

ALASKA LEGISLATURE

HOUSE and SENATE FINANCE COMMITTEE FILES, 2005-2006 2815

Angry parent punches schoolteacher

ATTACK: Mother assaults Fairview Elementary teacher; district will pursue charges.

By KATIE PESZNECKER
Anchorage Daily News

(Published: October 15, 2003)

The mother of a Fairview Elementary School student was cited for misdemeanor assault Monday after she confronted her son's teacher in a school hallway and hit the man several times.

Police said the teacher had broken up a fight between two sixth-graders earlier in the day, placing one, Cassandra L. West's son, in a "bear hug" to pull him off the other student. Principal Lois Mance called West, 39, and asked her to come to school to discuss the incident, said Superintendent Carol Comeau.

According to police and school officials, West arrived after school hours and attacked the 40-year-old teacher outside his classroom. She punched him three times, police said.

Comeau said she met with the Fairview teacher Tuesday. He was shaken up, she said, and she assured him the district will pursue charges.

"This is absolutely intolerable," Comeau said. "Our employees should feel safe wherever they are, and nobody has a right to assault an Anchorage employee for any reason. Assaulting school personnel is illegal and she will be prosecuted to the full extent of the law."

In an interview Tuesday, West said she didn't go to the school intending to hit her son's teacher. She said she and her son arrived at the school about 3:45 p.m. While they were there, she said, her son told her he had felt "choked" under the teacher's restraint.

West said she felt overcome with anger and went up to the classroom. When she arrived, she said, she asked the teacher if they could talk. She wanted to be polite, she said.

West said the teacher immediately left the room and suggested they go to the office. He was walking away, with West swearing at him, according to police and West's own account.

"Excuse me," West said she called after him. "I want to know why you put your hands on my kid."

She then jumped on him and hit him, West said. A second teacher intervened and the principal came on the scene.

"To put your hands on somebody's child, it doesn't make sense," West said Tuesday evening. "I was tripped out."

School staff members called police.

West had left in her vehicle when officers arrived, McGee said. Police found her at her home and cited her.

The contract for district teachers says they may "use reasonable and necessary physical force on a student to protect the teacher, a student(s) or others from physical injury" and "in any extraordinary case of breach of discipline, to restrain a physically disruptive student."



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"Had a student been attacking another student and the teacher stood by and just yelled at the kid, somebody would now hold that teacher responsible for not intervening to prevent injury," said Bob Roses, president of the Anchorage Education Association teachers union. "You have to err on the side of caution."

The teacher did not want to be identified or interviewed, Roses said. "He wants this thing to go away." Police and school officials also refused to identify the teacher.

West has lived in Alaska for eight years and said it hasn't been without trouble. She has been cited several times for minor crimes ranging from assault to theft and said she spent three years in prison on a drug conviction.

She said hitting the teacher was wrong.

"But wasn't it wrong when he touched (my son)?" said West, sipping apple juice at her apartment and wearing a red and white T-shirt that read "Beware! Attitude out of control."

West said she plans to look into filing charges against the teacher.

If someone thinks a teacher has behaved inappropriately, there are procedures in place to investigate that, Roses said.

"The real problem here is the parent coming in and deciding to attack a teacher," he said. "It is never appropriate for any (parent) to take matters into their own hand."

Monday's assault is only the second time an Anchorage teacher has been assaulted at school, district officials say. A Taku Elementary mother in December 2001 assaulted her daughter's teacher in front of a classroom of children. That woman, Angel Carter, was sentenced to 90 days in jail.

Daily News reporter Katie Pesznecker can be reached at kpesznecker@adn.com.

Juneau Empire
Web posted Sunday, December 16, 2001

State Briefs

Parent charged with attacking teacher

ANCHORAGE - The mother of an Anchorage fifth-grader is accused of attacking her daughter's teacher in the classroom.

Angel Carter, 36, has been cited for misdemeanor assault and malicious destruction of property, but has not been taken into custody, police said.

Carter walked into Bonnie Lucca's classroom at Taku Elementary School on Thursday morning and asked the teacher if they could discuss her daughter's grades, police said. At the time, Lucca was working on an assignment with her students.

When Lucca told Carter she couldn't speak with her until class ended and asked her to leave, Carter became furious, pushing the teacher and pulling her hair, police said.

Lucca tried to call for help, but Carter tore the classroom telephone off the wall, police said.

Lucca suffered minor injuries. The School District has banned Carter from school grounds.

Anchorage Daily News (AK)
March 2, 2004
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Assault nets jail for mom

SENTENCE: Woman who punched teacher gets 120 days.

TATABOLINE BRANT
Anchorage Daily News
Staff

A mother who punched a Fairview Elementary School teacher last fall outside his classroom was sentenced Friday to 120 days in jail and 10 years of probation -- the maximum probation for misdemeanor assault, court records say. Cassandra L. West, 39, was also fined \$1,000, forbidden to have contact with the fifth-grade teacher she assaulted, and ordered to stay off Anchorage School District property unless given specific permission to the contrary.

The stiff sentence pleased School District Superintendent Carol Comeau, who said the misdemeanor assault was serious. Comeau is pushing for a state law to establish mandatory minimum jail sentences of 30 to 60 days for people convicted of assaulting school employees.

"I very much appreciate the support of the prosecutor and the Police Department in dealing with this issue," Comeau said. "I can't emphasize strongly enough how I want all our school employees to feel safe while they're on duty at work."

The assault took place around 4 p.m. Oct. 13. West had been called to the school after her son got into a fight and was restrained by a fifth-grade teacher. West confronted the instructor outside his classroom, swore at him and then punched him three times, according to police and West.

West said in an interview in October that she did not go to the school intending to hit anyone but that she was overcome with anger when her son said he felt he had been choked by the teacher. Comeau said Monday that district officials investigated the teacher's actions in restraining the boy and that he was found to have done nothing wrong.

West has convictions for drug, larceny and false reporting offenses and a history of losing her temper, court records show. About six months before the incident at the school, she was arrested for malicious destruction of property for pouring water on the electrical components of her ex-boyfriend's television. She also cut the line to the intercom in his apartment used for buzzing people in, and cracked one of his windows, the documents say. West was ordered to complete an anger management course but never did, court records show.

West could not be reached Monday, but she said in the October interview that hitting the teacher was wrong. "But wasn't it wrong when he touched (my son)?" she said.

Assistant Municipal Attorney Richard Felton said West's sentence was in line with the 90-day jail term Angel Carter was given two years ago after she assaulted a Taku Elementary School teacher.

"I think it's a fair sentence," he said. "There has to be a bright line drawn."

Daily News reporter Tataboline Brant can be reached at tbrant@adn.com or 274-4321.

Juneau Empire
Web posted Wednesday, January 16, 2002

State Briefs

Mom pleads innocent in assault on her daughter's teacher

ANCHORAGE - An Anchorage mother who police say attacked her daughter's teacher pleaded innocent Tuesday in Anchorage District Court to charges of assault.

Angel S. Carter, 36, faces two counts of fourth-degree misdemeanor assault and one count of malicious destruction of property. Her trial is set for March 11.

Carter is free on her own recognizance and has been ordered by a judge to stay away from the teacher and Anchorage School District property.

Anchorage police say Carter walked into the fifth-grade classroom at Taku Elementary School on Dec. 13 and asked teacher Bonnie Lucca for documented daily reports on her daughter's behavior. At the time, the teacher was working on an assignment with students. Lucca told Carter she couldn't speak with her until class ended and asked her to leave, police said. Carter became furious and pushed Lucca and pulled her hair, police said.

Lucca tried to call for help, but Carter grabbed the classroom telephone and tore it off the wall, police said. Other teachers separated the two. Lucca suffered minor injuries, including a scratch and bruises.

Kenai Peninsula Online

Web posted Sunday, March 24, 2002

Anchorage mother sentenced for assaulting fifth-grade teacher

ANCHORAGE (AP) -- A judge sentenced an Anchorage mother to 90 days in jail for assaulting her daughter's teacher in front of a class of fifth-graders.

Prosecutors said Angel Carter in December walked into Bonnie Lucca's classroom at Taku Elementary School and grabbed Lucca after the teacher motioned for her to keep quiet. Carter then hit Lucca and smashed a telephone against her head.

Carter, 36, pleaded guilty Friday to two counts of misdemeanor assault and one count of malicious destruction of property. She also was ordered not to contact teachers without written permission from prosecutors.

"To bring violence in the classroom to children is so horrible, so insidious and unforgivable that I think a serious jail sentence would be warranted," Alaska District Judge Peter Ashman told Carter, whose head remained bowed as he spoke.

Ashman accepted the plea agreement and sentenced Carter to three months in jail. If Carter stays out of trouble during a year of probation, the conviction will be cleared from her record, said municipal attorney Bill Greene.

Although the judge felt Carter's punishment should be more harsh, not accepting the agreement would mean returning the case to trial status. That would postpone an end to the case, he said, and would not be fair to Lucca or her students.

"In real terms, what they'll know is she'll get 90 days in jail, and maybe that's enough," Ashman said.

Carter has no prior record.

During the hearing, she apologized to Superintendent Carol Comeau, Lucca and Taku's principal, Karlyn Daenzer.

"I hope something positive can come out of something negative," she said, turning in her seat to look at them.

Students heard a videotaped apology from Carter in class on Thursday.

During the hearing, Lucca told the judge her version of events.

Earlier that week in December, Carter had approached Lucca, asking for daily progress reports on her daughter. Lucca refused, saying she only had time to do

weekly reports. Substitute teachers for Lucca also told Lucca that Carter tried to intimidate them, and Taku's office staff said Carter had threatened to hurt Lucca.

Another teacher was leading the class Dec. 13 when Carter walked into the classroom with her daughter. Lucca said she motioned with her hand for Carter to stay silent, but the parent came face-to-face with her and started yelling. Then she grabbed Lucca and said they had to go in the hallway, Lucca said.

When Lucca resisted, Carter shoved her into a corner and started hitting her, the teacher said. Lucca yelled for help, and tried to use the telephone to call the police, but Carter ripped it off the wall and hit her with it, she said.

Carter's daughter was moved to another classroom after the incident.

ogan after game

Friday in the trial of Jerome Eielson of killing a man after a game, one witness said he did not tell Logan about the game. Eielson said in Anchorage Superior Court that his team of three white men defeated Logan's team. Eielson testified Logan and others teased Logan and others. "You got schooled by some

did not use racial slurs. Eielson faces charges for allegedly hitting Billy Watterson in July 2000 with a Tvele at an East

drinking that night and he might have taunted Watterson. "I was in panic, I was didn't know if I said it. Now I say it."

Rex Butler also asked the question to the police, in asking Logan as having "shiny teeth" and Logan "had a bright

— Anchorage Daily News

to be broadcast on radio, TV, the Internet

The annual State of the Alaska Legislature at 7 p.m. will be broadcast live on several radio stations.

The broadcast can be seen on Alaska TV (KUCB-TV Juneau, KUAC-TV Kodiak, KTVA-TV Bethel), the Alaska System (ARCS TV) and on radio in Anchorage, and Chantrelle.

Also on the cable-TV service, the event will also be televised on several radio stations in the Gavel at Gavel. For more information, visit www.ktoo.org/

The broadcast on Alaska radio stations and live-streamed at www.state.ak.us.
Anchorage Daily News

Airman got in the middle of shootout

■ **FATALITY:** Gunfire erupted at trailer court during confrontation.

By LUCAS WALL
Anchorage Daily News

The 19-year-old man shot to death Sunday in a Fairbanks trailer park was an Air Force airman who got in the middle of a shootout involving more than 20 people, including several other airmen and Army soldiers, Alaska State Troopers said Tuesday.

Troopers and three local police departments responded to the Lake View Trailer Court about 12:25 a.m. Terry Hachtel died while en route to Fairbanks Memorial Hospital in a private vehicle.

Seven trooper investigators are

working the case with help from State Crime Lab technicians, the Air Force Office of Special Investigations and the Army Criminal Investigation Division.

Troopers spokesman Greg Wilkinson said events began Friday night at a party in a Fairbanks residence. There was a fight there involving military personnel and civilians, but Wilkinson said he didn't know what it was about.

The night after, a group of 20 or so people including Hachtel went to the trailer, which the Lake View manager said is owned by David Causey. Troopers said the owner was home at the time but wouldn't say how many others were with him.

The group wanted revenge for what happened the previous night, Wilkinson said, and several people

tried to enter the trailer. Gunfire erupted between those inside and outside the trailer, and Hachtel was struck in the chest.

Wilkinson said he didn't know how many people fired shots or if Hachtel was among the shooters. One firearm was recovered from inside the trailer and one from outside, he said. He didn't know the types, but said neither was a military weapon.

About 10 strings of green and orange yarn were strung up outside the trailer Monday as investigators apparently tried to plot bullet trajectory.

"We're trying to establish who fired first," Wilkinson said.

Troopers hope to conclude their investigation within the next two weeks and forward findings to the Fairbanks district attorney's office.

Lt. Eimeralda Silvestre, an Eielson spokeswoman, said Air Force investigators won't comment on the matter. Hachtel's hometown was listed as Fort Ord, Calif., an Army base 5 miles north of Monterey. He is a native of Roy, Utah.

Hachtel joined the Air Force in May 2000 and had been stationed at Eielson since November 2000, Silvestre said. He worked in the 354th Munitions Flight, responsible for taking trailers of bombs and bullets from storage to the flight line for loading onto aircraft.

The Air Force held a memorial service for Hachtel Tuesday afternoon at the base chapel.

■ The Associated Press contributed to this story. Reporter Lucas Wall can be reached at lwall@adn.com or 257-4321.

Mom pleads not guilty to assaulting girl's teacher

■ **CHARGES:** Woman pulled Taku teacher's hair, tore phone off wall, police say.

By NICOLE TSONG
Anchorage Daily News

A mother who police say attacked her daughter's Taku Elementary teacher pleaded not guilty on Tuesday in Anchorage District Court to charges of assault.

