

AK LEGISLATURE FINANCE COMMITTEES FILES 2007-2008 3300

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or both." *14 V.I. Code Ann. §13* (1996). Since the statute only criminalizes willful concealment and does not mention failure to disclose, it would appear to reach only affirmative acts of concealment.

n178 S.D. Codified laws § 22-11-12 (Michie 1988). The penalty for Class 1 misdemeanor is 1 year imprisonment in a county jail or \$ 1,000 fine or both. S.D. Codified Laws § 22- 6-2(1) (Michie1988).

n179 See supra notes 162-165 and accompanying text.

n180 Cf. *In re Russel*, 493 N.W.2d 715, 716 (S.D. 1992) (Lawyer pled guilty to having violated the statute for having "assisted known fugitives from Florida in fleeing from authorities by lending money, furnishing a car, and providing his credit cards to them.").

n181 See supra note 148.

n182 220 N.E.2d 146, 151 (Ohio Ct. App. 1966). The court observed "[t]he imposition of an obligation under criminal penalty to inform upon other people involves difficult issues of policy. Failure to inform has not generally been recognized as a crime in American jurisdictions." *Id.*

n183 *Ohio Rev. Code Ann. § 2921.22(A)* (West 1997). The provision is not designated as misprision of felony for reasons explained in the documentation of the legislative history: [The statutory crime] is similar to, but narrower than the common law crime of misprision of felony . . . The gist of misprision at common law was keeping silence [sic] or failing to attempt to apprehend the offender when one knew a felony had been committed. . . . It was a passive offense. . . . Under this section, persons are required only to inform authorities of which they have knowledge, and are not required to attempt apprehension of the offender. *Ohio Rev. Code Ann. § 2921.22* (West 1997) (Committee Comment H 511). As noted above, the authority for including in the common-law crime an obligation to attempt apprehension of a felon is highly questionable. Supra notes 6-10 and accompanying text.

n184 *Ohio Rev. Code Ann. § 2921.22(I)* (West 1997). A misdemeanor of the fourth degree is punishable by thirty days imprisonment or a \$ 250 fine. *Ohio Rev. Code Ann. § 2929.21(B)(4), (C)(4)* (Anderson 1996).

n185 *Id.* § 2921.22 (Committee Comment to H 511).

n186 See *id.* §§ 2921.22(F)(1), (G)(3).

n187 See *id.* §§ 2921.22(F)(1), (G)(4).

n188 See *id.* §§ 2921.22(F)(1), (G)(5), (6).

n189 See *id.* § 2921.22(G)(2).

n190 In the Young case, the Ohio Court of Appeals observed "in some instances misprision could present complex questions under the modern application of the privilege against self-incrimination." *State v. Young*, 220 N.E.2d 146, 151 (Ohio Ct. App. 1966).

n191 484 N.E.2d 276, 279 (Ohio Ct. App. 1985).

n192 See *id.* at 277-78.

n193 *Id.* at 279.

n194 See *id.* at 279-80. The defendant's conviction for child endangerment was upheld but remanded for resentencing because the trial court imposed the maximum sentence without following statutory guidelines. See *id.* at 279-80.

n195 425 N.E.2d 957 (Ohio Ct. App. 1980).

n196 See *id.* at 958.

n197 See *id.* at 958-59.

n198 *Id.* at 958.

n199 See, e.g., *Neb. Rev. Stat. § 28-1226* (1995) (making punishable as a Class III misdemeanor the failure of any person who has knowledge of the theft or loss of explosive materials from his or her stock to report such theft or loss to the police within twenty-four hours of discovery); *Ariz. Rev. Stat. Ann. § 13-3009* (West 1989) (making punishable as a class 3 misdemeanor the intentional failure of telecommunications workers to report to prosecuting attorneys illegal wire-tapping coming within their knowledge).

n200 See, e.g., *Haw. Rev. Stat. Ann. § 453-14* (Michie 1998) failure to make report within twenty-four hours punishable by \$ 50 to \$ 500 fine); *Mich. Comp. Laws Ann. § 750.411* (West 1991) (failure to report immediately punishable as a misdemeanor).

n201 Compare *Haw. Rev. Stat. Ann. § 291C-19* (Michie 1998 Replacement Volume) (failure to report accident or bullet damage carries no penalty) and *Mich. Comp. Laws Ann. § 257.623* (West 1990) (same) and *Ala. Code § 32-10-10* (1999 Replacement Volume) (same) with *Ind. Code Ann. § 9-26-5-1, 9-26-5-2* (West 1992) (failure to notify police within twenty-four hours of receiving motor vehicle with bullet damage punishable as a Class C Infraction).

n202 See John E.B. Meyers, A Survey of Child Abuse and Neglect Reporting Statutes, *10 J. Juv. L. 1* at 11-27, 62-72 (1986) (charts summarizing the obligations and penalties imposed by child abuse reporting statutes in all fifty states). Prompted by the murder of Sherrice Iverson, discussed *infra* Part VIII.C, Nevada enacted such a law in 1999. *Nev. Rev. Stat. Ann. § 202.882* (Michie Supp. 1999). For comment on recent legislative efforts in this vein, see Marcia M. Ziegler, Nonfeasance and the Duty to Assist: The American Seinfeld Syndrome, *104 Dick. L. Rev.* 525 at 545-47 (2000).

n203 Illinois, as part of its "Bill of Rights for Victims and Witnesses of Violent Crime Act" has a statute making it the responsibility of victims and witnesses to aid in the prosecution of violent crime by (among other things) making a timely report of a violent crime. Ill. Stat. Ann. ch. 725, para. 120/7(a) (Smith-Hurd 1992). There is no penalty for noncompliance with the statute and its only obvious purpose is to express public policy.

n204 *Wash. Rev. Code Ann. § 9.69.100* (West 1998). The penalty for a gross misdemeanor in Washington is imprisonment for up to one year in county jail, or fine up to \$ 5,000, or both. *Wash. Rev. Code Ann. § 9.92.020* (West 1998). "Some commentators have referred to this statute as a type of Good Samaritan law. However, from the text of the statute, the purpose appears to be catching the criminal, not aiding the victim." Sungeeta Jain, How Many People Does it Take to Save a Drowning Baby?: A Good Samaritan Statute in Washington State, *74*

*Wash. L. Rev.* 1181 at 1193-94 n.114 (1999). The distinction between catching criminals and helping their victims is discussed *infra* Part VI.

n205 Susan F. Hoffman, Statutes Establishing a Duty to Report Crimes or Render Assistance to Strangers: Making Apathy Criminal, 72 *Ky. L. J.* 827 at 839-40 (1984). The Big Dan's case is discussed *infra* part VIII.B.

n206 *Mass. Gen. Laws Ann. ch. 268, § 40* (West 1990). Massachusetts has seen further egregious cases of bystander indifference to rape and murder. See J. M. Lawrence, Crime Stoppers Gather Force, *Boston Herald*, June 1, 1998 at 4 (a 1985 rape and a 1996 rape-murder shared the element of neighbors ignoring the crime as it occurred). But it appears that this statute was not enforced in those cases.

n207 *R.I. Gen. Laws § 11-1-5.1* (1994 Reenactment).

n208 The duty to report in Washington extends to, *inter alia*, arson, kidnaping, assault, and extortion as well as rape, murder, manslaughter, and robbery, and also includes attempts, conspiracies, or criminal solicitations to commit any of these crimes. See *Wash. Rev. Code Ann. § 9A.030(41)* (West Supp. 2000) (defining "Violent offenses").

