Absent	Absent										
Excused	Excused										
	Reported correctly engrossed										
	Signed by President										
	Returned to House										
	SECRETARY OF THE SENATE										

HISTORY IN THE HOUSE

19	Received from Senate
	Concurred in Senate amendment thus adopting: VOTE
	Failed to concur in Senate amendment; asked Senate to recede VOTE
	Senate receded from amendment VOTE
	Senate failed to recede from amendment VOTE
	CC appointed by House
	CC appointed by Senate
	CC adopted by House VOTE
	CC adopted by Senate VOTE
	To enrolling
	Reported correctly enrolled
	Sent to Governor
	..... by Governor
	Filed with Lt. Governor
	Chapter No. ....

Introduced: 1/13/86  
Referred: State Affairs and  
Finance

1 IN THE HOUSE

BY CLOCKSIN AND KOPONEN

2

HOUSE BILL NO. 465

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to fiscal matters involving the  
7 state and persons doing business in the Republic of  
8 South Africa; and providing for an effective date."

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

10 \* Section 1. AS 37 is amended by adding a new chapter to read:

11 CHAPTER 24. FISCAL MATTERS RELATING TO SOUTH AFRICA.

12 Sec. 37.24.010. PROHIBITED INVESTMENTS AND DEPOSITS. (a) An  
13 agency may not

14 (1) deposit an asset in a bank or financial institution  
15 that directly or through a subsidiary has outstanding loans to the  
16 Republic of South Africa or an instrumentality of the Republic of  
17 South Africa; or

18 (2) invest an asset in the stocks, bonds, securities or  
19 other obligations of a company engaged directly or through a  
20 subsidiary in manufacturing, assembling, warehousing, or other  
21 substantial business operations within the Republic of South Africa.

22 (b) For purposes of this section "asset" means any asset of the  
23 state including money in the general fund, the permanent fund, or  
24 other fund of the state or an agency.

25 Sec. 37.24.020. DIVESTMENT OR WITHDRAWAL OF DEPOSITS. An agency  
26 with an investment or deposit that is prohibited under AS 37.24.010  
27 shall sell, redeem, divest or withdraw the investment or deposit as  
28 soon as possible consistent with sound investment policy and, in any  
29 case, no later than December 31, 1988.

1           Sec. 37.24.030. EXERCISE OF VOTING RIGHTS. An agency with an  
2 investment that is prohibited under AS 37.24.010 shall exercise share-  
3 holder voting rights and take other action as feasible to encourage  
4 the company to curtail its business involvement in the Republic of  
5 South Africa.

6           Sec. 37.24.040. ANNUAL REPORTS. (a) An agency with investments  
7 or deposits prohibited under AS 37.24.010 shall by January 15 of each  
8 year file a report with the legislature

9                 (1) identifying each prohibited investment or deposit  
10 together with its value; and

11                (2) describing all actions taken during the previous year  
12 in accordance with AS 37.24.030.

13           (b) The governor shall by March 1 of each year file a report  
14 with the legislature indicating the extent to which progress has been  
15 made toward eliminating the system of apartheid in the Republic of  
16 South Africa. The report may include recommendations for changes in  
17 legislation relating to the Republic of South Africa.

18           Sec. 37.24.050. PURCHASING AND CONTRACTING. (a) An agency may  
19 not purchase an article or product that has been wholly manufactured  
20 or produced within the Republic of South Africa.

21           (b) In considering the awarding of a contract for goods or  
22 services to a person, an agency shall review the business involvement  
23 of the person in the Republic of South Africa. The agency may decline  
24 to award a contract to an otherwise qualified person if it determines  
25 that the person engages in substantial business within the Republic of  
26 South Africa.

27           Sec. 37.24.060. CONFLICTING LAWS INAPPLICABLE. To the extent  
28 that the provisions of this chapter conflict with the provisions of  
29 other state law, the provisions of this chapter prevail.

1           Sec. 37.24.100. DEFINITION. In this chapter "agency" means a  
2           state agency or public corporation of the state, other than a munic-  
3           ipality, and includes the University of Alaska.

4           \* Sec. 2. This Act takes effect immediately in accordance with AS 01.-  
5           10.070(c).