Angel S. Carter, 36, of Anchorage faces two counts of fourth-degree misdemeanor assault and one count of malicious destruction of property.

The maximum penalty for one assault charge is one year in jail and a \$5,000 fine, while destroying

property carries a maximum penalty of six months in jail and a \$1,000 fine. Her trial was set for March 11.

Carter is free on her own recognizance. Judge Stephanie Rhoades also ordered her to stay away from the teacher and Anchorage School District property.

Anchorage police say Carter walked into the fifth-grade classroom on Dec. 13 and asked teacher Bonnie Lucca for documented daily reports on her daughter's behavior. At the time, the teacher was



Carter

working on an assignment with students. When Lucca told Carter she couldn't speak with her until class ended and asked her to leave, Carter became furious and attacked, pushing Lucca and pulling her hair, police said.

Lucca tried to call for help, but Carter grabbed the classroom telephone and tore it off the wall, police said. Other teachers separated the two.

Lucca suffered minor injuries, including a scratch on her face and bruises on her arm and leg. She could not be reached for comment.

In an interview five days after the incident, Carter said she lost her temper that day because of ongoing issues with Lucca. She said

she was having behavioral and academic problems, so she asked Lucca to try daily reports for two weeks.

"I was asking for something daily, just for a short period of time, and she would always tell me, 'I don't have time, I'm not going to give this to you.'"

Carter, who also could not be reached for comment Tuesday, said at the time she was sorry the incident happened in front of children.

But "you don't deny a parent from wanting their child to excel," she said.

■ Nicole Tsong can be reached at ntsong@adn.com or 257-4450.

(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

(i) manslaughter; or

(ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 — 11.41.250, 11.41.420 — 11.41.432, 11.41.436 — 11.41.458, or 11.41.500 — 11.41.520.

(d) In this section,

(1) "active term of imprisonment" means the total term of imprisonment imposed for a crime, minus suspended imprisonment;

(2) "additional crime" means a crime that is not the primary crime;

(3) "primary crime" means the crime

(A) for which the sentencing court imposes the longest active term of imprisonment; or

(B) that is designated by the sentencing court as the primary crime when no single crime has the longest active term of imprisonment. (§ 3 ch 125 SLA 2004)

Effective dates. — Section 9, ch. 125, SLA 2004, provides that this section applies "to offenses occurring on or after July 1, 2004."

Editor's notes. — Section 8, ch. 125, SLA 2004,

Sec. 12.55.135. Sentences of imprisonment for misdemeanors. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed under AS 12.30.027 or AS 18.66.100 — 18.66.180 and not subject to sentencing under (d) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault shall be sentenced to a minimum term of imprisonment of

(1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);

(2) 30 days if the defendant violated AS 11.41.230(a)(3).

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in the section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(j) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983; am §§ 5, 6 ch 53 SLA 1991; am § 3 ch 6 SLA 1996; am § 14 ch 64 SLA 1996; am §§ 5, 6 ch 71 SLA 1996; am §§ 8, 9 ch 86 SLA 1998; am §§ 3, 4 ch 106 SLA 1998)

Revisor's notes. — Subsection (h) was enacted as (g). Relettered in 1998, at which time the cross-reference in subsection (e) was conformed.

Subsections (i) and (j) were enacted as (h) and (i), respectively. Relettered in 1996.

Cross references. — For legislative findings and purpose in connection with the enactment of subsection (f), see §§ 1 and 2, ch. 53, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1991 amendment, effective September 13, 1991, rewrote subsection (e) and added subsection (f).

The first 1996 amendment, effective June 27, 1996, in subsection (d), substituted "who knowingly directed the conduct constituting the offense at" for "upon," "correctional employee" for "correctional officer," and paragraphs (1) and (2) for "30 days."

The second 1996 amendment, effective July 1, 1996, in subsection (c), inserted "or filed" and "or issued under former" and inserted section references.

The third 1996 amendment, effective June 20, 1996,

in the introductory language in subsection (e), deleted "Except as provided in AS 12.55.055(f)," from the beginning and ", or (f)" following "(d)" and made related stylistic changes and rewrote subsection (f).

The first 1998 amendment, effective June 13, 1998, rewrote subsection (c) and added subsections (g), (i), and (j).

The second 1998 amendment, effective January 1, 1999, inserted a subsection reference and made minor stylistic changes in subsection (e) and added subsection (h).

Editor's notes. — Section 7, ch. 6, SLA 1996 provides that the 1996 amendment to (d) of this section applies "to all offenses committed on or after June 27, 1996."

Section 22(c), ch. 86, SLA 1998 provides that with respect to the 1998 enactment of subsections (g), (i), and (j), "[r]eferences to previous convictions in this Act apply to all convictions occurring before, on, or after June 13, 1998."

NOTES TO DECISIONS

Constitutionality of presumptive sentencing provisions. — See notes under same heading, AS 12.55.125. *Nell v. State*, 642 P.2d 1361 (Alaska Ct App. 1982).

Maximum sentence for joyriding justified. — The district court judge was not clearly mistaken in

characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which the defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyrid-

injuries that resulted from it justified a sentence of several months' incarceration and he was also convicted of one count of felony assault, and defendant, a Const Guard yeoman, might have been ordered to undergo a period of up to 90 days' voluntary restriction to quarters, because the sentencing court ignored the 90-day confinement alternative to imprisonment that defendant himself had argued for and without explanation or comment imposed only the requirement of community service, the sentence was disapproved. *State v. Monk*, 886 P.2d 1315 (Alaska Ct. App. 1994).

Order to attend AA meetings vacated. — Provision in judgment ordering defendant to attend Alcoholics Anonymous meetings was vacated, and his case was remanded for further proceedings, where the trial court's decision was insufficiently explained and had no adequate support in the record. *Karl v. State*, 770 P.2d 299 (Alaska Ct. App. 1989).

Applied in *Wolf v. State*, 647 P.2d 607 (Alaska Ct. App. 1982); *McManners v. State*, 650 P.2d 414 (Alaska Ct. App. 1982); *Bidwell v. State*, 656 P.2d 592 (Alaska Ct. App. 1983); *Wright v. State*, 656 P.2d 1226 (Alaska Ct. App. 1983); *Morton v. State*, 684 P.2d 144 (Alaska Ct. App. 1984); *Smaker v. State*, 695 P.2d 238 (Alaska Ct. App. 1985); *Napageak v. State*, 729 P.2d 893 (Alaska Ct. App. 1986); *Wickham v. State*, 770 P.2d 757 (Alaska Ct. App. 1989); *Fuzzard v. State*, 13 P.3d 1163 (Alaska Ct. App. 2000).

Quoted in *Butts v. State*, 53 P.3d 609 (Alaska Ct. App. 2002); *Hughes v. State*, 56 P.3d 1088 (Alaska Ct. App. 2002).

Stated in *Mynard v. State*, 652 P.2d 489 (Alaska Ct. App. 1982); *Edwin v. State*, 762 P.2d 499 (Alaska Ct. App. 1988); *Atkinson v. State*, 869 P.2d 486 (Alaska Ct. App. 1994).

Cited in *Lerchenstein v. State*, 697 P.2d 312 (Alaska Ct. App. 1985); *New v. State*, 714 P.2d 378 (Alaska Ct. App. 1986); *Ackermann v. State*, 716 P.2d 5 (Alaska Ct. App. 1986); *Witt v. State*, 725 P.2d 723 (Alaska Ct. App. 1986); *Newsom v. State*, 726 P.2d 561 (Alaska Ct. App. 1986); *Arenas v. State*, 727 P.2d 313 (Alaska Ct. App. 1986); *Weston v. State*, 656 P.2d 1186 (Alaska Ct. App. 1982); *Pollins v. State*, 757 P.2d 601 (Alaska Ct. App. 1988); *Jones v. State*, 765 P.2d 107 (Alaska Ct. App. 1988); *Hilburn v. State*, 765 P.2d 1382 (Alaska Ct. App. 1988); *Newcomb v. State*, 779 P.2d 1240 (Alaska Ct. App. 1989); *State v. Malone*, 819 P.2d 34 (Alaska Ct. App. 1991); *State v. Jeske*, 823 P.2d 6 (Alaska Ct. App. 1991); *Lewis v. State*, 845 P.2d 447 (Alaska Ct. App. 1993); *Mustafoski v. State*, 867 P.2d 824 (Alaska Ct. App. 1994); *State v. Hernandez*, 877 P.2d 1309 (Alaska Ct. App. 1994); *Johnson v. State*, 889 P.2d 1076 (Alaska Ct. App. 1995); *Peterser v. State*, 930 P.2d 414 (Alaska Ct. App. 1996); *Griffin v. State*, 9 P.3d 301 (Alaska Ct. App. 2000); *Hurd v. State*, 22 P.3d 12 (Alaska Ct. App. 2001); *Brockway v. State*, 37 P.3d 427 (Alaska Ct. App. 2001); *Freeman v. State*, Ct. App. Op. No. 4550 (File No. A-7658), P.3c (Alaska Ct. App. 2002); *Pearce v. State*, 45 P.3d 67 (Alaska Ct. App. 2002); *Ramsey v. State*, 56 P.3d 67 (Alaska Ct. App. 2002); *Cathey v. State*, 60 P.3d 19 (Alaska Ct. App. 2002); *Nelson v. State*, 68 P.3d 40 (Alaska Ct. App. 2003); *Timothy v. State*, 90 P.3d 17 (Alaska Ct. App. 2004).

Collateral references. — Attempt to commit assault as criminal offense, 93 ALR5th 683.

Sec. 11.41.230. Assault in the fourth degree. (a) A person commits the crime of assault in the fourth degree if

- (1) that person recklessly causes physical injury to another person;
- (2) with criminal negligence that person causes physical injury to another person by means of a dangerous instrument; or
- (3) by words or other conduct that person recklessly places another person in fear of imminent physical injury.

(b) Assault in the fourth degree is a class A misdemeanor. (§ 3 ch 166 SLA 1978; am § 6 ch 102 SLA 1980; am § 5 ch 143 SLA 1982)

Cross references. — For sentences for violations of this section committed against certain officers, employees, and emergency responders, see AS 12.55.135(d).

Legislative history reports. — For a report on

Chapter 102, SLA 1980 (HCS CSSB 511), see 198 Senate Journal Supplement, No. 44, May 29, 1980, and 1980 House Journal Supplement, No. 79, May 21, 1980.

NOTES TO DECISIONS

"Fear of imminent physical injury". — To convict defendant of fourth-degree assault in beating his child with a belt, the state was not required to prove that he actually struck the child, only that he recklessly placed the child in fear of imminent physical injury. *S.R.D. v. State*, 820 P.2d 1088 (Alaska Ct. App. 1991).

Recklessness. — Second-degree assault requires proof of intent to cause physical injury, whereas fourth-degree assault requires proof only of reckless-

ness, the two offenses differing only in their culpable mental state elements. *Willett v. State*, 836 P.2d 95 (Alaska Ct. App. 1992).

The fact that defendant simply "lashed out" violently at the victim without specifically intending to cause her injuries did not substantially mitigate the offense. *State v. Huletz*, 838 P.2d 1257 (Alaska Ct. App. 1992).

"Dangerous instrument". — Where defendant was charged with second-degree assault for kick-

the victim, there was at least some evidence to support a finding that defendant's feet were not dangerous instruments, and because the defendant's use of a dangerous instrument was therefore in dispute, the trial court erred in denying defendant's conviction for assault in the second degree. *Willett v. State*, 836 P.2d 955 (Alaska Ct. App. 1992).

Fourth-degree assault as lesser included offense of first-degree sexual assault. — See *Nathaniel v. State*, 668 P.2d 851 (Alaska Ct. App. 1983).

Fourth-degree assault as a component of sexual assault. — Under either a sufficiency-of-the-evidence or a double-jeopardy analysis, sexual assault defendant's separate conviction for fourth-degree assault was improper; where the victim testified that defendant's act of running to the door placed her in fear that he was going to lock the door and recommence a sexual assault, the fourth-degree assault was simply a component of the sexual assault, and, moreover, the State did not prove the culpable mental state. *David v. State*, Ct. App. Op. No. 4862 (File No. A-8408), P.3d (Alaska Ct. App. Apr. 28, 2004).

Fourth-degree assault as lesser included offense of attempted sexual assault in the first degree. — See *Baden v. State*, 667 P.2d 1275 (Alaska Ct. App. 1983).

Fourth-degree assault as lesser included offense of robbery in the second degree. — Conviction for robbery in the second degree was reversed where there was at least some evidence presented at trial to justify finding that the defendant was guilty of assault but not robbery, so that a lesser included offense instruction on assault was required. *Marker v. State*, 692 P.2d 977 (Alaska Ct. App. 1984).

Cross-examination of psychiatrist. — Allowing the prosecutor to cross-examine a psychiatrist by reference to defendant's prior convictions for driving while intoxicated was not an abuse of discretion, where defendant, by putting his *mens rea* directly in issue through the witness's expert testimony, opened the witness up to cross-examination about the basis for his opinion. *Jansen v. State*, 764 P.2d 303 (Alaska Ct. App. 1988).

Instructions. — In prosecution for fourth degree assault, since there was evidence from which the jury could infer that defendant believed he had to kick his uncle to prevent harm to his daughter, and that this belief was reasonable, he was entitled to an instruction on defense of a third person as justification for his conduct. *David v. State*, 698 P.2d 1233 (Alaska Ct. App. 1985).

Trial court did not abuse its discretion in refusing to instruct the jury on the lesser-included offense of assault in the fourth degree at defendant's trial for sexual assault in the first degree, where there was no evidence of a disputed fact to distinguish sexual

assault from assault in the fourth degree, and a finding of guilt on the sexual assault offense would have been inconsistent with an acquittal on a fourth-degree assault charge. *Dolchok v. State*, 763 P.2d 977 (Alaska Ct. App. 1988).