n209 One could imagine a situation in which there is more than one victim of an enumerated violent crime and the Massachusetts and Rhode Island statutes, by their literal terms, would impose on each victim the duty to report, knowing that another was also a victim.

n210 Barry Siegel, *Beyond the Reach of the Law*, *L. A. Times*, Aug. 20, 1996 at A1 (detailed report of the incident).

n211 See *id.*

n212 See *id.*

n213 See *Washington v. Soler and Twyman*, Nos. 36068-0-1 & 36179-1-1, 1998 *WL* 300535 (Wash. Ct. App. June 8, 1998) (unpublished opinion). Soler was also convicted but was then granted a new trial because of the prosecutor's improper comments in closing argument. *Id.* at \*4. Subsequently, he entered a plea agreement by which he was convicted of first-degree manslaughter. Jain, *supra* note 204, at 1195.

n214 See, e.g., Siegel, *supra* note 210; Nancy Bartley, *Innocent Bystanders No More*, *Seattle Times*, Dec. 13, 1996 at B1.

n215 It should also be noted that, if Levick had received his injuries from a wild animal or an accidental fall, not even a rule as broad as common law misprision of felony would require persons aware of his distress to summon assistance. See *infra* note 250 and accompanying text.

n216 Jim Brunner, *Crime Laws Bear Names of Young Victims*, *Seattle Times*, Mar. 31, 2000 at B4; Jennifer McCoy, *Joey Levick's Bill a Call for Decency*, *Seattle Times*, Jan. 30, 1997 at B3; Bartley, *supra* note 214.

n217 One writer has criticized duty-to-rescue statutes because they could be taken to endorse vigilantism. See Wenik, *supra* note 91, at 1794-97. Cf. David C. Biggs, "The Good Samaritan Is Packing": An Overview of the Broadened Duty to Aid Your Fellow Man, with the Modern Desire to Possess Concealed Weapons, 22 *U.*

*Dayton L. Rev. 225 (1997)* (arguing that duty-to-rescue statutes and an armed citizenry are a dangerous combination, and concluding that the former should be expanded while the latter should be curtailed).

n218 *Vt. Stat. Ann. tit. 12, § 519 (1973)*. Note that, by its literal terms, the statute imposes an obligation of rescue not only on eyewitnesses to another's peril but also on those who learn of another's peril indirectly. See Jain, *supra* note 204, at 1192 (observing that Vermont does not limit the duty to rescue to persons at the scene of an emergency but extends it to "anyone who 'knows' of another in peril.").

n219 *433 A.2d 271 (Vt. 1981)*. The defendant Joyce was accused of kicking his son in the head repeatedly in front of witnesses. See *id.* at 272. The defense argued to the jury that any reasonable person would have done something to stop the defendant if he had actually been trying to seriously injure his son. See *id.* at 273. The trial judge instructed the jury that a person has no duty to try to stop a fight occurring in his presence. See *id.* The defense argued to the supreme court that the instruction was incorrect because the Duty to Aid the Endangered Act imposes such a duty. See *id.*

n220 *Id.* at 273. Cf. *Farrell v. People*, 46 P. 841 at 843 (*Colo. Ct. App. 1896*) (reversing conviction of defendant, who stood by and did nothing as a woman was robbed of her jewelry, under a repealed statute making "a person who stands by, without giving such help as may be in his or her power to prevent a criminal offense from being committed" an "accessory during the fact" because the indictment did not "set forth what act he failed to do which he might have safely done."). It might be in one's power to prevent the commission of a crime, but he might succeed at the cost of his own life. He might readily be willing to interfere, but fail to do so, because he has reason to believe that he could not act without exposing himself to danger. The law does not require him to hazard his personal safety. If he does what he can without endangering himself, he is guiltless. *Id.*

n221 That the statute would not require personal intervention in a fight makes perfect sense. However, the witnesses to the incident in the Joyce case did not try to summon assistance, either. *Joyce*, 433 A.2d at 273. The jury instruction, and the supreme court's interpretation of the statute, while technically correct, should have expressed the distinction between personally intervening in a fight and calling for help from the authorities.

n222 See Daniel B. Yeager, A Radical Community of Aid: A Rejoinder to Opponents of Affirmative Duties to Help Strangers, 71 *Wash. U. L.Q.* 1, 24 n.114 and accompanying text (1993); Jay Silver, The Duty to Rescue: A Reexamination and a Proposal, 26 *Wm. & Mary L. Rev.* 423 at 423, 426-27 (1985).

n223 *R.I. Gen Laws § 11-56-1 (1994 Reenactment)*.

n224 *Minn. Stat. Ann. § 604A.01 Subd. 1 (West 2000)*. Under Minnesota law, "'Petty misdemeanor' means a petty offense which is prohibited by statute, which does not constitute a crime and for which a sentence of a fine of not more than \$ 200 may be imposed." *Id.* § 609.02 subd. 4(a) (West Supp. 2000).

n225 *Id.* § 609.662 Subd. 3 (West Supp. 2000).

n226 *Id.* § 609.662 Subd. 1 (West Supp. 2000).

n227 *Id.* § 609.662 Subd. 4 (West Supp. 2000).

n228 See Yeager, *supra* note 222, at 24 n.114 and accompanying text.

n229 *Wis. Stat. Ann. § 940.34(2)(a)* (West Supp. 1999). A violation is a Class C misdemeanor. See *id.* § 940.34(1)(a) (West Supp. 1999). A Class C misdemeanor is punishable by a fine not to exceed \$ 500 or imprisonment not to exceed thirty days, or both. See *id.* § 939.51(3)(c) (West Supp. 1999).

n230 *Id.* § 940.34(2)(d) (West Supp. 1999).

n231 See *State v. La Plante*, 521 N.W.2d 448, 451 (Wis. Ct. App. 1994) (affirming conviction under the statute).

n232 See *id.*

n233 See *id.* at 449; see also Kristina M. Knapcik, *Unlike Nevada, Witnesses Here Face Law*, Milwaukee J. Sentinel, Sept. 9, 1998 at 7 (contrasting the Iverson murder).

n234 See *id.*

n235 See *La Plante*, 521 N.W.2d at 449.

n236 See Knapcik, *supra* note 233.

n237 See *La Plante*, 521 N.W.2d at 448.

n238 *Id.* at 450-51.

n239 See *id.* at 452.

n240 *Haw. Rev. Stat. Ann. § 663-1.6* (Michie 1995 Replacement Vol.) (captioned "Duty to assist"). The penalty for a petty misdemeanor is a fine up to \$ 1,000 and imprisonment for up to thirty days. *Haw. Rev. Stat. Ann. §§ 706-640(5)* ("Authorized fines"), 706-663 ("Sentence of imprisonment for misdemeanor or petty misdemeanor") (Michie 1999 Replacement Vol.).

n241 See Hoffmann, *supra* note 205, at 841.

n242 *Fla. Stat. Ann. § 794.027* (West 2000). In Florida, a misdemeanor of the first degree is punishable by a definite term of imprisonment not exceeding one year or a fine not exceeding \$ 1,000 or both. See *id.* §§ 775.082(4)(a) & 775.083(1)(d) (West 2000).

n243 *R.I. Gen. Laws § 11-37-3.3* (1994 Reenactment).

n244 See *supra* note 100 and accompanying text.

n245 See *supra* notes 222-223 and accompanying text.

n246 See *supra* note 207 and accompanying text.

n247 The perverse result of the Rhode Island legislative scheme is that a person who mutely witnesses a rape and murder is subject to a lesser penalty than a person who mutely witnesses a rape only, since a live victim can file a complaint while a dead victim cannot.