Introduction into evidence of tape recording of incident not erroneous and conviction upheld. — See *O'Neill v. State*, 675 P.2d 1288 (Alaska Ct. App. 1984).

Conviction and sentence upheld. — See *Contreras v. State*, 675 P.2d 654 (Alaska Ct. App. 1984).

Sentence found excessive. — Composite sentence of 41 years for convictions of sexual assault in the first degree, kidnapping, three counts of assault in the third degree and one count of assault in the fourth degree was excessive; the defendant should not have received a sentence in excess of 30 years. *Patterson v. State*, 689 P.2d 146 (Alaska Ct. App. 1984).

Sentence affirmed. — See *Afcan v. State*, 711 P.2d 1198 (Alaska Ct. App. 1986).

Sentence disapproved. — Trial court's sentencing decision was clearly mistaken where the sentence fell near the bottom of the authorized range of sentences for fourth-degree assault and the evidence concerning defendant's background and personal characteristics provided little basis for characterizing his case as particularly mitigated, including two prior misdemeanor convictions. *State v. Huletz*, 838 P.2d 1257 (Alaska Ct. App. 1992).

Applied in *Bidwell v. State*, 656 P.2d 592 (Alaska Ct. App. 1983); *Jackson v. State*, 657 P.2d 405 (Alaska Ct. App. 1983); *Huitt v. State*, 678 P.2d 415 (Alaska Ct. App. 1984); *Olp v. State*, 738 P.2d 1117 (Alaska Ct. App. 1987).

Quoted in *Maynard v. State*, 652 P.2d 489 (Alaska Ct. App. 1982); *Michael v. State*, 767 P.2d 193 (Alaska Ct. App. 1988).

Stated in *State v. Williams*, 855 P.2d 1337 (Alaska Ct. App. 1993); *Sosa v. State*, 4 P.3d 951 (Alaska 2000).

Cited in *Folger v. State*, 648 P.2d 111 (Alaska Ct. App. 1982); *Kelly v. State*, 652 P.2d 112 (Alaska Ct. App. 1982); *Moxie v. State*, 662 P.2d 990 (Alaska Ct. App. 1983); *Davis v. State*, 684 P.2d 147 (Alaska Ct. App. 1984); *Norbert v. State*, 718 P.2d 160 (Alaska Ct. App. 1986); *Weston v. State*, 656 P.2d 1186 (Alaska Ct. App. 1982); *Noel v. State*, 754 P.2d 280 (Alaska Ct. App. 1988); *Alfred v. State*, 758 P.2d 130 (Alaska Ct. App. 1988); *Jones v. State*, 765 P.2d 107 (Alaska Ct. App. 1988); *State v. Hernandez*, 877 P.2d 1309 (Alaska Ct. App. 1994); *Samaniego v. City of Kodiak*, 2 P.3d 78 (Alaska 2000); *Griffin v. State*, 9 P.3d 301 (Alaska Ct. App. 2000); *Heaps v. State*, Ct. App. Op. No. 1741 (File No. A-7472), P.3d (Alaska Ct. App. 2001); *Hutchings v. State*, 53 P.3d 1132 (Alaska Ct. App. 2002); *Nelson v. State*, 68 P.3d 402 (Alaska Ct. App. 2003); *Bingaman v. State*, 76 P.3d 398 (Alaska Ct. App. 2003); *Dayton v. State*, 78 P.3d 270 (Alaska Ct. App. 2003).

Collateral references. — Standard for judging conduct of minor motorist charged with gross negligence, recklessness, wilful or wanton misconduct, or

the like, under guest statute or similar common-law rule, 97 ALR2d 861.

Sec. 11.41.250. Reckless endangerment. (a) A person commits the crime of reckless endangerment if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Reckless endangerment is a class A misdemeanor. (§ 3 ch 166 SLA 1978)

Sec. 11.81.640. Application of AS 11.81.600 — 11.81.630. AS 11.81.600 — 11.81.630 apply only to this title. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Stated in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982); *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992); *Alvarez v. Ketchikan Gateway Borough*, 91 P.3d 289 (Alaska Ct. App. 2004).
Cited in *Brown v. State*, 739 P.2d 182 (Alaska Ct. App. 1987).

Article 6. Definitions.

Section 11.81.900. Definitions

Sec. 11.81.900. Definitions. (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

(1) "access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property;

(2) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(3) "animal" means a vertebrate living creature not a human being, but does not include fish;

(4) "benefit" means a present or future gain or advantage to the beneficiary or to third person pursuant to the desire or consent of the beneficiary;

(5) "building", in addition to its usual meaning, includes any propelled vehicle structure adapted for overnight accommodation of persons or for carrying on business when a building consists of separate units, including apartment units, offices, or rental rooms, each unit is considered a separate building;

(6) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(7) "conduct" means an act or omission and its accompanying mental state;

(8) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(9) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(10) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(11) "crime" means an offense for which a sentence of imprisonment is authorized; crime is either a felony or a misdemeanor;

(12) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(13) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

(ii) AS 11.46; or

(iii) a felony offense.

(14) "culpable mental state" means "intentionally", "knowingly", "recklessly", or with "criminal negligence", as those terms are defined in (a) of this section;

(15) "dangerous instrument" means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury;

(16) "deadly force" means force that the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; "deadly force" includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument;

(17) "deadly weapon" means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckle or an explosive;

(18) "deception" means to knowingly

(A) create or confirm another's false impression that the defendant does not believe to be true, including false impressions as to law or value and false impressions as to intention or other state of mind;

(B) fail to correct another's false impression that the defendant previously has created or confirmed;

(C) prevent another from acquiring information pertinent to the disposition of the property or service involved;

(D) sell or otherwise transfer or encumber property and fail to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether or not the impediment is a matter of official record; or

(E) promise performance that the defendant does not intend to perform or knows will not be performed;

(19) "defense", other than an affirmative defense, means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the state then has the burden of disproving the existence of the defense beyond a reasonable doubt;

(20) "defensive weapon" means an electric stun gun, or a device to dispense mace or a similar chemical agent, that is not designed to cause death or serious physical injury;

(21) "drug" has the meaning ascribed to it in AS 11.71.900(9);

(22) "dwelling" means a building that is designed for use or is used as a person's permanent or temporary home or place of lodging;

(23) "explosive" means a chemical compound, mixture, or device that is commonly used or intended for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including dynamite, blasting powder, nitroglycerin, blasting caps, and nitrojelly, but excluding salable fireworks as defined in AS 18.72.050, black powder, smokeless powder, small arms ammunition, and small arms ammunition primers;

(24) "felony" means a crime for which a sentence of imprisonment for a term of more than one year is authorized;

(25) "fiduciary" means a trustee, guardian, executor, administrator, receiver, or any other person carrying on functions of trust on behalf of another person or organization;

(26) "firearm" means a weapon, including a pistol, revolver, rifle, or shotgun, whether loaded or unloaded, operable or inoperable, designed for discharging a shot capable of causing death or serious physical injury;

(27) "force" means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, "force" includes deadly and nondeadly force;

(28) "government" means the United States, any state or any municipality or other political subdivision within the United States or its territories; any department, agency, or subdivision of any of the foregoing; an agency carrying out the functions of government; or any corporation or agency formed under interstate compact or international treaty;

(29) "highway" means a public road, road right-of-way, street, alley, bridge, walk, trail, tunnel, path, or similar or related facility, as well as ferries and similar or related facilities;

(30) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(31) "includes" means "includes but is not limited to";

(32) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(33) "intoxicated" means intoxicated from the use of a drug or alcohol;

(34) "law" includes statutes and regulations;

(35) "leased" includes "rented";

(36) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(37) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(38) "nondeadly force" means force other than deadly force;

(39) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(40) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(41) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(42) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(43) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(45) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(46) "physical injury" means a physical pain or an impairment of physical condition;

(47) "police dog" means a dog used in police work under the control of a peace officer;

(48) "possess" means having physical possession or the exercise of dominion or control over property;

(49) "premises" means real property and any building;

(50) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(51) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, an access device, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence;

(53) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(54) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person acting as an advisor, consultant, or assistant at the request of, the direction of, or under contract with the state, a municipality or other political subdivision

f the state, or another governmental instrumentality; in this subparagraph "person" includes an employee of the person;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) — (C) of this paragraph, but who does not occupy the position;

(55) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(56) "serious physical injury" means

(A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or

(B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy;

(57) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, including cable, subscription, or pay television or other telecommunications service, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, the use of a computer, computer time, a computer system, a computer program, a computer network, or any part of a computer system or network, and the supplying of equipment for use;

(58) "sexual contact" means

(A) the defendant's

(i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or

(ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast;

(B) but "sexual contact" does not include acts

(i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child;

(ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or

(iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(59) "sexual penetration"

(A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration;

(B) does not include acts

(i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or

(ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services;

(60) "solicits" includes "commands";

(61) "threat" means a menace, however communicated, to engage in conduct described in AS 11.41.520(a)(1) — (7) but under AS 11.41.520(a)(1), includes all threats to inflict physical injury on anyone;

(62) "violation" is a noncriminal offense punishable only by a fine, but not by imprisonment or other penalty; conviction of a violation does not give rise to a disability or legal disadvantage based on conviction of a crime; a person charged with violation is not entitled

(A) to a trial by jury; or

(B) to have a public defender or other counsel appointed at public expense to represent the person;

(63) "voluntary act" means a bodily movement performed consciously as a result of effort and determination, and includes the possession of property if the defendant was aware of the physical possession or control for a sufficient period to have been able to terminate it. (§ 10 ch 166 SLA 1978; am §§ 29 — 32 ch 102 SLA 1980; am §§ 12 — 1 ch 45 SLA 1982; am §§ 12 — 15 ch 143 SLA 1982; am § 2 ch 54 SLA 1983; am § 5 ch 7 SLA 1984; am § 3 ch 114 SLA 1984; am §§ 1, 2 ch 116 SLA 1984; am § 1 ch 171 SLA 1990; am § 10 ch 59 SLA 1991; am § 3 ch 91 SLA 1991; am § 5 ch 60 SLA 1996; am § ch 86 SLA 1998; am §§ 4, 5 ch 33 SLA 2000; am §§ 16, 17 ch 65 SLA 2000; am § 22 ch 35 SLA 2003; am § 3 ch 139 SLA 2004)

Revisor's notes. — Subsection (b) was reorganized in 1983, 1991, 1996, 1998, 2000 and 2004 to maintain alphabetical order. Paragraph (3) was enacted as paragraph (63) and renumbered in 2004.

Cross references. — See general definitions in AS 01.10.060.

For legislative purpose of the 1991 amendment to paragraph (b)(35) (now (b)(40)), see § 1, ch. 91, SLA 1991 in the Temporary and Special Acts.

Effect of amendments. — The 1998 amendment, effective June 13, 1998, added paragraph (b)(10) (now (b)(12)).

The first 2000 amendment, effective August 9, 2000, added items (b)(57)(B)(iii) and (b)(58)(B)(ii) [now (b)(58)(B)(iii) and (b)(59)(B)(ii)] and made related stylistic changes.

The second 2000 amendment, effective May 23, 2000, in subsection (b) substituted "an access device" for "a credit card" near the middle of paragraph (50) [now (51)] and added paragraphs (1) and (29) [now (30)].

The 2003 amendment, effective June 3, 2003, made stylistic changes in paragraph (b)(58) [now paragraph (b)(59)].

The 2004 amendment, effective September 21, 2004, inserted paragraph (b)(3).

Editor's notes. — Section 12, ch. 60, SLA 1996 provides that the definition of "criminal street gang" as added by § 5, ch. 60, SLA 1996, applies "to an act that occurs on or after September 1, 1996, except that references to previous offenses refer to acts occurring before, on, or after September 1, 1996."

For related article, see Stern, *Consciousness and Wrongdoing: Mens Rea in Alaska*, 1984 *Alaska Law Rev.* 1.

Legislative history reports. — For a report of Chapter 102, SLA 1980 (HCS CSSB 511), see 198 *Senate Journal Supplement*, No. 44, May 29, 1980, or 1980 *House Journal Supplement*, No. 79, May 28, 1980.

NOTES TO DECISIONS

Annotator's notes. — Many of the cases in the notes below were decided under former AS 11.75.030, which provided for the division of crimes into felonies and misdemeanors.

Mere civil negligence not basis for criminal conviction. — The definitions contained in the Revised Criminal Code for both recklessness (paragraph (a)(3) of this section) and criminal negligence (paragraph (a)(4) of this section), which require "gross deviation" from the standard of care that "a reasonable person would observe in the situation" were expressly formulated to preclude mere civil negligence from forming the basis for a criminal conviction. *Andrew v. State*, 653 P.2d 1063 (Alaska Ct. App. 1982).

Paragraph (a)(3) provision as to intoxication is constitutional. — Due process is not violated by the provision in paragraph (a)(3) that intoxication is not to be considered in determining recklessness with regard to circumstances surrounding one's conduct. *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Applicability to second-degree murder statute. — The term "intentionally" as used in AS 11.41.110(a)(2) is not used "with respect to a result and thus is not governed by the definition of "intentionally" in AS 11.61.900(a)(1), but should be given the meaning assigned to "knowingly" in AS 11.41.110(a)(2) with respect to conduct ("performance of an act which results in death"). *Neitzel v. State*, 65 P.2d 325 (Alaska Ct. App. 1982).

Criminally negligent homicide scheme not unconstitutionally vague. — Alaska's criminally negligent homicide scheme proscribed by this section and AS 11.41.130(a) is not unconstitutionally vague with respect to, inter alia, the term "gross deviation", as its meaning is well within the comprehension of the average juror. *Panther v. Hames*, 991 F.2d 576 (9th Cir. 1993).

Applicability to robbery statute. — Court did not err, in defendant's robbery case, by denying his motion to dismiss where defendant grabbed the vic

tim's purse and tugged until she fell down, because that conduct constituted bodily impact. *Butts v. State*, 53 P.3d 609 (Alaska Ct. App. 2002).

Applicability to theft by receiving statute. — The definition of recklessness in paragraph (a)(3) of this section is applicable to term "reckless disregard" in AS 11.46.190(a), the theft by receiving statute. *Andrew v. State*, 653 P.2d 1063 (Alaska Ct. App. 1982).

No decriminalization of escapes by 1978 criminal code revision. — When the criminal code was revised in 1978, the commentary stated that the revised code made three significant changes in the escape laws; there was no mention of the decriminalization of escapes by persons confined in lieu of bail, and the absence of such a comment indicates the legislature's intent not to change the effect of the law in that regard. *Andrejko v. State*, 695 P.2d 246 (Alaska Ct. App. 1985).

Only anonymous phone calls without any legitimate intent prohibited. — When AS 11.61.120(a)(4) (harassment by making anonymous telephone call) is read in conjunction with paragraph (a)(1) of this section, the statute is theoretically broad enough to punish political speech or other legitimate communication upon proof that one of the speaker's subsidiary motives was to annoy the listener. Because the scope of the statute is potentially so broad, AS 11.61.120(a)(4) must be interpreted to prohibit telephone calls only when the call has no legitimate communicative purpose, when the caller's speech is devoid of any substantive information, and the caller's sole intention is to annoy or harass the recipient. *McKillop v. State*, 857 P.2d 358 (Alaska Ct. App. 1993).

"Knowingly." — One who remains "deliberately ignorant of illegal activity," is necessarily "aware of a substantial probability of its existence," and so, acts "knowingly" under subdivision (a)(2). *Dawson v. State*, 894 P.2d 672 (Alaska Ct. App. 1995).

A defendant who inadvertently encounters another person in a public place has not "knowingly" approached or appeared within sight of that person. *Petersen v. State*, 930 P.2d 414 (Alaska Ct. App. 1996).

A conviction for third-degree weapons misconduct under AS 11.61.200(a)(6) does not require the State to present evidence that defendant possessed the handgun with the specific intent that the weapon be untraceable. *Collins v. State*, 977 P.2d 741 (Alaska Ct. App. 1999).

If a person is subject to a protective order containing a provision listed in AS 18.66.100(c)(1)-(7), when a person commits the crime of violating the protective order, the state must prove that the defendant acted "knowingly" as that term is defined in paragraph (a)(2). *Strane v. State*, 16 P.3d 745 (Alaska Ct. App. 2001).

Under the intoxication clause of paragraph (a)(2), unawareness caused by intoxication is deemed to be unawareness for purposes of assessing whether a defendant acted "knowingly." *Hutchison v. State*, 27 P.3d 774 (Alaska Ct. App. 2001).

Benefit. — A public defender's agreement to accept meals, marijuana, a trip and a promise to build a cabin from a criminal defendant fell within the definition of "benefit" for purposes of the bribery statute. AS 11.56.110. *Bachlet v. State*, 941 P.2d 200 (Alaska Ct. App. 1997).

"Building." — Walk-in cooler in store building was not a separate unit, but a storage area within the single-business structure. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Paragraph (b)(3) provides examples of what types of

units are "separate units": apartments, offices, and rented rooms. This list is illustrative but not definitive, and does not exhaust the list of what would be considered "separate units" for purposes of burglary. *Pushruk v. State*, 780 P.2d 1044 (Alaska Ct. App. 1989).

There is nothing in the statutory definition of building, or the examples given of separate units which would require separate owners, in order to have separate units. *Pushruk v. State*, 780 P.2d 1044 (Alaska Ct. App. 1989).

A person who rents out a portion of his residence can reserve a right of privacy in certain rooms of the house and these rooms can constitute separate buildings within the meaning of paragraph (b)(3). A renter who breaks into those rooms and steals property from them commits burglary. *Wesolic v. State*, 837 P.2d 130 (Alaska Ct. App. 1992).

Freezer trailer which defendants forcibly entered and from which they took bread products, which was standing, self-enclosed metal structure, fit the definition of a "building." *Austin v. State*, 883 P.2d 992 (Alaska Ct. App. 1994).

Although the statute does not define the terms "adapted" and "for carrying on business," the theft of a fax machine from a real estate agent's unoccupied automobile might constitute burglary. *United States v. Sparks*, 265 F.3d 825 (9th Cir. 2001).

Pursuant to subsection (b)(4), unlawful entry of a propelled vehicle, with intent to commit a crime in that vehicle, constitutes the crime of burglary only if the propelled vehicle is adapted for overnight accommodation of persons, or for carrying on business. *Timothy v. State*, 90 P.3d 177 (Alaska Ct. App. 2004).

Terms "building" and "premises" in AS 11.46.310, paragraph (b)(3) of this section and 11.46.350 are used interchangeably. *Arabie v. State*, 699 P.2d 890 (Alaska Ct. App. 1985).

Credit card numbers. — Policy considerations and case law support the conclusion that a credit card number is included in the definition of "credit card." *State v. Morgan*, 985 P.2d 1022 (Alaska Ct. App. 1999).

"Dangerous instrument." — While feet are not dangerous instruments per se, they may become so, however they are shod, if used in such a way as to be capable of causing death or serious physical injury. *Wettanen v. State*, 656 P.2d 1213 (Alaska Ct. App. 1983).

Before a hand may be deemed a "dangerous instrument," the state must present particularized evidence from which reasonable jurors could conclude beyond a reasonable doubt that the manner in which the hand was used in the case at issue posed an actual and substantial risk of causing death or serious physical injury, rather than a risk that was merely hypothetical or abstract. *Konrad v. State*, 763 P.2d 1369 (Alaska Ct. App. 1988).

The use of a dangerous instrument is not necessarily an element of manslaughter, even though it is safe to assume that the vast majority of manslaughter cases will involve the use of an object or implement that falls within the definition of a dangerous instrument. *Krasovich v. State*, 731 P.2d 598 (Alaska Ct. App. 1987).

The use of a dangerous instrument is characteristic of manslaughter, and the automobile is a dangerous instrument characteristically used in committing the offense. *Krasovich v. State*, 731 P.2d 598 (Alaska Ct. App. 1987).

A knife meets the definition of "dangerous instru-

Article 5. General Principles of Criminal Liability.

Section

600. General requirements of culpability
 610. Construction of statutes with respect to culpability
 615. Offenses defined by age or value

Section

620. Effect of ignorance or mistake upon liability
 630. Intoxication as a defense
 640. Application of AS 11.81.600 — 11.81.630

Sec. 11.81.600. General requirements of culpability. (a) The minimal requirement for criminal liability is the performance by a person of conduct that includes voluntary act or the omission to perform an act that the person is capable of performing;

(b) A person is not guilty of an offense unless the person acts with a culpable mental state, except that no culpable mental state must be proved

(1) if the description of the offense does not specify a culpable mental state and the offense is

(A) a violation; or

(B) designated as one of "strict liability"; or

(2) if a legislative intent to dispense with the culpable mental state requirement is present. (§ 10 ch 166 SLA 1978; am § 27 ch 102 SLA 1980)

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 2, 1980.

NOTES TO DECISIONS

Culpable mental state requirement. — Subsection (b) generally requires criminal acts to be performed with an accompanying culpable mental state, but the provision allows exceptions when the legislature has clearly expressed its intent to apply strict liability to a specific element of a crime. *Noblit v. State*, 808 P.2d 280 (Alaska Ct. App. 1991).

Since no portion of AS 11.56.740 expressly designates the crime as one of strict liability, and the wording of the statute gives no other indication that the legislature wished to dispense with proof of a culpable mental state, the rule of statutory construction obliged the appellate court to construe the statute as requiring proof of culpable mental state. *Strane v. State*, 981 P.2d 122 (Alaska Ct. App. 1999).

For discussion of culpable mental states relat-

ing to violation of fish and game laws, see *Reynolds v. State*, 655 P.2d 313 (Alaska Ct. App. 1982).

Applied in *Bell v. State*, 668 P.2d 829 (Alaska Ct. App. 1983).

Quoted in *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982); *Hart v. State*, 702 P.2d 651 (Alaska Ct. App. 1985); *Kinney v. State*, 927 P.2d 1289 (Alaska Ct. App. 1996); *State v. Simpson*, 53 P.3d 165 (Alaska Ct. App. 2002).

Stated in *Ortberg v. State*, 751 P.2d 1368 (Alaska Ct. App. 1988).

Cited in *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988); *Gudmundson v. State*, 763 P.2d 136 (Alaska Ct. App. 1988); *R.J.M. v. State*, 946 P.2d 86 (Alaska 1997); *Alvarez v. Ketchikan Gateway Borough*, 91 P.3d 289 (Alaska Ct. App. 2004).

Sec. 11.81.610. Construction of statutes with respect to culpability. (a) [Repealed, § 44 ch 102 SLA 1980.]

(b) Except as provided in AS 11.81.600(b), if a provision of law defining an offense does not prescribe a culpable mental state, the culpable mental state that must be proved with respect to

(1) conduct is "knowingly"; and

(2) a circumstance or a result is "recklessly."

(c) When a provision of law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly, or recklessly. If acting recklessly suffices to establish an element, that element is also established if a person acts intentionally or knowingly. If acting knowingly suffices to establish an element, that element is also established if a person acts intentionally. (§ 10 ch 166 SLA 1978; am § 44 ch 102 SLA 1980)

NOTES TO DECISIONS

Subsection (b) applies to AS 11.51.120. *Taylor v. State*, 710 P.2d 1019 (Alaska Ct. App. 1985).

Subsection (b) applies to second-degree criminal trespass statute. — Since AS 11.46.330 is silent regarding mens rea, this section is implicated. *Johnson v. State*, 739 P.2d 781 (Alaska Ct. App. 1987).

Application of subsection (b) to second-degree murder statute. — Since AS 11.41.110(a)(2) does not specifically establish a mental element for the result ("death") or the surrounding circumstances ("under circumstances manifesting an extreme indifference to the value of human life") involved in second-degree murder, a "reckless" mental state is to be imputed to those two factors based on application of subsection (b) of this section. *Neitzel v. State*, 655 P.2d 325 (Alaska Ct. App. 1982).

Subsection (b) inapplicable to fish and game offenses. — Subsection (b) does not govern the interpretation of offenses defined in Title 16. For fish and game offenses under that title and its regulations, civil negligence, rather than recklessness, is the de-

fault culpable mental state to be applied. *Orr-Hickey v. State*, 973 P.2d 612 (Alaska Ct. App. 1999).

For discussion of culpable mental states relating to violation of fish and game laws, see *Reynolds v. State*, 655 P.2d 1313 (Alaska Ct. App. 1982).

Applied in *Afean v. State*, 711 P.2d 1198 (Alaska Ct. App. 1986).

Quoted in *Gregory v. State*, 717 P.2d 428 (Alaska Ct. App. 1986); *Michael v. State*, 767 P.2d 193 (Alaska Ct. App. 1988); *Cole v. State*, 828 P.2d 175 (Alaska Ct. App. 1992); *Knix v. State*, 922 P.2d 913 (Alaska Ct. App. 1996).

Stated in *Ortberg v. State*, 751 P.2d 1368 (Alaska Ct. App. 1988); *Strane v. State*, 16 P.3d 745 (Alaska Ct. App. 2001).

Cited in *Baden v. State*, 667 P.2d 1275 (Alaska Ct. App. 1983); *Allen v. State*, 759 P.2d 541 (Alaska Ct. App. 1988); *Strane v. State*, 981 P.2d 122 (Alaska Ct. App. 1999); *Riley v. State*, 60 P.3d 204 (Alaska Ct. App. 2002).

Sec. 11.81.615. Offenses defined by age or value. Whenever a provision of law defining an offense requires a determination of the age of the victim or the value of property or services, it is not a defense to the lowest class of offense established by the evidence that the age of the victim is less than the age which would make the offense a higher class of offense or that the value of the property or services exceeds the value which would make the offense a higher class of offense, and a person may be charged and convicted accordingly. (§ 10 ch 166 SLA 1978)

NOTES TO DECISIONS

Sexual offender convicted of lesser degree of offense. — The legislature intended this section to permit a court or jury to convict a sexual offender of a lesser degree of offense despite the fact that the evidence reasonably (or even convincingly) demonstrates that the defendant committed a greater degree of offense because the victim was younger than alleged. *Thiessen v. State*, 844 P.2d 1137 (Alaska Ct. App. 1993).

Restitution based on actual loss. — Where a defendant is charged with a lesser offense but the evidence establishes that he committed a greater offense, a restitutionary award based on the actual loss to the victim is appropriate, even though the loss exceeds the maximum property-value figure which defines the lesser offense. *Fee v. State*, 656 P.2d 1202 (Alaska Ct. App. 1982).

Sec. 11.81.620. Effect of ignorance or mistake upon liability. (a) Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides. Use of the phrase "intent to commit a crime", "intent to promote or facilitate the commission of a crime", or like terminology in a provision of law does not require that the defendant act with a culpable mental state as to the criminality of the conduct that is the object of the defendant's intent.

(b) A person is not relieved of criminal liability for conduct because the person engages in the conduct under a mistaken belief of fact, unless

(1) the factual mistake is a reasonable one that negates the culpable mental state required for the commission of the offense;

(2) the provision of law defining the offense or a related provision of law expressly provides that the factual mistake constitutes a defense or exemption; or

(3) the factual mistake is a reasonable one that supports a defense of justification as provided in AS 11.81.320 — 11.81.430. (§ 10 ch 166 SLA 1978; am § 28 ch 102 SLA 1980)

4.6 ASSAULT OF SCHOOL EMPLOYEES

AASB urges that Alaska's criminal code or sentencing guidelines be revised so that a non-student adult convicted of assault on a school employee during or because of the performance of official duties will receive a mandatory minimum term of imprisonment similar to that imposed upon an adult who assaults a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant or other emergency responder engaged in the performance of official duties at the time of the offence.