n248 See Yeager, *supra* note 222, at 28-29 ("The duty to rescue will most often require prompt reporting; thus, the two different types of laws [duty-to-rescue and duty-to-report] would have substantially the same application and effect."). See also, Heyman, *supra* note 6, at 747 ("the citizens duty to act [per a duty to rescue] would often be satisfied by calling for emergency assistance from the police, fire department, or rescue services. An individual would be required to intervene directly in an emergency situation only when there was no time to obtain governmental assistance."); Melody J. Stewart, How Making the Failure to Assist Illegal Fails to Assist: An Observation of Expanding Criminal Omission Liability, *25 Am. J. Crim. L.* 385, 413-14 (1998) (observing that, in "situations involving imperiled strangers who are victims of crime," a statutory duty to rescue imposes no greater burden than a statutory duty to report).

n249 Hence, it is erroneous, or at least imprecise, to categorize both kinds of laws as "duty to aid" statutes. See Biggs, *supra* note 217, at 231. See also Stewart, *supra* note 248, at 413 n.142 ("it should be made clear that general duty-to assist laws are different from crime reporting laws.").

n250 See Jain, *supra* note 204, at 1193 (comparing the Wisconsin statute with the Vermont and Minnesota statutes and noting that the former, unlike the latter two, would impose "no duty to aid a drowning baby or a stranger having a heart attack."). See generally John T. Pardun, Good Samaritan Laws: A Global Perspective, *20 Loy. L.A., Int'l & Comp. L.J.* 591 at 594, 599-600 (1994) (noting the distinction between a general duty to assist and a duty to act only with regard to criminal conduct); Biggs, *supra* note 279, at 231, 244 (noting the distinction between statutes covering "Acts of God" and those covering acts of criminal agents); Jessica R. Givelber, Imposing Duties on Witnesses to Child Sexual Abuse: a Futile Response to Bystander Indifference, *67 Fordham L. Rev.* 3169, 3192 (1999) (same).

n251 See *Minnesota v. Carter*, *119 S. Ct.* 469 at 482 (1998) (Ginsburg, J., dissenting).

n252 Still, a witness reporting duty specific to criminal violence is perhaps more likely to focus a witness to a crime in progress on his or her legal obligation to summon assistance than would be a generic rescue statute applicable to any emergency.

n253 See *supra* Part IV.B.

n254 It must be emphasized that the following discussion addresses the duty to report crime, not a duty to rescue victims of crime. Many other commentators have taken the reverse approach. See Ziegler, *supra* note 202, at 556-57 (proposing a statute to provide that "[i]t shall be a crime for witnesses to violent actions to deny assistance to victims of such actions."); Jennifer Bagby, Justifications for State Bystander Intervention Statutes: Why Crime Witnesses Should be Required to Call for Help, *33 Ind. L. Rev.* 571, 585, 586 (stating that "[r]ather than focusing on the need to capture criminals, 'Bad Samaritan' statutes should direct attention to the plight of the victims of crime and the need to intervene in order to render assistance to those in danger"). *Id.* at 586 (proposing a statute to require "bystander intervention by reporting specifically enumerated crimes in order to aid the crime victim.").

n255 See Howard, *supra* note 7, at 754 ("[T]he scope of misprision, if the traditional statements are taken literally, is absurd . . ."). See also Williams, *supra* note 7, at 423 (calling the offense, as defined by authoritative commentators, "unreasonably wide"); P. R. Glazebrook, *supra* note 26, at 311 ("The long-standing criticism that misprision is an impracticably wide crime remains unanswered."); Mullis, *supra* note 36, at 1111-12 (submitting that the common law crime of misprision, if applied to all felonies, makes difficult the protection of individual

rights and needs, and further venturing that appropriate limits on the felonies that must be reported would cure such difficulties).

n256 See Broeder, *supra* note 15, at 88-89; Gerald E. Lynch, *The Lawyer as Informer*, 1986 *Duke L.J.* 491 at 535 (1986).

n257 See Case and Comment [1961] *Crim. L. Rev.* 483 at 485 (1961) ("[I]t is clear that many respectable persons and institutions—banks, schools, universities, trade unions, etc., and their officers—commit the crime regularly. It is no answer to such a point to say that it is only in exceptional cases that a prosecution will be brought. The law-abiding citizen should not have to depend on the benevolent exercise of a discretion for his freedom from prosecution."); Allen, *supra* note 3, at 53 ("[I]t is perturbing that the police have the right to institute prosecutions which would revolt common sense.").

n258 See, e.g., Norvall Morris, *An Australian Letter*, 1955 *Crim. L. Rev.* 290 at 293 ("Ultimately, the repression of crime is a community responsibility, and the existence and occasional prosecution of this offence expresses and underlines this truth."); Goldberg, *supra* note 79 at 150 ("[E]ven apart from its immediate practical consequences, its existence might renew a sense of communal responsibility, the present lack of which is a major element of our most pressing concerns."); Kelly, *supra* note 102 at 230 ("the possible harshness that the retention of the offense might cause is not sufficient justification for its abrogation. The harshness of the rule is more than alleviated by the benefits society would likely derive from its retention."); Frankel, *supra* note 59, at 419 ("[S]ociety must rely upon reports and information from private citizens. This being true, there are definite social advantages in a rule which declares a public obligation to give such information.") and at 421 ("One might ask, however, whether the advantages from threatening to punish are more than offset by the disadvantages in enforcing (or failing to enforce) the threat?"). Among the authorities endorsing abolition of misprision in favor of laws against crimes that require some affirmative act are *Recent Case*, 54 *Harv. L. Rev.* 506 at 506-07 (1941); *Recent Decision*, *supra* note 5, at 172; Glazebrook, *supra* note 26, at 308.

n259 Cf. Hoffman, *supra* note 205 at 841 (criticizing the "unduly restricted scope" of the analogous Rhode Island statute because "other serious crimes pose an equally dangerous threat to society.").

n260 See Morgan, *supra* note 5, at 95 ("The citizen's duty set out in misprision is certainly of a high political and moral character, but any punishment for failure to carry out this duty would seem to be best determined by the legislative branch of government, rather than under common law rules which arose in answer to problems of a society very different from our own."). Cf. Glazebrook, *supra* note 26, at 308 (stating, in reference to the Sykes case, that a statutory provision "would have been preferable to the recognition of a vaguely defined common law offence embracing much misconduct which no Englishman finds reprehensible.").

n261 See Paul H. Robinson, *Criminal Law Defenses: A Systematic Analysis*, 82 *U. Colo. L. Rev.* 199 at 267-68 n.61 (1982). In a jurisdiction retaining common law crimes, any court passing on misprision of felony in a case of first impression must make several preliminary determinations. First, it must decide if the crime existed at common law. Second, it must decide if the crime was adopted into the jurisdiction's criminal law by the reception statute or clause in force. Third, it must decide if the crime remains a valid indictable offense at the present time. Fourth, it must decide if willfulness or an evil intent (or even an affirmative act) is an essential part of the offense. There is a conflict of authority on each of these matters. Thus, the first prosecution for common law misprision of felony in a given jurisdiction is always a test case. The crucial issue is not the defendant's conduct but whether the court will hold the crime to be part of the jurisdiction's law. The court decides after the fact whether to embrace a doctrine which makes criminal the defendant's alleged omission. In substance, the prosecution asks the court to criminalize the defendant's omission *ex post facto*.