Rationale. State statute provides for specific terms of imprisonment for crimes committed against peace officers, firefighters, etc. in the performance of their official duties. Our school employees, who each day work with our most precious resource, our children, deserve the same level of respect and protection under the law. *Adopted 2002 Amended 2004 (Sunset: Nov. 2007)*

HB

41

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT
MAY 04 2006
SENATE FINANCE COMMITTEE

DATE: 2/16/06

FURTHER:

DATE TURNED
IN TO OFFICE: 5/4/06

Finance Committee considered CS FOR HOUSE BILL NO. 41(FIN)

HB 41 ASSAULT ON SCHOOL EMPLOYEES/BUS DRIVERS

"An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree committed against an employee of an elementary, junior high, or secondary school or certain contractors of school districts who were engaged in the performance of school duties at the time of the assault."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous 5 CS CS HB 41 (JUD)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:

- Same Title
- New Title

SCS House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # 23

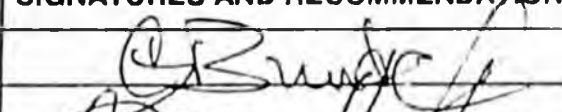
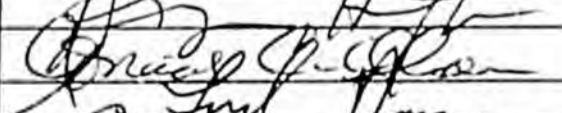
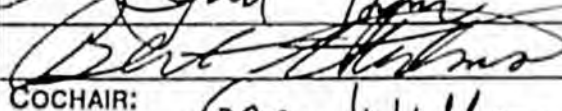
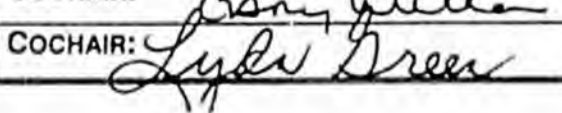
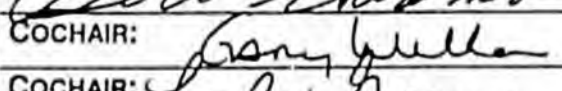
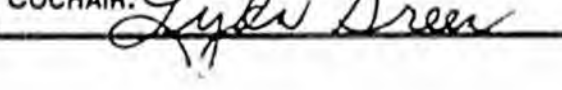
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Ind.	Zero	FN#
ADM	1/27/06			✓	6
LAW	1/30/06			✓	7
DPS	1/30/06			✓	8

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	✓			
			✓	
	✓			
	✓			
COCHAIR: 	✓			
COCHAIR: 	✓			

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: SCS CSHB 41(JUD)
(S) Publish Date: 2/16/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: An act relating to minimum sentence RDU: Legal and Advocacy Services
for assault on school employee... Component: Public Defender Agency
Sponsor: Reps. Lynn & McGuire
Requester: _____ Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
This bill would require a mandatory minimum sentence for an assault in the fourth degree committed against school employees and contractors. It is expected that this bill will not have a significant fiscal impact upon the Public Defender Agency.

Prepared by: Quinlan Steiner, Director Phone: 907.334.4414
Division: Public Defender Agency Date/Time: 1/28/06 5:00 p.m.
Approved by: Mike Tibbles, Deputy Commissioner Date: _____
Agency: Administration

FISCAL NOTE

REPORTED OUT
MAY 04 2006
SENATE FINANCE COMMITTEE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 7
Bill Version: SCS CSHB 41(JUD)
(S) Publish Date: 2/16/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to minimum periods of imprisonment for the crime of assault in the fourth degree..." RDU: CRIMINAL
Sponsor: Representatives Lynn and McGuire Component: Criminal Justice Litigation
Requester: Senate Judiciary Component No.: _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box: (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.55.135 (Sentencing for misdemeanors) by amending subsection d so that a 60 day sentence would be imposed for assault in the fourth degree if the assault is committed against an employee of an elementary, junior high, or secondary school while the employee was engaged in the performance of school duties while on school ground, on a school bus, at a school-sponsored event, or in the administrative offices of a school district at the time of the assault. Most assaults in schools are committed by juveniles, and there aren't enough cases to result in a fiscal impact on the Department of Law as a result of passage of this legislation.

Prepared by: Kathryn Daughhete, Director
Division: Administrative Services Division
Approved by: Kathryn Daughhete for David Márquez, Attorney General
Agency: Department of Law

Phone: 465-3673
Date/Time: 1/30/06 1:49 PM
Date: 1/30/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 8
Bill Version: SCS CSHB 41(JUD)
(S) Publish Date: 2/16/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
Title: "An Act relating to minimum periods of imprisonment for the crime of assault..." RDU: Alaska State Troopers
Sponsor: Representative Lynn Component: AST Detachments
Requester: Senate Judiciary Committee Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation has no fiscal impact to the Department of Public Safety. State troopers and local law enforcement officials already handle violations for the crime of assault, so this statute will not increase the numbers they deal with and should instead act as a deterrent. This bill will add a minimum term of 60 days imprisonment for convictions of assault in the fourth degree against school employees.

Prepared by: Lieutenant James Helgøe
Division: Alaska State Troopers
Approved by: Commissioner William Tandesko
Agency: Department of Public Safety

Phone: 907-269-4532
Date/Time: 1/30/06 2:17 PM
Date: 1/30/2006

Alaska State Legislature

Chairman

Military & Veterans' Affairs Committee

Member

Labor and Commerce Committee

State Affairs Committee

Economic Development, Trade & Tourism
Committee

Education Committee

Joint Armed Services Committee

Finance Subcommittees

Labor & Workforce Development

Community & Economic Development

Military & Veterans' Affairs



A Communication From

REPRESENTATIVE BOB LYNN

District 31 Anchorage

**E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" AlaskaDistrict31.blogspot.com**

Session:

Alaska State Capitol
Juneau, AK 99801-1182

Phone: (907) 465-4931

Fax: (907) 465-4316

Toll Free: (800) 870-4391

Interim:

716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205

Fax: (907) 269-0207

SPONSOR STATEMENT Senate CS for CSHB 41(JUD)

Senate CS for CSHB 41(JUD) revises sentencing guidelines to require a 60-day *mandatory* minimum term of imprisonment for assaults in the fourth degree committed on:

- school grounds
- on a school bus
- at a school-sponsored event
- or at certain school district administration offices.

A message needs to be sent that violence of any kind will not be tolerated - especially when it pertains to school grounds and school functions. We must provide for safety of teachers, other school employees, as well as for children. This bill adds a giant step toward that safety. Your support of HB 41 is requested.

HS 41

Police: Student urged into fight by mother

5/4/06

9:46 AM

Lo

MARY AMES
Frontiersman reporter

WASILLA — A sixth-grade Wasilla Middle School girl, accompanied into the school by her mother and her aunt, assaulted another sixth-grade girl at the start of school Thursday, according to a report from the Wasilla police.

The assault was initiated by the adults, who encouraged the girl to fight, the report said. The women cheered and made no attempt to stop the fight, according to the report.

Mary L. Bright, 36, and Martha I. Hunter, 36, were both charged with fourth-degree assault, second-degree criminal trespass, disorderly conduct and contributing to the delinquency of a minor, and their sixth-grader was charged with fourth-degree

assault, the report said.

Amy Spargo, Wasilla Middle School principal, said the student who came armed with two adults started the fight in the sixth-grade hallway with another student who was completely unaware of trouble brewing. The victim was just coming to school, she said.

"The bottom line is these adults crossed the line," Spargo said. "They didn't work with us. The vast majority of parents work with us to solve problems peacefully and productively."

Neither Bright nor Hunter told school employees about any perceived problems, Spargo said. They didn't sign in at the office and took matters into their own hands with complete disregard for the safety of students, she said.

Whenever an adult has a concern about a child's safety, they should bring it to the attention of the school, she said.

"We'll work together to solve problems," Spargo said. "This wasn't logical or typical." Spargo, who has been at Wasilla Middle School for four years, said she never had something like this assault take place. "We've been very successful in resolving peer conflicts," she said.

The victim had minor injuries from the fight, was treated by the school nurse and is still in class, but the school district suspended the child aggressor, she said.

Bright and Hunter have been ordered to stay away from Wasilla Middle School, the police report said.

Dave Eller, the school

resource officer from the Wasilla police, was at the high school Thursday morning, but he was at the middle school within minutes, Spargo said.

"He was a terrific help and support through the whole process," Spargo said.

Middle school students who witnessed the fight brought it to the attention of the staff, Spargo said, and when school employees intervened, the women took the child and went home.

"I want parents to know that student safety is our highest priority, and this was completely unacceptable," she said. "We won't tolerate kids being afraid of adults at school."

An official report was also sent to the Office of Children's Services, according to the police report.

Court records show only one Palmer case for Mary Bright, a restraining order filed on Jan. 30, 2001, against Mary and Waymen Bright. Court records show two Kenai cases, one for debt collection in 2000 and another for forcible entry, which was dismissed by the prosecution in 1999, against Mary and Waymen Bright.

Records for Martha Hunter show a Palmer conviction for driving with a canceled, suspended or revoked license in 2000, and a series of restraining orders filed by and against her in Palmer and Anchorage from this year and 2005. Records also show two small claims filed against Hunter in Anchorage in 2002.

Contact Mary Ames at 352-2284 or maryames@frontiersman.com.

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FREE
Blood Pressure Check • Height • Weight
BMI • Vision screening

Comprehensive Health Panel \$45.00
(Blood & urine test)

- Complete blood count
- Comprehensive chemistry panel
- Lipid panel
- Thyroid (TSH)
- Uric acid

Important!
Do not eat or drink for 12 hours prior (except water) Please drink plenty of water. Prescription medications should be taken and people with diabetes should not fast.

- PSA-Prostate Cancer Screening \$20.00
- Colon Cancer Screening \$20.00
- Blood type test \$20.00

Walk-ins welcome
746-3366

Around the Valley

Big Lake chamber to meet

BIG LAKE — The next Big Lake Chamber of Commerce meeting will take place at noon Wednesday at Kathy's Restaurant (formerly Mahoney's). The guest speaker will be Marc Van Dongen, director of Port MacKenzie. Interested people may contact Randi Perlman at 892-6109 for more information.

Land management meeting scheduled

TALKEETNA — A public

and Question Lakes Area Recreation Management Plans. Residents and landowners near the project area are encouraged to attend and comment on issues and preliminary recommendations for the borough lands. The workshop will be from 6 to 9 p.m. Wednesday at the Talkeetna Elementary School.

National Library Week celebrated

WASILLA — The Wasilla Public Library has scheduled a library trivia contest as part of the celebration this week of

contest, people can stop by the library and get a trivia question sheet to fill out. Library Director KJ Martin-Albright said the winner will receive a dinner for two from Chepo's. Library patrons who use the library during National Library Week also can enter a drawing for a \$25 gift certificate for WaldenBooks.

For more information, contact the Wasilla Public Library at 376-5913.

Area Democrats to caucus

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Frontiersman

Tuesday, January 31, 2006

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Parent who assaulted school secretary fined

January 31, 2006

MARY AMES\Frontiersman reporter

PALMER - A Palmer District Court judge on Thursday sentenced a Pioneer Peak Elementary parent who assaulted the school secretary last May to pay a \$500 fine and apologize, and imposed a suspended prison term.

Sammie Jo Wilson, 35, was charged with fourth-degree assault after she grabbed Toni Hartley by the hair, bent Hartley over at the waist and punched her head repeatedly about 2 p.m. May 6, according to Alaska State Troopers.

Wilson came to the school to pick up a student, but refused to show any identification, according to the report.

When Hartley requested identification in accordance with school district policy, Wilson responded that the request was crazy, that her ID was in the car and that she wanted the teacher in charge, the report said.

The student had been sick all day, but the phone numbers the school had for a parent contact were not working, Hartley said Friday.

"She was very defensive coming in the door," Hartley said. "I told her we needed to get new phone numbers and she said she didn't have time. There were younger children in the lobby waiting to leave school and she was profane, saying this was 'f----- crazy.'"

Wilson went back toward her car and Hartley went to get the child from the nurse's office, the report said. The child had followed Wilson out into the parking lot, though, and Hartley went back out, put her arm around the child and started to walk her back into the school, stating she needed to positively identify Wilson before she could let the student leave with her, according to troopers.

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Another parent at the school was driving away at the time, but saw the assault in her rear-view mirror and stopped, the report said.

Wendy Sant told troopers she saw Wilson grab Hartley and punch her multiple times, the report said. Sant said she ran over to stop the confrontation.

It all happened so fast, Hartley said, that at first she didn't know she was injured.

"I realized I was hurt when I went back into school and people were staring at me," she said. "I had blood on my face. I had reached back to get her to let go and damaged my ulna nerve. I still have a dead spot in my hand and arm."

Wilson, who switched from a public defender to Anchorage attorney Wayne Anthony Ross for her defense in October, pleaded no contest to the assault charge and received a \$500 fine, which was fully suspended, and a 30-day suspended jail sentence, according to court records.

Wilson was also ordered to deliver a letter of apology by Feb. 14, must stay away from Hartley and may not enter Pioneer Peak Elementary School property, records show.

"She made a statement to the court that 'things got out of control,' Hartley said. "She never said. 'I got out of control.' And she had violated the restraining order by coming to school the Monday, Tuesday and Wednesday following this incident."

Wilson told the troopers that "she basically lost control," and had five kids home sick, according to troopers.

Hartley read a statement in court to Wilson.

"Your actions and words were witnessed by those parents in the lobby at kindergarten pick up time," Hartley wrote in part of her statement. "Your stepdaughter witnessed your horrific attack, and words, in total silence. I'm sad that she has now left her school and friends and has that picture of your attack on me that day forever locked away in her mind. The emotional and physical effects from your assault include doctor visits, hepatitis shots, physical therapy, and still I have nerve damage that the doctor says will take up to two years to heal before I regain full feeling in my arm and hand. These medical bills have amounted to \$11,000. These doctor visits took time away from my family, my job and missed sports activities with my kids."