n262 Meale, *supra* note 7, at 212 (1975). A statute which encompassed the full breadth of the common law offense, recycling the oblique formulations of the crown law writers, would be impermissibly vague. See Hoffman, *supra* note 205 at 850; Wood, *supra* note 79 at 303 ("It has long been one of the fundamental principles of

the common law that the provisions of a penal law should be certain and clear, not couched in such vague terms that it constitutes a dragnet to entangle anyone a particular court and jury can be persuaded to envelop in it. It is submitted that the definition of misprision of felony propounded in *Sykes v. D.P.P.* is just such a dragnet type of law that, had it appeared in a penal statute, these same Lords would not have hesitated to criticize the draughtsmanship." (footnotes omitted). Cf. Meale, *supra* note 7, at 202 n.17, 205, 206, 212 ("Reasonableness also requires greater specificity [in a misprision statute] in light of the characteristic vagueness of the crime of misprision.").

n263 A skeptic might ask: under what circumstances is it just to penalize someone for steadfastly minding his or her own business?

n264 See *supra* note 86 and accompanying text.

n265 See Model Penal Code §§ 210.2(1), 2.210.3(1), 2.210.4(1) (Official Draft 1962).

n266 Glazebrook, *supra* note 26, at 316.

n267 Mullis, *supra* note 36, at 1117 (footnote omitted).

n268 See Webster's New Collegiate Dictionary 1350 (9th ed. 1989).

n269 See Glazebrook, *supra* note 26 at 316 ("[I]f a man is to be punished for not doing something, he ought to know precisely what is expected of him.").

n270 See *id.* at 313 (considering, as per common law misprision of felony, when the duty to reveal a felony arises and how such duty may be discharged).

n271 Cf. Yeager, *supra* note 222, at 30 (comparing current crime reporting statutes to common law misprision of felony).

n272 See *supra* notes 64-65 and accompanying text.

n273 Mullis, *supra* note 36, at 1117.

n274 Glazebrook, *supra* note 26, at 313 (footnote omitted).

n275 One might witness actions in the execution of a crime (burglars disguised as furniture movers clearing out a house) without actually gaining knowledge of a crime. A person, who failed to report such activity does not violate a duty to report crime any more than a person who unwittingly gives a victim a drink another has laced with poison, commits murder. Witnessing a crime is conceptually distinct from witnessing suspicious criminal activity. Cf. Silver, *supra* note 222, at 431 n.56 ("Our police should be called to investigate not only unambiguous instances of criminal activity, but also situations in which there is reasonable suspicion that a crime is occurring."). A rule extending the reporting duty to witnesses of suspicious activity would be quite cumbersome.

n276 See Wenik, *supra* note 91, at 1800 ("By limiting its application to those persons who have actually witnessed a felony, the proposed statute avoids the potential for overbroad coverage."); Meale, *supra* note 7, at 212 ("[I]t is necessary that any rational misprision statute demand that the reporter's knowledge of the crime be

the result of direct, personal observation, in order to guarantee greater accuracy in reporting as well as to avoid placing too burdensome a duty on the would-be reporter.").

n277 Hoffman, *supra* note 205, at 842.

n278 See Lynch, *supra* note 256, at 523-27 (approving of existing law for not requiring the victim to make an unsolicited report of a crime); Glazebrook, *supra* note 26 at 311 ("It is, furthermore, particularly difficult to defend a law which indiscriminately adds to the injuries of the victim of a crime the penalties of the criminal law should he or she wish to forgive and forget."). The dilemma of a rape victim compelled to make a report can be particularly acute. See Hoffman, *supra* note 205, at 843. ("[A] crime reporting statute should clearly exempt a rape victim from the statutory duties of a witness."). Cf. Howard, *supra* note 7, at 755 (offering hypothetical example involving rape victim to illustrate the difficulty of circumscribing the crime). However, the same concerns extend to victims of other crimes, as well. See Lynch, *supra* note 256, at 523 n.126 and accompanying text.

n279 See Lynch, *supra* note 256, at 527-28. See also Glazebrook, *supra* note 26, at 311 ("X says to B: 'I stole some money yesterday; will you help me repay it?' B is a friend of X; he wished to know nothing of X's misdeeds; and yet he is to be a criminal if he does not betray him.").

n280 Cf. Glazebrook, *supra* note 26, at 311 ("A says to B 'Did you know that X stole a book from the library last week?' Adding appropriate circumstantial details . . . [T]he duty to act arises not because of willing assumption of responsibility, the occupation of an office, or the ownership of property but because of the mere possession of certain knowledge-knowledge possessed accidentally and undesired knowledge which may indeed have been acquired through some malevolent person.").

n281 Consider the case of an individual who, without witnessing a crime, hears a killer's confession exonerating a wrongly accused person.

n282 A duty to summon help for injured or otherwise endangered persons in circumstances such as those presented by the Joey Levick case, discussed *supra* Part IV.B, is a different matter, most appropriately addressed by a duty-to-rescue statute of the type enacted in Vermont, Rhode Island, and Minnesota. See *supra* Part V.A.

n283 Cf. Frankel, *supra* note 59, at 421 (1965) ("Is it then a matter of sound policy to expect citizens to inform authorities concerning other people's crimes? The answer would seem to depend, as the Law Lords [in the Sykes case] recognize, upon the nature of the crime. Certainly, we are incensed by the failure to prevent or report violent and other serious crimes which result in injuries to other persons or demonstrate that the criminal is a continuing threat to the public.") (footnotes omitted). See also Lynch, *supra* note 256, at 532-34 (observing that one's view of an informant's actions depends in large part on the gravity of the offense disclosed).

n284 See Mullis, *supra* note 36, at 1111-12 ("It seems then, that the common law crime of misprision should no longer exist if it is applied to all citizens and to all felonies, as has traditionally been the case." *Id.* at 1112.). See also Broeder, *supra* note 15, at 90 ("And who but one knowledgeable in the law can in most cases draw the line between felony and misdemeanor and know with some assurance even if he recognizes what conduct theoretically constitutes a felony whether one has in fact and in law been committed?"). Even writers who are favorable to common law misprision of felony obliquely concede the preferability of a more limited reporting duty. See Goldberg, *supra* note 79, at 150 ("If limited by its terms to serious crimes, perhaps only serious crimes against the person, few injustices are likely to result.") (footnote omitted). A writer criticizing the Holland decision for giving insufficient weight to strong policy considerations favoring retention of common law misprision makes no attempt to justify the crime's application to drug felonies, as was the case in Holland. Instead, he invokes the famous Kitty Genovese incident (discussed *infra* Part VIII.A) and posits that a known duty to inform police could operate to save victims in similar situations. Kelly, *supra* note 102, at 229-30. This line of reasoning supports a reporting duty applicable to crimes against the person, but not a rule embracing all felonies.

n285 Shannonhouse, *supra* note 35, at 61-62 ("If one further contemplates that state laws classify many serious crimes a misdemeanors and many relatively petty offenses as felonies, the limitation of misprision to felonies seems indefensible.") (footnote omitted); see also Glazebrook, *supra* note 26, at 312 ("There may be crimes where the protection of the public requires that each offender be brought to justice however reluctant his victim, his friends, or those who have him in their care, may be to do so, but the line which separates them from all other offences is not the line which separates felonies from misdemeanors."). *Pope v. State*, 396 A.2d 1054 at 1075 (Md. 1979) (quoting Glazebrook and adding "this is particularly true with respect to Maryland where the distinction between felony and misdemeanor is a hodgepodge, following neither rhyme nor reason.").

n286 See *supra* text accompanying notes 65-66.

n287 Wenik, *supra* note 91, at 1800 n.100. Wenik considers reporting laws limited to violent crimes to be "too narrowly drawn" because "such important categories of crime as burglary and auto theft are not within their ambit." *Id.* at 1804.

n288 Mullis, *supra* note 36, at 1111.

n289 See *id.* at 1112. "These crimes are of such a basic nature that it is difficult to conceive of anyone having any moral quandaries about them." *Id.*

n290 *Id.* "Thus, a two-fold limitation on the crimes to which misprision would apply is suggested-the crime must be one of the English common law felonies and it must be of such a serious nature that a reasonable man would consider it his duty to inform the police. By limiting misprision in this manner, the crime would be manageable enough to warrant a definite reappraisal of its potential usefulness." *Id.* at 1113 (footnote omitted).

n291 See Meale, *supra* note 7, at 212 ("It is also necessary to limit the crimes capable of concealment under the statute to only the most serious.").

n292 See *id.* at 213 ("Murder arson, kidnaping, robbery, burglary or aggravated assault"); Hoffman, *supra* note 205, at 864 ("murder, rape, kidnaping, robbery, or arson").

n293 Cf. John H. Scheid, Affirmative Duty to Act in Emergency Situations - The Return of the Good Samaritan, 3 J. Mar. J. of Prac. And Proc. 1 at 13 ("A's duty to act for B's protection should not be extended to property. A new rule should be addressed only to the most pressing problem, the most flagrantly immoral.").

n294 See *supra* text accompanying notes 204, 206-207.

n295 See *supra* text accompanying note 242 (Florida's rape reporting statute limits its application to persons with "the present ability to seek assistance for the victim or victims . . .").

n296 Hoffman, *supra* note 205, at 843, 864.

n297 A statute or proposal considering only the danger to the reporter personally or his family or household is too narrow. See, e.g., *Wash. Rev. Code Ann. § 9.69.100(4)* (West 1998); Meale, *supra* note 7, at 212, 213; Wenik, *supra* note 91 at 1800 n.100. The reporting duty should be suspended until a report can be made without endangering oneself or other innocent persons. See, e.g., *Mass. Gen. Laws Ann. ch. 268, § 40* (West 1990); *R.I. Gen. Laws § 11-1-5.1* (1994 Reenactment).

n298 After decades of ever-expanding usage across the country, "911" became the officially established universal emergency telephone number throughout the United States by congressional enactment in 1999. Wireless Communications and Public Safety Act of 1999 § 3(a), 47 U.S.C. § 251(e)(3) (West Supp. 2000).

n299 See *Wash. Rev. Code Ann. § 9.69.100(1)(c)* (West 1998).

n300 Cf. *In re Stichtenoth*, 425 N.E.2d 957, 958 (Ohio Ct. App. 1980) (bystander notified person at the front desk of a skating rink of a stabbing on the business premises). A person trying to make a report of a crime may retreat to a place open to the public and ask an employee there to call authorities or allow access to a telephone for the purpose of making the call. Employees who refuse to cooperate with a person trying to discharge his or her reporting duty should be held civilly liable to the victim of the crime in question, together with the employer. Cf. *Soldano v. O'Daniels*, 190 Cal. Rptr. 310, 311-12, 315-17 (Cal. Ct. App. 1983) (reversing summary judgment dismissal of a wrongful death complaint against a bar owner whose bartender allegedly refused to allow a good Samaritan access to a telephone to notify police of a threat made against the life of a patron in another bar later murdered by the issuer of the threat). For discussion of *Soldano*, see Beverly Ann Seagraves, *The Duty to Rescue in California: A Legislative Solution?*, 15 *Pac. L. J.* 1261 at 1273-75 (1984); Hoffman, *supra* note 258, at 835-37. See also Ziegler, *supra* note 202, at 541-42.

n301 See *Mass. Gen. Laws. Ann. ch. 268, § 40* (West 1990).

n302 See *Ohio Rev. Code Ann. § 2921.22(a)* (West 1997).

n303 *S.D. Codified Laws § 22-11-12* (Michie 1988).

n304 Police nonfeasance is a risk that no reporting duty can eliminate. See, e.g., *Estate of Sinthasomphone v. Milwaukee*, 838 F. Supp. 1320, 1322-24 (E.D. Wis. 1993); *Estate of Sinthasomphone v. Milwaukee*, 785 F. Supp. 1343, 1345 (E.D. Wis. 1992) (police, summoned by a 911 caller in a phone booth to help a naked, bleeding boy reeling down the street, instead returned the youth to the clutches of a cannibalistic serial killer posing as his companion and threatened to arrest good Samaritans who attempted to inform them of the truth of the situation). For an account of an especially galling episode of futile crime reporting, see Bryn Freedman & William Knocdelseder, *In Eddie's Name: One Family's Triumph over Tragedy*, 56-57, 59, 61, 65 (Faber & Faber, 1999). In 1994, a gang of armed teenagers rampaged through a Philadelphia neighborhood, killing one youth and injuring others. *Id.* at 172. At least fourteen 911 emergency calls reporting the riot were logged, but the city's superannuated dispatch system delayed a police response for more than two hours. *Id.* at 65, 130-32.

n305 *Wash. Rev. Code Ann. § 9.69.100(3)* (West 1998).

n306 Cf. *Shannonhouse*, *supra* note 35, at 67-69 (discussing whether or not an ineffective attempt to communicate knowledge of a felony to authorities should be a good defense under the federal misprision statute). However, the old maxim "if at first you don't succeed, try, try again" retains its force. A person who has been unable to get through on a telephone should not ignore the chance to personally notify a passing patrolman. *Id.* at 68.

n307 See, e.g., *Lynch*, *supra* note 256, at 527-32, 533. Among writers who have considered the question, there is a general agreement that those who fail to inform against close family members should not suffer criminal sanctions. Broeder, *supra* note 15, at 88-89; Glazebrook, *supra* note 26, at 316-18; Meale *supra* note 7, at 212, 213 (statutory proposal for reporting duty would exempt the "spouse, parent, child, brother, sister, grandparent, or grandchild of the actor"). Cf. *Shannonhouse*, *supra* note 35, at 76 (discussing applicability of the interspousal privilege to prosecutions under the federal misprision statute).

n308 See, e.g., *Ohio Rev. Code Ann. § 2921.22(F)(6)* (West 1997) (exempting rape counselors from the crime reporting duty). 1989 Md. Att'y Gen. Ann. Rep.128 (July 18, 1989) (responding to inquiry as to whether a rape crisis center employee must report to police knowledge of a sex crime committed against an adult).

n309 As one writer observed: [A] vague rule compelling action would tend to compel action far beyond the borders of the rule since people would tend to act in all doubtful cases in order to be on the safe side of the law. This danger is compounded because of the "aura effect" of any criminal mandate or proscription. Any criminal law which is effective in deterring crime also has the effect of deterring conduct not criminal, but bordering on the fringe of criminality. . . . The aura effect is the principle factor in making misprision offenses socially disadvantageous. Although the ordinary citizen certainly can be expected to know what he should do when he has information about a crime, he still must speculate on what constitutes such information, e.g., mere suspicion or guess. To be safe from prosecutions and to obey the law, citizens would have to resolve their doubts in favor of informing and the conscientious citizen would be acting in a manner indistinguishable from the intermeddling snoop. Frankel, *supra* note 59 at 425-26.