Dan Molina, the school's principal, said he has never seen an incident like this happen before, and that because of this incident, Alaska passed a new law making an assault

on school grounds an automatic felony.

"Toni is a wonderful employee," Molina said. "She is the perfect front office employee - pleasant, efficient and always concerned for the safety of the students."

In general, safe schools are a priority, according to Kim Floyd, spokeswoman for the Mat-Su Borough School District.

"We work with students on anti-bullying," Floyd said. "Adults are models for our children and we expect them to display appropriate behavior. This is rare. We have wonderful parents. One individual crossed the line, and we support prosecution. We have front-office staff to make sure people who come in have a right to be there. We work hard toward maintaining a safe learning environment."

Contact Mary Ames at 352-2284 or mary.ames@frontiersman.com.

Across the seasons

Farmer cultivates agricultural progress

Students may get reprieve

School board asked to delay tougher graduation requirements

Robber fires gun in Carrs

Home invasion also occupies Palmer police

Parent who assaulted school secretary fined

January 31, 2006

Defense up next in murder trial

January 31, 2006

Defense up next in murder trial

January 31, 2006

Woman who killed boyfriend gets 60 years

January 31, 2006

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4.6 ASSAULT OF SCHOOL EMPLOYEES

AASB urges that Alaska's criminal code or sentencing guidelines be revised so that a non-student adult convicted of assault on a school employee during or because of the performance of official duties will receive a mandatory minimum term of imprisonment similar to that imposed upon an adult who assaults a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant or other emergency responder engaged in the performance of official duties at the time of the offence.

Rationale. State statute provides for specific terms of imprisonment for crimes committed against peace officers, firefighters, etc. in the performance of their official duties. Our school employees, who each day work with our most precious resource, our children, deserve the same level of respect and protection under the law. *Adopted 2002 Amended 2004 (Sunset: Nov. 2007)*

Mat-Su Principals Association MSPA

Dwight Probasco, President 352-8214
Amy Spargo, Vice President 352-8200

Mark Okeson, V.P. Rep. 352-8215
Barb Gerard, Secretary/Treasurer 746-2358

February 14, 2006

Honorable Representative Bob Lynn,
My name is Dwight Probasco, and for the past 13 years I have served the Community of Wasilla as Principal of Wasilla High School, imbedded in those years have been the 8 years that I have served as President of the Mat - Su Principals Association. My voice today comes to you through my position as President of the MSPA and the 44 Principals that make up its membership, these 44 Principals supervise approximately 1800 staff members, who with the Principals provide for the educational needs of approximately 14000 students. Representative Lynn, our Association fully and wholeheartedly support in its entirety HOUSE BILL 41, which if it becomes law would provide for specific terms of imprisonment for crimes committed against public school employees. Thank you for looking out for our safety, and in looking out for ours, it creates a safe environment for our children.

Respectfully submitted,
Dwight Probasco, Principal Wasilla
Home phone: (907)376 - 7605
Work phone: (907) 352 - 8214
e-mail< dwight.probasco@matsuk12.us>

ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



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Pres. Wrangell Chapter
- Sarah McCumby, Member
Valdez
Pres. Port of Valdez Chapter

January 31, 2006

Representative Bob Lynn
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Lynn:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 41, relating to the crime of assault against school employees.

The APOA State Board and Legislative Committee reviewed this proposed legislation and unanimously support this bill.

The proposed bill provides for more stringent consequences for those who would assault a school employee when in performance of their official duties. This legislation recognizes that these employees often deal with the public during highly charged situations. This legislation brings this profession to the same standard as those who would assault a peace officer or emergency services responder.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515 if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

cc Rep. McGuire

HB

42

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 42
(H) Publish Date: 2/9/2005

Revision Date/Time (Note if correction): _____ Dept. Affected: DOT&PF
Title Joe Williams, Sr. Coastal Trail RDU Administration and Support
Sponsor Rep. Elkins Component Commissioners Office
Requester (H) Transportation Committee Component No. 530

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

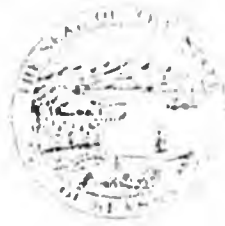
ANALYSIS: (Attach a separate page if necessary)

The only foreseeable cost to DOT&PF would be a minimal cost for the production of signs used to identify the trailhead and DOT&PF has agreed to absorb these costs internally.

Prepared by: Jos Govaris Phone: 465-6873
Division: (H) TRA Committee Aide Date/Time: 2/9/05 3:16 PM
Approved by: Rep Elkins Date: 2/9/2005
Agency: Co-Chair (H) Transportation Committee

ALASKA STATE LEGISLATURE

INTERIM
50 Front Street
Suite 203
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Phone (907) 247-4672
Fax: (907) 225-8546



SESSION
Suite 416
State Capitol Building
Juneau, Alaska 99801
Phone: (907) 465-3424
Fax: (907) 465-3793

REPRESENTATIVE JIM ELKINS

Sponsor Statement

If adopted, House Bill 42 will rename the three miles of trail alongside the South Tongass Highway between Ketchikan and Saxman, Alaska the Joe Williams Sr., Coastal Trail.

Joe was an advocate for the construction of a trail alongside the South Tongass Highway between the Cities of Ketchikan and Saxman. Residents of these communities for many years, without the means of transportation, commonly walked the three miles between towns alongside the road with tragic results.

After the trail was completed, it quickly became a favorite walking and bicycling path used by visitors and locals alike. Set between the Ocean and the Highway the Joe Williams Sr. Coastal Trail is both scenic and historically important to the people of the Ketchikan Area.

Joe's son, William K. "Bill" Williams, while serving as a member of the Alaska State House of Representatives, worked diligently to obtain funding for the construction of this traditional path between these two communities.

This Legislation honors the memory of a highly respected member of the Native Community in Southeast Alaska, and will help recognize the Twelve Years of service to the people of the State of Alaska by his son.


City of Ketchikan



JAN 26 2005

334 Front Street
Ketchikan, Alaska 99901
Phone 907-225-3111
Fax 907-225-5075

January 21, 2005

Representative Jim Elkins 
Alaska House of Representatives
State Capitol, Room 416
Juneau, AK 99801-1182

Dear Representative Elkins:

I am writing in support of House Bill 42 "An Act naming the Joe Williams, Sr., Coastal Trail."

Mr. Williams was a highly respected tribal and political leader in Saxman and Ketchikan for many years. Naming the trail that connects these two communities would honor Mr. Williams and memorialize his efforts over a long period of time to make our communities better places to live.

Sincerely,

Bob Weinstein
Mayor

KETCHIKAN GATEWAY BOROUGH

OFFICE OF THE BOROUGH MAYOR
Michael B. Salazar

344 FRONT STREET
KETCHIKAN, ALASKA 99901
PHONE: 907.228.6605
FAX: 907.247.8439

Office of Representative Elkins

JAN 27 2005


January 21, 2005

Representative Jim Elkins
Alaska State Legislature
State Capitol, Room 416
Juneau, AK 99801-1182

Dear Representative Elkins:

I would like to offer my full support for House Bill No. 42 which names the bike path adjacent to the South Tongass Highway, between the City of Ketchikan and the City of Saxman, as the "Joe Williams, Sr., Coastal Trail." It is a fitting way to honor Mr. Williams, who has contributed so much to the community of Ketchikan.

Sincerely,


Michael B. Salazar
Mayor

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City of Saxman

19 January 2005

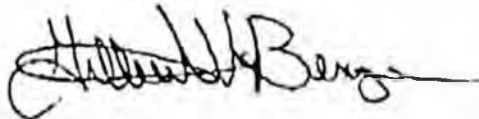
Representative Jim Elkins
Capitol Building
Juneau, Alaska 99801

Dear Representative Elkins:

The City Council members of the City of Saxman would like to thank you for introducing House Bill 43, for renaming the "bike path" the "Joe Williams, Sr. Coastal Trail". Joe Williams, Sr. was a political leader for Saxman from a very early age until his death. He was Mayor of Saxman for 38 years as well as being Tribal President during the same time period. He was also Alaska Native Brotherhood Camp 15 President and Grand President of the Alaska Native Brotherhood. Joe Williams, Sr. worked hard at connecting the community of Ketchikan and Saxman in more ways than the highway. Joe Williams, Sr. was highly respected in Saxman, Ketchikan and throughout South East Alaska, no matter the culture. He was of the Raven moiety, of the Beaver Clan and instrumental in preserving the Tlingit Culture in Saxman.

Naming this Coastal Trail after Joe Williams, Sr. will ensure his memory. His legacy will be remembered and cherished by the people of the communities of Saxman and Ketchikan for many years to come. Thank you very much.

Respectfully yours,



Gilbert Bengé
Mayor of Saxman

HB

46

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CSHB 46 (FIN)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation.
Title Permitting grants to certain regulated RDU Division of Water
utilities for water and wastewater systems Component Facility Construction
Sponsor Rep. Harris
Requester House Finance Committee Component No. 637

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Finance Committee

Phone 465-4945

Date/Time 2/8/05 3:16 PM

Approved by: Rep. Meyer, Co-Chair
Rep. Chenault

Date 2/8/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number 1
Bill Version HB 46
(H) Publish Date: 1/28/05

Revision Date/Time (Note if correction): _____ Dept Affected Commerce
Title Water/Sewer/Waste Grants to Utilities RDU Regulatory Commission of Alaska (399)
Component Regulatory Commission of Alaska
Sponsor Harris, Coghill, Rokeberg, et al
Requester House Labor & Commerce Component No 2417

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

The Regulatory Commission of Alaska's (RCA) mission is to protect consumer interests and promote economic development by ensuring affordable, reliable utility and pipeline services and ensuring that the utility and pipeline infrastructure is adequate to support community needs. The RCA believes that passage of this legislation will increase utility infrastructure throughout the state. Grant-funded infrastructure reduces rates for consumers.

ANALYSIS CONTINUED ON NEXT PAGE

Prepared by Kate Giard, Chair Phone 907 276 6222
Division Regulatory Commission of Alaska Date/Time 1/28/05 5:38 PM
Approved by Edgar Blatchford, Commissioner Date 1/28/2005
Agency Commerce, Community & Economic Development

FISCAL NOTE #1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. HB 46

ANALYSIS CONTINUATION

The RCA is in the process of implementing a reduced regulatory program for small water and sewer utilities. When fully implemented, this program will reduce the regulatory burden and reporting requirements on these utilities. However, passage of this legislation may cause some of these utilities to seek a higher degree of regulation in order to be eligible to receive grant funds. The RCA can identify the number of utilities which may seek expanded regulation, but it is more difficult to quantify the number or timing of these applications. At this juncture, the RCA anticipates that existing staff can absorb any additional applications resulting from this legislation in the normal course of Commission operations. Therefore, this legislation is anticipated to have no fiscal impact on the RCA.

RCA's budget is funded through the Regulatory Cost Charge (RCC) mechanism and direct charge mechanisms. No general funds are allocated for support of the agency. The RCC is recalculated each year and allows the agency to recover its operating costs through an assessment on the revenues of the utilities and pipeline carriers.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 46
(H) Publish Date: 1/28/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Environmental Conservation
Title: Permitting grants to certain regulated public utilities for water and wastewater systems RDU: Division of Water
Component: Facility Construction
Sponsor: Harris, Coghill, and Rokeberg
Requester: House Labor and Commerce Component No.: 637

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	83.3	83.3	83.3	83.3	83.3	83.3
Travel	12.0	12.0	12.0	12.0	12.0	12.0
Contractual	29.0	29.0	29.0	29.0	29.0	29.0
Supplies	1.0	1.0	1.0	1.0	1.0	1.0
Equipment	6.9	0.5	0.5	0.5	0.5	0.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	132.2	125.8	125.8	125.8	125.8	125.8

CAPITAL EXPENDITURES	132.2	125.8	125.8	125.8	125.8	125.8
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1061 CIP Receipts	132.2	125.8	125.8	125.8	125.8	125.8
TOTAL	132.2	125.8	125.8	125.8	125.8	125.8

Estimate of any current year (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 46 will expand eligibility for Municipal Water, Sewer and Solid Waste Matching Grants to include privately-owned water and sewer utilities that are economically regulated by the Regulatory Commission of Alaska (RCA). The grant program is administered by the Department of Environmental Conservation (DEC). Eligibility is currently restricted to municipally-owned utilities. DEC, along with the RCA, estimates that there are 193 water and sewer utilities that could qualify for the expanded grant program. We estimate that approximately 50% -- or 96 utilities -- would seek to participate in the grant program over the next 10 years. This suggests that the expanded program would result in DEC administering nine or ten grants each year to these newly eligible, primarily small utilities. This would require an increase of \$132.2 to Ref Number 40142, Municipal Matching Grants Project Administration, in the capital budget. An additional Environmental Engineer I position will be required to manage these new grant projects, along with contractual funding to audit each grant upon completion in accordance with program requirements.

Prepared by: Dan Easton, Director
Division: Water
Approved by: Kurt Fredriksson, Acting Commissioner
Agency: Department of Environmental Conservation

Phone: 465-5135
Date/Time: 1/25/05 2:30 PM
Date: _____

Personal Services New Position Detail

Department of Environmental Conservation

Scenario: A Scenario for FY2006 Fiscal Notes (4191)
 Component: Facility Construction (637)
 RDU: Water (210)

PCN	Job Class Title	Time Status	Retire Code	Barg Unit	Location	Salary Sched	Range & Steps	Budgeted Months	Split / Annual Count	Annual Salary	COLA	Premium Pay	Annual Benefits	Total Costs
18-#018	Environmental Engineer I	FT	A	GG	Anchorage	2A	21 A	12.0		55,920	1,081	0	26,333	83,334

Justification: No justification provided.