n310 See *Commonwealth v. Lopes*, 61 N.E.2d 849, 850-52 (Mass. 1945); see also *Commonwealth v. Stowell*, 449 N.E.2d 357 (Mass. 1983).

n311 See *State v. Wardlow*, 484 N.E.2d 276, 277-80 (Ohio Ct. App. 1985).

n312 See *State v. Conquest*, 377 A.2d 1239, 1240-43 (N.J. Super. Ct. Law Div. 1977).

n313 See *State v. Biddle*, 124 A. 804 (Del. 1923).

n314 See *State v. Michaud*, 114 A.2d 352 (Me. 1955).

n315 See *Holland v. State*, 302 So.2d 806, 807-10 (Fla. Dist. Ct. App. 1974); Kelly, *supra* note 102, at 222.

n316 See *Pope v. State*, 396 A.2d 1054, 1058-60 (Md. 1979).

n317 See *State v. Carson*, 262 S.E.2d 918, 919-20 (S.C. 1980).

n318 See *In re Stichtenoth*, 425 N.E.2d 957, 958-59 (Ohio Ct. App. 1980).

n319 The account of the crime most often cited is that given by the New York Times shortly after the fact, Martin Gansberg, 37 Who Saw Murder Didn't Call Police, N.Y. Times, Mar. 27, 1964, at 1, and elaborated upon by the paper's then-Metropolitan Editor in a small book, A. M. Rosenthal, *Thirty-Eight Witnesses* (1964). This account has Mosley making three separate attacks on Genovese, retreating and returning twice before delivering the fatal wounds. *Id.* at 29-40. But see *id.* at 78-79 (describing attacker as retreating and returning only once). However, a later and apparently more accurate account appears in a book by a former Chief of Detectives for the New York Police Department, who was a deputy inspector in Queens at the time of the murder. Albert A. Seedman & Peter Hellman, *Chief!* 109-46 (1974). It describes only two attacks, with Mosley leaving and returning only once. A recounting of the crime consistent with this latter version appeared in the New York Times in a piece about the twentieth anniversary of the crime. Maureen Dowd, *The Night that 38 Stood by as a Life Was Lost*, N.Y. Times, Mar. 12, 1984 at B1.

n320 See Seedman, supra note 319, at 115-16, 133; *Moseley v. Scully*, 908 F. Supp. 1120, 1124 (E.D.N.Y. 1995) (recounting Moseley's trial testimony).

n321 See Seedman, supra note 319, at 116, 133.

n322 See *Moseley*, 908 F. Supp. at 1124; Seedman, supra note 319, at 116.

n323 See *Moseley*, 908 F. Supp. at 1124; Seedman, supra note 319, at 116, 133.

n324 See Seedman, supra note 319, at 117.

n325 See *Moseley*, 908 F. Supp. at 1124; Seedman, supra note 319, at 117, 133.

n326 See Seedman, supra note 319, at 117-18.

n327 See id. at 134; *Moseley*, 908 F. Supp. at 1124.

n328 See Seedman, supra note 319, at 118; *Moseley*, 908 F. Supp. at 1124.

n329 See Seedman, supra note 319, at 135.

n330 See id. at 120.

n331 See id. at 135.

n332 See id. at 118; Rosenthal, supra note 319, at 37, 74-75.

n333 See Seedman, supra note 319, at 118; Rosenthal, supra note 319, at 36, 69.

n334 See generally, Rosenthal, supra note 319, at 27-29, 40-45, 72-73. Although the crime predated the advent of the 911 system, the witnesses could have reached the police simply by dialing "0" for operator. Id. at 40, 59, 67.

n335 See Kelly, supra note 102, at 121-23; Rosenthal, supra note 319, at 42, 79, 80, 82.

n336 Rosenthal, supra note 319, at 37, 79.

n337 See Seedman, supra note 319, at 145.

n338 Although the victim is deceased, the author respects the judgment of others well-acquainted with the case to leave her name unstated, even though it is by now a matter of public record. Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* 119 n\* (1992); interview with the Honorable William G. Young, United States District Court for the District of Massachusetts (Feb. 1999) (then presiding state court judge at criminal proceedings).

n339 See Thomas Farragher, *Widely Watched Mass. Trial Reshaped Society's Attitude Toward Rape Victims*, *The Boston Globe*, Oct. 18, 1999, at A1 ("Crimes of the Century" series); Benedict, *supra* note 338 at 91; Videotape: Excerpts from the Big Dan's criminal trial (on file with the Harvard Law School Audiovisual Department).

n340 See Benedict, *supra* note 338; Videotape, *supra* note 339.

n341 See *Farragher, supra* note 339; Videotape, *supra* note 339; Benedict, *supra* note 338.

n342 See Benedict, *supra* note 338, at 93-94. See, e.g., *The Tavern Rape: Cheers and No Help*, *Newsweek*, Mar. 21, 1983 at 25 ("As she struggled - screaming 'Stop . . . I want to get out,' and pleading for help from others at the oval bar - several of them reportedly lifted her onto the pool table and raped her again and again to the cheers and applause of the other bar patrons.").

n343 See Benedict, *supra* note 338; Videotape, *supra* note 339.

n344 See Benedict, *supra* note 338.

n345 See *Farragher, supra* note 339; Interview with Judge Young, *supra* note 339.

n346 See *Commonwealth v. Vieira*, 519 N.E.2d 1320 (Mass. 1988); *Commonwealth v. Cordeiro*, 519 N.E.2d 1328 (Mass. 1988); Melinda Beck, *Rape Trial: 'Justice Crucified'?*, *Newsweek*, Apr. 2, 1984 at 39; *Farragher, supra* note 339; Videotape, *supra* note 339. The Supreme Judicial Court of Massachusetts unanimously affirmed all of the convictions.

n347 See Benedict, *supra* note 338, at 137-39; *Farragher, supra* note 339.

n348 See *Farragher, supra* note 339.

n349 Benedict, *supra* note 338, at 139. Some patrons may have departed before police arrived. *Id.* at 138.

n350 See Heyman, *supra* note 6, at 678 n.17 & 689 n. 66. It is not clear that a rescue or reporting law would have been apposite to the situation at Big Dan's. Some among the accused perpetrators may have, by intimidation, prevented others at the scene from calling for help. Videotape, *supra* note 339. Interview with Judge Young, *supra* note 338; telephone interview with the Honorable Robert Kane, Massachusetts District Court Judge (Mar., 1995) (prosecuting attorney at criminal trial). See also Benedict, *supra* note 338, at 93, 125 (bar-tender indicated that his fear of the perpetrators prevented him from alerting the authorities). What is more, verbal encouragement of a crime is an affirmative act, making one liable as a criminal accessory. See *Anderson v. State*, 516 S.E.2d 315, 316 (Ga. Ct. App. 1999) (verbal encouragement of a shooting). See generally, Wayne R. LaFare & Austin W. Scott, Jr., *Substantive Criminal Law* § 6.7(a) (1986) ("One may become an accomplice . . . by words or gestures of encouragement . . .") (footnote omitted).

n351 See *Farragher, supra* note 339; Benedict, *supra* note 338, at 140-41.