Funding Detail:

1004	General Fund Receipts	100.00%	83,334
Total Funding:		100.00%	83,334

Component Summary:

Total New Positions: 1

Fund Description	Fund Percent	Fund Amount
1004 General Fund Receipts	100.00%	83,334
Total Funding:	100.00%	83,334

Note: If a position is split, an asterisk (*) will appear in the Split Count column. If the split position is also counted in the component, two asterisks (**) will appear in this column.

+ amended pg 2 line 24

10 → 5

WORK DRAFT

WORK DRAFT

WORK DRAFT

adopted M/O 2/9/05

24-LS0313VY

Craver

2/8/05

CS FOR HOUSE BILL NO. 46()

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HARRIS, COGHILL AND ROKEBERG, Holm, Kelly

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to grants to certain public utilities for water quality enhancement
2 projects and water supply and wastewater systems."

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

4 * Section 1. AS 46.03.030(b) is amended to read:

5 (b) The department may grant to a municipality or, to the extent allowed
6 under (i) of this section, to a public utility, as funds are available, a grant for any of
7 the following:

- 8 (1) a water quality enhancement project;
- 9 (2) a public water supply, treatment, or distribution system;
- 10 (3) a wastewater collection, treatment, or discharge system;
- 11 (4) a solid waste processing, disposal, or resource recovery system.

12 * Sec. 2. AS 46.03.030(e) is amended to read:

13 (e) A grant under this section to a municipality or public utility eligible
14 under (i) of this section for a project funded by an appropriation made by the

1 legislature

2 (1) before July 1, 1994, may not exceed 50 percent of the eligible costs
3 of the project;

4 (2) after July 1, 1994, may not exceed

5 (A) 85 percent of the eligible costs for a utility serving
6 [MUNICIPALITY WITH] a population of 1,000 persons or less;

7 (B) 70 percent of the eligible costs for a utility serving
8 [MUNICIPALITY WITH] a population of 1,001 to 5,000 persons; and

9 (C) 50 percent of the eligible costs for a utility serving
10 [MUNICIPALITY WITH] a population greater than 5,000 persons; however,
11 if a utility serving [MUNICIPALITY WITH] a population greater than 5,000
12 persons seeks a grant for a project that relates to a solid waste processing or
13 disposal system that incorporates resource recovery, the department may
14 provide a grant for up to 60 percent of the eligible costs of the project.

15 * Sec. 3. AS 46.03.030 is amended by adding new subsections to read:

16 (i) A public water and sewer utility is eligible for a grant for projects described
17 in (b)(1) - (3) of this section if

18 (1) the rates of the public utility are regulated by the Regulatory
19 Commission of Alaska under AS 42.05; or

20 (2) the utility is owned or operated by a political subdivision of the
21 state that is a municipality.

22 (j) A grant must be repaid in full by a public utility that is not owned or
23 operated by a municipality if

24 (1) the public utility is sold within ⁵~~10~~ years after receipt of the grant;
25 and

26 (2) the rates of the entity buying the public utility that is sold under (1)
27 of this subsection are not regulated by the Regulatory Commission of Alaska under
28 AS 42.05.

New Amendment # 1

AMENDMENT

discussed
briefly 2-3-05

OFFERED IN THE HOUSE FINANCE COMMITTEE
BY REPRESENTATIVE CROFT

TO: HB 46

Page 2, after line 18, insert:

"Sec. 4. AS 46.03.030 is amended by adding a new subsection to read:

(j) Any grant to a public utility that is not a municipality must be repaid with interest from the date the grant was issued if the public utility ceases to be regulated by the RCA within five years of receipt of the grant."

Renumber accordingly.

Replaced 2-3-05

AMENDMENT

OFFERED IN THE HOUSE FINANCE COMMITTEE
BY REPRESENTATIVE CROFT

TO: HB 46

Page 2, after line 18, insert:

"Sec. 4. AS 46.03.030 is amended by adding a new subsection to read:

(j) Any grant to a public utility that is not a municipality must be repaid with interest from the date the grant was issued if the public utility is sold to a non-governmental utility."

Renumber accordingly.

Alaska State Legislature

Session: (Jan-May)
 State Capitol, Room 208
 Juneau, AK 99801-1182
 (907) 465-4859
 Fax (907) 465-3799



Interim: (June-Dec)
 716 West 4th Avenue, Suite 300
 Anchorage, AK 99501-2133
 (907) 269-0129
 Fax (907) 269-0128

John Harris
 Speaker of the House

SPONSOR STATEMENT House Bill 46

"An Act relating to permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

Four years ago, legislation passed that allowed privately owned economically regulated water and wastewater utilities to be eligible for the low-cost Municipal Water & Wastewater Loan Program. This legislation has been introduced to ensure that privately owned public utilities are eligible for grant funds through the Municipal Water and Wastewater Matching Grant Program within the Department of Environmental Conservation.

The residents of a community, the utility ratepayers, are the only beneficiaries of these grants through a reduction in costs for infrastructure improvements made to a utility system. The legislation is limited to only those privately owned companies economically regulated by the RCA. That is, the RCA sets the rates and thereby ensures the benefits of the grants to the ratepayers rather than the owners. Privately held companies regulated by the RCA may not generate a return on investment or receive depreciation expense credits for grant funds they receive.

Current residents of communities with municipally owned water and wastewater systems are already the benefactors of these grant funds. It is only fair that all residents of Alaska benefit from these federally generated funds.

All existing municipally owned water and wastewater utilities remain eligible for these grants.

THE
FOLLOWING
DOCUMENT(S)
ARE
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COPIES

STATE OF ALASKA

DEPARTMENT OF COMMUNITY AND
ECONOMIC DEVELOPMENT
REGULATORY COMMISSION OF ALASKA

TONY KNOWLES, GOVERNOR

701 WEST FIFTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-3409
PHONE: (907) 276-6222
FAX: (907) 276-0160
TTY: (907) 276-4533

April 8, 2002

*Rea
letter*

The Honorable Senator Gene Theriault
Alaska State Senate
State Capitol (MS: 3100)
Juneau, Alaska 99801-1182
Faxed to 907-485-3884 (attention Wilda Rodman)

Re: SB 280/HB 119 2003

Dear Senator Theriault:

You asked whether the owners of a utility that received grant funding under this proposed legislation would receive a profit based on those grant funds if the utility was ever sold. The brief answer is no, for the two reasons explained below.

First, any grant funds received by a utility are considered contributed capital and, with limited exception, a regulated utility is not permitted to recover contributed capital from its customers. The utility is also, with the same limited exceptions, not permitted to count the contributed capital as a portion of its investment in establishing the amount of return on its investment it may recover from its customers. AS 42.05.471(b). Utilities must account for contributed capital in a manner in which it is clearly identified or excluded from the utility's rate base under the uniform system of accounts prescribed by regulations. Utilities with annual revenues in excess of \$100,000 are also required to maintain continuing property records that reflect this treatment. AS 42.05.481.

Second, market value for a utility, similar to unregulated enterprises, is generally established using the net present value of expected future cash flows the purchasing entity will receive. The cost of purchasing a utility in excess of the net book value of the selling utility's assets (an acquisition adjustment) usually constrains market value. The new owner of a utility should know that they will not automatically be allowed to recover the acquisition adjustment from its customers through rates and will set the price accordingly.

Senator Theriault

April 8, 2002

Page 2

Either the stock or assets of a utility can be sold, and depending on the nature of the transaction, the prescribed uniform system of accounts will require the book value of the seller's plant to be carried forward by the purchaser rather than revaluing the assets to market value. At the time of the utility's next overall rate review, the RCA is directed by statute to establish the ratebase for the new owner using the lower of the purchase price or the value on the selling utilities' books. The book value represents the remaining value of the plant after the depreciation already paid by the utilities' customers has been deducted and the purchase price represents the market value of the utility. The statute requires rate base to be set at that value if lower so that the customers of the new utility are not paying for plant value the utility did not acquire.

The RCA has allowed acquisition adjustments to be recovered from ratepayers by the utility when the new owner provides evidence of public interest, like lower rates as the result of the acquisition. The RCA carefully scrutinizes proposed acquisition adjustments that utilities seek to recover through rates. The RCA's role is not to determine the purchase price in a utility sale, that is left to the parties. Rather, we regulate the amount of the purchase price that the utility will be allowed to recover from its ratepayers.

I hope this information is helpful to you. Please contact me if you need any further information.

Very Truly Yours,



G. Nanette Thompson
Chair

GNT:dea

(11)



Alaska State Legislature

REPRESENTATIVE JOHN HARRIS

District 12 - Eielson AFB, Valdez, Delta Junction, Palmer, Glennallen, Salcha, Paxson, Sutton, Chickaloon

SECTIONAL ANALYSIS

House Bill 46

"An Act relating to permitting grants to certain regulated public utilities for water quality enhancement projects and water supply and wastewater systems."

Section 1: Amends AS 46.03.030(b), Water quality enhancement, water supply, sewage, and solid waste facilities grants. Adds language referencing the new subsection (i), found in section 3 of this bill.

Section 2: Amends AS 46.03.030(e), Water quality enhancement, water supply, sewage, and solid waste facilities grants. Adds language that allows a public utility that is eligible under new subsection (i), to participate in the grant program. Also changes municipality to utility based on the population it serves, within this subsection.

Section 3: Adds a new subsection (i) to AS 46.03.030, Water quality enhancement, water supply, sewage, and solid waste facilities grants. States that a public water and sewer utility is eligible for the grant program as long as its rates are regulated by the Regulatory Commission of Alaska.

Co-Chair, Joint Armed Services Committee
Co-Chair, House Finance Committee
Member, Energy Council

Session: State Capitol, Juneau Alaska 99801-1182 • Phone: (907) 465-4859 Fax: (907) 465-3799
Interim: P.O. Box 305, Valdez, Alaska 99686 • Phone (907) 835-2836 Fax: (907) 835-3732

Sec. 46.03.030. Water quality enhancement, water supply, sewage, and solid waste facilities grants.

(a) *[Repealed, Sec. 19 ch 220 SLA 1976].*

(b) The department may grant to a municipality, as funds are available, a grant for any of the following:

- (1) a water quality enhancement project;
- (2) a public water supply, treatment, or distribution system;
- (3) a wastewater collection, treatment, or discharge system;
- (4) a solid waste processing, disposal, or resource recovery system.

(c) There is a water quality enhancement and water supply, wastewater, and solid waste systems program created in the department to carry out the purposes of this section.

(d) The department shall, by regulation, identify those costs that are eligible costs for the purposes of this section. Eligible costs do not include interest and financing and right-of-way acquisition, or costs that are related to the operation, maintenance, or repair of a system.

(e) A grant under this section to a municipality for a project funded by an appropriation made by the legislature

(1) before July 1, 1994, may not exceed 50 percent of the eligible costs of the project;

(2) after July 1, 1994, may not exceed

(A) 85 percent of the eligible costs for a municipality with a population of 1,000 persons or less;

(B) 70 percent of the eligible costs for a municipality with a population of 1,001 to 5,000 persons; and

(C) 50 percent of the eligible costs for a municipality with a population greater than 5,000 persons; however, if a municipality with a population greater than 5,000 persons seeks a grant for a project that relates to a solid waste processing or disposal system that incorporates resource recovery, the department may provide a grant for up to 60 percent of the eligible costs of the project.

(f) *[Repealed, Sec. 14 ch 106 SLA 1994].*

(g) The match required for grants made under this section may include

(1) federal funds; or

(2) state funds, other than those funds received under this section or AS 37.06.

(h) Construction of a project for which a grant is made under this section may commence only after the department has approved in writing the plans and specifications for the project.

Municipal Water, Sewerage and Solid Waste Matching Grants Program Description

- The matching grants program provides technical and financial assistance to Alaska's larger, incorporated communities to design and construct water, wastewater and solid waste facilities.
- Each year, communities submit grant applications which are scored weighing primarily the extent to which proposed projects address critical public health needs. Grants are awarded to the highest ranking projects.
- Community requests for financial assistance through the Municipal Matching Grants program exceed available funding. In FY05 grant applications were received for over 75 projects. Funding was available for the 7 highest ranked projects.
- Program engineers assist communities by providing technical assistance with planning, design and construction, as well as helping secure needed state and federal permits and approvals.
- The engineers review and approve all grant disbursements to make sure that state and federal dollars are invested wisely and each project is audited to make sure that all funds were used properly.
- The percentage of local financial participation depends on the population of the community. Up to 85% of project costs can be granted for communities of less than 1,000 people. The grant amount can be 70% for municipalities with populations between 1,000 and 5,000. Communities with a population exceeding 5,000 are eligible for 50% grants.
- Federal grant funds are available to fund projects in smaller communities that are considered "rural". These federal funds require a 25% State match.
- The program has provided financial assistance to over 850 projects in 63 communities since 1970.

Municipal Loans Program Description

- The Municipal Loans Program consists of two revolving loan funds - the Alaska Drinking Water Fund and the Alaska Clean Water Fund.
- Both loan funds were established with federal and state grants to create perpetual sources of low-interest loans to municipalities and boroughs.
- Each annual federal capitalization grant requires a 20% State match. State matching funds have come from short-term bonds and general funds.
- Loans can be used to plan, construct and finance a variety of project types including drinking water facilities, water source rehabilitation, water treatment facilities, water storage facilities, water transmission and distribution systems, wastewater treatment facilities, sewer interceptor and collection systems, storm water collection and treatment, non-point source prevention and restoration, and estuary enhancement projects.
- Private utilities that are economically regulated by the Alaska Regulatory Commission may obtain loans for drinking water projects.
- Loans may finance up to 100 percent of a project's eligible costs.
- Loans may also be used to meet the local match requirements for the Municipal Water, Sewerage and Solid Waste Matching Grants program or most other federal or state funding sources.
- Since its inception in 1987 the Alaska Clean Water Fund has received \$137.7 million in federal capitalization grants and \$27.8 million in state match. It has loan commitments totaling \$186.8 million.
- The Alaska Drinking Water Fund is a slightly younger program (established in 1994). It has received \$73.5 million in federal capitalization grants and \$14.7 million in state match. It has loan commitments totaling \$76.6 million.