n352 See *Good Samaritan Law Sought*, *Chi. Trib.*, Sept. 16, 1998, at 3 (Michigan); Stacy Finz, *Killing of Girl, 7, in Casino Spurs Good Samaritan Bills*, *S. F. Chron.*, Dec. 9, 1998, at A21 (California). See also Patrick McGreevy, *City: Punish 'Bad Samaritans'*, *L. A. Daily News*, Sept. 16, 1998, at 3 (California). The U.S. Congress considered a bill called the "Sherrice Iverson Act," which would have conditioned a state government's re-

receipt of certain federal funds in the future on enactment and enforcement of a generally applicable duty to report sexual abuse of a child. S. 793, 106th Cong. (1999). The press reported on these legislative efforts with pronounced skepticism. See Maura Dolan, Good Samaritan Laws Are Hard to Enact, Experts Say, *L. A. Times*, Sept. 9, 1998, at A1. Dan Reed, Experts Warn About Impact of Proposed Good Samaritan Laws, *Dallas Morning News*, Sept. 6, 1998, at 44A. Cf. Caren Benjamin, Lawyers Say Care Needed in Writing Good Samaritan Law, *Las Vegas Rev.-J.*, Sept. 13, 1998 at 1B (discussing potential problems with mandatory child abuse reporting laws proposed after the murder of Iverson).

n353 See Joshua Hammer, Shunned at Berkeley, *Newsweek*, Oct. 19, 1998, at 70; Norma Zamichow, The Fractured Life of Jeremy Strohmeyer, *L. A. Times*, July 19, 1998, at A1.

n354 See Hammer, supra note 353, at 70; Zamichow, supra note 353. The two young men were regarded as high achievers in school, but together they manifested an ugly predilection for lawless mischief. See also Caren Benjamin, Friend: Cash Witnessed Sex Assault, *Las Vegas Rev.-J.*, Sept. 17, 1998, at 1B; Zamichow, supra note 353, (Cash and Strohmeyer participated in assaults, vandalism, and binge drinking).

n355 See Hammer, supra note 353, at 70; Zamichow, supra note 353; 60 Minutes: The Bad Samaritan (CBS television broadcast, Sept. 27, 1998).

n356 See Zamichow, supra note 353. He recounts being impaired by a combination of prescription amphetamines and alcoholic beverages. 20/20: A Murderous Encounter (ABC television broadcast, Oct. 30, 1998); *Las Vegas Rev.-J.*, Documents of Record: Jeremy Strohmeyer Statement, available at <<http://www.lvrj.com/lvrj/home/news/packages/strohmeyer/statement.html>> [hereinafter Strohmeyer Statement] (visited Aug. 29, 2000).

n357 See *Las Vegas Rev.-J.*, Documents of Record: Grand Jury Testimony <<http://www.lvrj.com/lvrj/home/news/packages/strohmeyer/transcript.html>> (testimony of surveillance officer) (visited Aug. 29, 2000). Cash would reemerge in two minutes but Strohmeyer would not exit for almost twenty-four minutes and Sherrice never came out alive. *Id.*

n358 See *Las Vegas Rev.-J.*, Documents of Record: Grand Jury Testimony <<http://www.lvrj.com/lvrj/home/news/packages/strohmeyer/transcript2.html>> (testimony of David Cash) (visited Aug. 29, 2000); 20/20, supra note 356, Zamichow, supra note 355.

n359 *Las Vegas Rev.-J.*, supra note 356. Strohmeyer says he became enraged, 20/20, supra note 356. Cash says he registered only a moderate pique. *Las Vegas Rev.-J.*, supra note 356.

n360 *Las Vegas Rev.-J.*, supra note 356; Hammer, supra note 353; 60 Minutes, supra note 355.

n361 *Las Vegas Rev.-J.*, supra note 356; Hammer, supra note 353.

n362 *Las Vegas Rev.-J.*, supra note 357 (testimony of county coroner medical examiner).

n363 See Ziegler, supra note 202, at 526-27 ("Across the country, letters in opinion columns, editorials in newspapers, and magazine articles have called for David Cash to be formally prosecuted for his behavior.") (footnote omitted); Cynthia Tucker, Everyone Should Be Accountable for Children's Safety, *Atlanta J.-Const.*, Sept. 6, 1998, at R5 (editorial).

n364 *Las Vegas Rev.-J.*, supra note 356; 60 Minutes, supra note 355.

n365 Las Vegas Rev.-J., supra note 356; Hammer, supra note 353.

n366 20/20, supra note 356; Strohmeyer Statement, supra note 356.

n367 See id.

n368 See id.

n369 See id.

n370 See id.

n371 See id.

n372 Days later, Strohmeyer was arrested shortly after attempting a suicidal overdose. Zamichow, supra note 355. His stomach was pumped, and he gave police an account of the crime that included details of the sexual molestation. Caren Benjamin, Officer Testifies About Strohmeyer's Constitutional Rights, Las Vegas Rev.-J., Jan. 28, 1998 at 2B; Caren Benjamin, Doctor Testifies Strohmeyer Was Lucid as He Confessed, Las Vegas Rev.-J., Jan. 6, 1998 at 1B; Las Vegas Rev.-J., Documents of Record: J e r e m y S t r o h m e y e r A r r e s t R e p o r t [http://www.lvrj.com/lvrj\\_home/news/packages/strohmeyer/stroh/one.html](http://www.lvrj.com/lvrj_home/news/packages/strohmeyer/stroh/one.html) (visited Aug. 29, 2000). He skewed his confession to conceal Cash's presence. 20/20, supra note 356; Strohmeyer Statement, supra note 356. He maintains that he still had no genuine recollection of these details, but simply improvised a narrative from the information he got from Cash, news reports, and leading questions from his interrogators. 20/20, supra note 356; Strohmeyer Statement, supra note 356.

n373 Norma Zamichow, Strohmeyer Friend Saw Him Molest Girl, Classmates Say, L.A. Times, Sept. 16, 1998 at A1.

n374 Cash has furthered the cause by demonstrating a callousness about Iverson's death bordering on the pathological. Ziegler, supra note 202, at 526; Hammer, supra note 353; Zamichow, supra note 353; 60 Minutes, supra note 355.

n375 Seedman, supra note 319, at 122.

n376 *Id.* ("slender man of 120 to 140 pounds who could have been black or white").

n377 *Id.* at 125-26, 131. See also Rosenthal, supra note 319, at 42 (Police were able to "piece together what happened-and capture the suspect-because residents furnished all the information when detectives rang doorbells during the days following the slaying.").

n378 Seedman, supra note 319, at 131-37.

n379 Mark Starr, Gang Rape: The Legal Attack, Newsweek, Mar. 12, 1984 at 38; Aric Press, Rape and the Law, Newsweek, May 20, 1985 at 60; Interview with Judge Young, supra note 350; Benedict, supra note 338, at 125; Vidoetape, supra note 339.

n380 Las Vegas Rev.-J., Documents of Record: Grand Jury Testimony [http://www.lvrj.com/lvrj/home/news/packages/strohmeyer/transcript 2.html](http://www.lvrj.com/lvrj/home/news/packages/strohmeyer/transcript%20.html) (testimony of David Cash) (visited Aug. 29, 2000).

n381 Before accepting a plea bargain to avoid the risk of a capital sentence, Strohmeyer's legal team worked at formulating a defense based on his mental condition. See Caren Benjamin, *Natural Born Killer?*, Las Vegas Rev.-J., Aug. 30, 1998 at 1A; Tim Dahlberg, *Guilty Plea in Vegas Casino Killing*, Associated Press, Sept. 8, 1998, available in *Westlaw*, 1998 WL 6719627. Strohmeyer has since made an unsuccessful collateral attack on the plea agreement. See Peter O'Connell, *Justice Unchanged for Killer*, Las Vegas Rev.-J., Feb. 10, 2000 at 1A.

n382 In fact, the victim specifically blamed the bartender for not helping her and she did try to impose civil liability on him through a lawsuit. Videotape, *supra* note 339; Benedict, *supra* note 338 at 125.