Water, Sewerage and Solid Waste Matching Grants SFY 2003 - SFY 2005

Community	Project Title	Federal	State	Total
SFY 2005				
Craig	East Hamilton Drive Pump Station and Force Main Upgrade	244,500	81,500	326,000
Wasilla	Stormwater Pumping and Treatment Facility, Phase 2	0	455,500	455,500
Palmer	Water System Improvements, Phase 3	0	1,045,000	1,045,000
Ketchikan	Tongass Avenue Water and Sewer Improvements, Phase 2	0	1,471,200	1,471,200
Palmer	Southwest Distribution Main Extension	0	500,000	500,000
Wrangell	Municipal Landfill Improvements	0	592,200	592,200
Anchorage	Water Loop Transmission Main, Phase 4 (modified amt)	0	2,000,000	2,000,000
Total:		244,500	6,145,400	6,389,900
SFY 2004				
Nome	Water Transmission Line Analysis	78,700	26,300	105,000
Seward	Water Source Study		99,800	99,800
Valdez	Outlying Wastewater Treatment Plant Analysis		141,400	141,400
Soldotna	Wastewater Treatment Plant Improvements		1,485,000	1,485,000
Wasilla	Storm Water Pumping and Treatment		271,500	271,500
Wasilla	Water Main Improvement Program, Phase 2		945,100	945,100
Hoonah	Water Storage Tank, Water and Sewer Mains	1,466,200	488,800	1,955,000
Sitka	Granite Creek Water Quality Improvements	33,700	11,300	45,000
Valdez	Sewer Treatment Plant Aeration Improvements, Phase 2		494,900	494,900
Juneau	Third Street Douglas Water and Sewer Replacement		750,000	750,000
Cordova	Wastewater Treatment Plant Upgrade, Phase 3	1,410,200	470,100	1,880,300
Anchorage (Revised)	Water, Wastewater and Water Quality Projects		1,250,000	1,250,000
Total:		2,988,800	6,434,200	9,423,000
SFY 2003				
Haines	Mud Bay Water and Sewer Study	41,100	13,700	54,800
Ketchikan	Shoreline Drive Water and Sewer Analysis and Prelim Design		140,000	140,000
Sand Point	Wastewater Improvement Analysis	75,000	25,000	100,000
Soldotna	Funny River Road Water and Sewer Analysis and Prelim Design		150,000	150,000
Unalaska	Leachate Collection and Treatment Analysis		49,000	49,000
Matanuska-Susitna	Central Landfill Expansion, Phase 2		160,000	160,000
Palmer	Wastewater Treatment Expansion, Phase 3		362,300	362,300
Juneau	North Douglas Sewer Extension Project, Phase 2		1,900,000	1,900,000
Cordova	Wastewater Treatment Plant Upgrade, Phase 2	1,464,900	488,300	1,953,200
Ketchikan	Tongass Avenue Water and Sewer Improvements		1,230,000	1,230,000
Palmer	Water System Improvements, Phase 2A		1,176,800	1,176,800
Kenai	Well House No. 4 with Main Line Trenches, Phase 3		700,000	700,000
Klawock	Three-Mile Water Intake	431,200	147,800	579,000
Wasilla	Septage Facility Emergency Generator		61,900	61,900
Matanuska-Susitna	Garden Terrace Water System Renovation		491,000	491,000
Petersburg	Airport Sewer Project	321,000	107,000	428,000
Wrangell	Bennet Street Watermain Extension, Phase 1	32,500	11,900	44,400
Wrangell	Cassara and Weber Sewer and Water Main Replacement	162,700	57,300	220,000
Craig	Water Treatment Plant Upgrades	284,200	97,800	382,000
Sitka	Sawmill Cove Industrial Park Wastewater Outfall	239,500	74,000	313,500
Homer	One Million Gallon Storage Reservoir	1,179,600	392,000	1,571,600
King Cove	Landfill Expansion Design		162,600	162,600
Soldotna	Funny River Road Water and Sewer Mainline Extension		1,400,000	1,400,000
Valdez	Wastewater System Improvements		402,500	402,500
Kodiak	Mohashka Dam Enlargement, Phase 2	1,463,900	481,000	1,944,900
Nome	Water and Sewer System Expansion, Phase 4	1,125,000	375,000	1,500,000
North Pole	Badger - Hurst Water Transmission Main		1,049,000	1,049,000
Matanuska-Susitna	Talkeetna Wastewater Treatment Facility	1,409,700	465,900	1,875,600
Ketchikan Gateway	Ketchikan International Airport Wastewater Plant		50,000	50,000
Petersburg	Landfill Closure		79,300	79,300
Seward	Gateway to Forest Avenue Waterline Extension	297,400	99,200	396,600
Anchorage	Water, Wastewater and Water Quality Projects		3,000,000	3,000,000
Total:		8,517,800	15,404,100	23,921,900

Private Water and Sewer Utilities Economically Regulated by RCA

From the 2001 Annual Report (latest published data)

Wednesday, March 26, 2003

Summarized by James A. Evensen, PM MG&L

Sewer Utilities Certified/Regulated	Water Utilities Certified/Regulated
College Utilities Corp Fairbanks	Chugiak Utilities, Inc. Eagle River
Crystal Cathedrals W&S, INC Haines	College Utilities Corp Fairbanks
Golden Heart Utilities, Inc. Fairbanks	Crystal Cathedrals W&S, INC Haines
Trillium Corp. Wasilla	Dawn Development Corp Eagle River
	Eagle Utilities, Inc. Palmer
	Golden Heart Utilities, Inc. Fairbanks
	Kake Tribal Corp. Pelican
	McGahan Utilities, Inc. Nikiski
	Mckinley Utilities, Inc. Eagle River
	N.L.T. Water Co., Inc. Wasilla
	Potter Creek Water Co. Anchorage
	Scott Hebertson & Randy Hestand D/B/A/ Sandlake Services Anchorage
	Southcentral Utilities, Inc. Anchorage
	Spenard Heights Water System Wayne Cates D/B/A Anchorage
	Swiss Castle Estates Water Works, Ron Alleva D/B/A Wasilla
	Trillium Corp Wasilla
	Valley Water Co., Inc. Fairbanks

Municipal Grant Communities that Qualify for Federal Assistance

Wednesday, April 02, 2003

James A. Evensen, PE

Community	Federal and State Funding	State Funding
Anchorage Public Works		X
Anchorage Solid Waste		X
Bristol Bay Borough	X	X
Cordova	X	X
Craig	X	X
Dillingham	X	X
Eagle River		X
Fairbanks		X
Girdwood		X
Haines	X	X
Homer	X	X
Juneau, City and Borough		X
Kenai		X
Kenai Peninsula Borough	X (Off Road System)	X
Ketchikan		X
Ketchikan Gateway Borough	X (Off Road System)	X
King Cove	X	X
Kodiak	X	X
Kodiak Island Borough	X	X
Kotzebue	X	X
Mat-Su Borough		X
Nenana	X	X
Nome	X	X
North Pole		X
North Slope Borough	X	X
Palmer		X
Petersburg	X	X
Sand Point	X	X
Seward	X	X
Sitka, City and Borough	X	X
Skagway	X	X
St. Paul	X	X
Unalaska	X	X
Valdez	X	X
Wasilla		X
Wrangell	X	X
Yakutat	X	X

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MEMORANDUM

February 9, 2005

SUBJECT: Water and Sewer Utility Grants
(Work Order No. 24-LS0313\A, HB 46)

TO: Representative John Coghill
Attn: Rynniva Moss

FROM: Barbara R. Craver 
Legislative Counsel

We discussed HB 46 in regard to trailer park and homeowner associations eligibility for grants under this bill. You were concerned that such groups might seek rate regulation by the Regulatory Commission of Alaska (RCA) to become eligible for the grants under AS 46.03.030(b).

With your permission, I spoke to staff at the RCA in regard to the type of certificate that trailer parks and homeowner associations might be operating under. I was directed to the regulations adopted in June of 2004 which provides that these types of associations are generally exempt from the requirement to obtain a certificate from the RCA.¹ Depending on the circumstances, a community association might also operate under a "provisional certificate," which is not subject to rate regulation by the RCA.² The regulations do provide that a utility that is either exempt, or operating under a provisional certificate, may apply for a certificate of public convenience and necessity,³ which would presumably allow that utility, once certificated, to seek rate regulation. However, it is my impression that the process of obtaining a certificate and submitting to rate regulation is

¹ 3 AAC 52.700(a)(5) and (6) provide that water or wastewater utilities are exempt entirely from AS 42.05 if the water or sewer service receives bulk water or sewer service from a certificated utility and does not charge the recipients of the service under a separate line-item on a bill. This would be the case where residents of a trailer park or homeowner's association pay a flat fee for several services.

² 3 AAC 52.720(a) provides that utilities operating under a provisional certificate are not rate regulated. 3 AAC 52.720(b) provides that a water or sewer utility may be eligible for a provisional certificate if it owns water or sewer utilities and it is structured so that all customers can vote at a local election for members that control the utility.

³ 3 AAC 52.710(a).

Representative John Coghill

February 9, 2005

Page 2

quite complex and expensive. You may wish to follow up with James Keen or Brad Pierson at the RCA about the actual expenses involved in these processes.⁴

If I may be of further assistance, please advise.

BRC:jad
05-078.jad

⁴ The Regulatory Commission of Alaska number is (907) 276-6222.

2-3-05

**Alaska State Legislature
HOUSE FINANCE COMMITTEE
AGENDA**

1:30 pm

HB 46-WATER/SEWER/WASTE GRANTS TO UTILITIES

Amendment?

Presenting:

Tom Wright, Staff, Representative Harris

Testifying via teleconference:

✓ **Steve Thompson**, Mayor, City of Fairbanks

✓ **Kara Moriarty**, CEO, Fairbanks Chamber of Commerce

✓ Fairbanks Economic Development Corporation

Moriarty

Questions:

✓ **Jim Strandberg**, Regulatory Commission of Alaska (tele)

✓ **Dan Easton**, Director, Division of Water, DEC

✓ **Ben Brown**, Legislative Liaison, DEC

✓ **George Gordon**, Utility Services of Alaska (tele)

Shirley Walker, Feb 2005

HB

47

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 47
(H) Publish Date: 1/24/05

Revision Date/Time (Note if correction):

Dept. Affected: Commerce

Title: Extend Board of Real Estate Appraisers

RDU: Occupational Licensing (117)

Component: Occupational Licensing

Sponsor: SAMUELS, Lynn

Component No.: 2360

Requester: House Labor and Commerce

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	26.1	26.1	26.1	26.1	26.1
Travel	0.0	1.4	1.4	1.4	1.4	1.4
Contractual	0.0	5.3	5.3	5.3	5.3	5.3
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	32.8	32.8	32.8	32.8	32.8

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES (1156)	0.0	32.8	32.8	32.8	32.8	32.8
----------------------------------	------------	-------------	-------------	-------------	-------------	-------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	32.8	32.8	32.8	32.8	32.8
TOTAL	0.0	32.8	32.8	32.8	32.8	32.8

Estimate of any current year (FY2006) cost: 32.8

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The bill extends the Board of Certified Real Estate Appraisers to June 30, 2010. In accordance with AS 08.03.020, funding should be extended one year following the termination date allowing the Board to conclude its affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget. New funds are not required to implement this bill.

Prepared by: Jennifer Strickler, Administrative Manager
Division: Occupational Licensing
Approved by: Edgar Blatchford, Commissioner
Agency: Commerce, Community and Economic Development

Phone: (907) 465-2144
Date/Time: 1/20/05 5:48 PM
Date: 1/20/2005

Adopted

2/1/05

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE MEYER

TO: HB 47

1 Page 1, line 2, following "Appraisers":

2 Insert "; and relating to the requirements for membership on the Board of
3 Certified Real Estate Appraisers"

4
5 Page 1, following line 6:

6 Insert a new bill section to read:

7 ** Sec. 2. AS 08.87.010 is amended to read:

8 Sec. 08.87.010. Board created. There is created in the Department of
9 Commerce, Community, and Economic Development the Board of Certified Real
10 Estate Appraisers. The board is composed of five members appointed by the governor.
11 At least one member shall be a person certified [LICENSED] under this chapter as a
12 general real estate appraiser, at least one member shall be a person certified
13 [LICENSED] under this chapter as a residential real estate appraiser, at least one
14 member shall be an executive in a mortgage banking entity, and at least one member
15 shall represent the public. The board shall elect a chair from among its membership."

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

Sponsor Statement for House Bill 47

TITLE: An Act extending the termination date of the Board of Certified Real Estate Appraisers.

Sec. 08.87.010 Established the Board of Certified Real Estate Appraisers and provided for the appointment of members by the governor. The board consists of one licensed general real estate appraiser, one licensed residential real estate appraiser, one mortgage banking executive, and one member who represents the public at large. If enacted, HB 47 would extend the board's operation for another 5 years to June 30, 2010.

The board is charged with establishing exam standards for the certification of real estate appraisers, adopting rules of professional conduct that establish standards and integrity in the real estate appraisal profession, and the adoption of regulations to satisfy state and federal regulations.

In the opinion of Legislative Audit, the Board of Certified Real Estate Appraisers should be extended. The regulation and certification of real estate appraisal professionals provides necessary public protection in the buying and selling of residential and commercial properties. I recommend that the board be extended to June 30, 2010, and urge you to vote for its passage.

Email: Representative_Ralph_Samuels@legis.state.ak.us

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 463-2995 Fax: (907) 467-3410
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