n383 See Broeder, *supra* note 15, at 90 ("And if one is in fact required to [report a crime] and does not, his knowledge of another's felonious misdeeds then becomes sacred and inaccessible because of the privilege against self-incrimination. Requiring him to testify concerning his knowledge after he has failed affirmatively to come forward would violate the privilege. . . ."). See also Givelber, *supra* note 250, at 3197 (observing that the threat of prosecution for failure to comply with a rescue or reporting statute may interfere with obtaining information from witnesses); Lynda Gorov, *Proposed Samaritan Law Comes Under Fire*, Boston Sunday Globe, June 20, 1999 at A3 (reporting on California attorneys' concern that, under a proposed child abuse reporting statute, "witnesses worried about their own prosecution [for failing to report] would be entitled to plead self-incrimination to avoid testifying.").

n384 See Austin Wehrwein, *'Samaritan' Law Poses Difficulties*, Nat. L. J., Aug. 22, 1983 at 5; Seagraves, *supra* note 300 at 1283-84. See also Caren Benjamin, *Lawyers Say Care Needed in Writing Good Samaritan Law*, Las Vegas Rev.-J., Sept. 13, 1998, at 1B (quoting District Attorney Stewart Bell, a prosecutor in the Iverson case, as saying "[i]t may be difficult for prosecutors to get people to testify as witnesses to a crime if they believe they will be charged for not reporting it while it was going on").

n385 Telephone interview, *supra* note 350; Yeager, *supra* note 222, at 37-38. See also Gorov, *supra* note 383 (reporting on California attorneys' concern that, under a proposed child abuse reporting law, witnesses who failed to come forward promptly would demand immunity in exchange for their testimony).

n386 See, e.g., Yeager, *supra* note 222, at 37-38; Hoffman, *supra* note 205, at 845; Saul Levmore, *Waiting for Rescue: An Essay on the Evolution and Incentive Structure of the Law of Affirmative Obligations*, 72 *Va. L. Rev.* at 897 n.47 (1986). It is also wrong to think that a duty-to-report law could be used to ensnare those suspected of participating in a crime without having to prove their participation beyond a reasonable doubt at trial, because such use of the law would be invalid on self-incrimination grounds. Cf. Yeager, *supra* note 222, at 32-34 (reporting that a small number of prosecutors have used duty-to-report statutes as a basis for plea agreements "[d]espite the Fifth Amendment self-incrimination problems endemic to a law that requires witnesses to report criminal activity in which they might have some involvement . . .") (footnote omitted); Glazebrook, *supra* note 26, at 310, 311 ("[E]ven misprision can hardly embrace one who conceals knowledge of another's felony for fear that in revealing it he will incriminate himself.") (footnote omitted). It would be an abusive application of the law, as well. Frankel, *supra* note 59, at 420. If prosecutors treat a reporting law simply as a trap for accomplices who deny active involvement in a crime, ordinary citizens cannot be expected to regard the law seriously as a mandate for taking affirmative steps against a crime occurring in one's presence.

n387 The idea of using a reporting statute as a threat in order to obtain testimony is premised on the assumption that the threatened person will be ignorant of his legal rights. Prosecutors will have to bluff a witness with threats of prosecution for violation of a reporting duty and hope the witness does not call the bluff by invoking the fifth and fourteenth amendments. In any case, such coercion will tend to impair the credibility of whatever testimony is extracted from the witness. See Gorov, *supra* note 383 (reporting on California attorneys' concern that, under a proposed child abuse reporting statute, "credible testimony could be tainted in jurors' eyes

if it appears witnesses were intimidated, either by police or by their own fear of prosecution."'). Cf. *State v. Freeman*, 473 A.2d 1149 at 1152-54 (R.I. 1984) (defendant had a right under the sixth amendment to show that the witness had a motive to change her story and accuse him of a crime because she had been arrested and notified by police that she was suspected of misprision of a felony).

n388 See Ronald J. Rychlack, *Society's Moral Right to Punish: A Further Exploration of the Denunciation Theory of Punishment*, 65 *Tul. L. Rev.* 299, 325-29, 331-36 (1990).

n389 *Id.* at 322-23.

n390 See *id.* at 309-10 & nn. 33, 34. The 'general deterrent' effect of a crime reporting statute bears upon bald inaction rather than positively antisocial behavior, but it is deterrence all the same. The other practical advantages commonly associated with criminal sanctions have little or no relevance to bystander indifference. There is no logical sense in which a passive witness to crime can be 'incapacitated,' see *id.* at 313-14, and it is more than a little naive to think that a cowardly or callous crime witness can be transformed into a good Samaritan through 'specific deterrence' or 'rehabilitation.' See *id.* at 309-12.

n391 In addition to helping incapacitate dangerous offenders, citizen compliance with a crime reporting duty can bring timely assistance to victims of crime. It was noted above that this humanitarian benefit to crime victims is really a secondary effect of a duty to inform on criminals and that the objective of bringing help to endangered persons would be served more completely by a generalized duty to rescue. See *supra* Part VI. A crime-witness reporting statute, however, may serve the same objective to an important degree. The author submits that this humanitarian consideration further tips the balance in favor of well-crafted crime witness reporting legislation.

**SB**

**8**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/2/07

FURTHER:

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Finance Committtee considered

SENATE BILL NO. 8

## SB 8 MENTAL HEALTH PATIENT RIGHTS:STAFF GENDER

"An Act relating to a mental health patient's right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment."

and recommends:

- be replaced with  SCS or  CS SB 8 (Fin)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

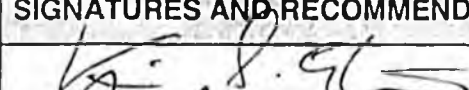

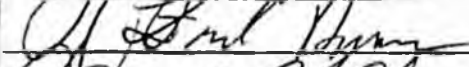
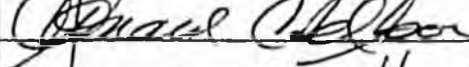


**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
COR	12/2/07			✓	
HSS	2/19/07			✓	

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	Do PASS	Do NOT PASS	No REC	AMEND
	Elmer	✓			
	Thomas	✓			
	Dyson	✓			
	OLSON			✓	
CO-CHAIR: 	HOFFMAN			✓	
CO-CHAIR: 	SPINDLER			✓	

# FISCAL NOTE

**STATE OF ALASKA  
2008 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CS SB 8 (JUD)  
 () Publish Date: \_\_\_\_\_  
 Dept. Affected: Health & Social Services  
 RDU Behavioral Health  
 Component Alaska Psychiatric Institute

ID(File name) SB008CS(JUD)-DHSS-API-12-19-2007  
 Title RIGHT OF PATIENTS TO CHOOSE GENDER OF HOSPITAL STAFF IN PSYCHIATRIC HOSPITALS

Sponsor DAVIS  
 Requester SENATE (FIN) Component Nc 311

**Expenditures/Revenues (Thousands of Dollars)**

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

	Appropriation		Information				
	Required						
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL EXPENDITURES</b>							
<b>CHANGE IN REVENUES (0)</b>							

**FUND SOURCE (Thousands of Dollars)**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1037 GF/Mental Health							
Other(Specify Type-do not abbreviate)							
Other(Specify Type-do not abbreviate)							
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: \_\_\_\_\_

**POSITIONS**

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time							
Part-time							
Temporary							

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

This bill requires hospitals providing psychiatric services to proffer gender choice to patients requiring intimate care, and to document in the patient record, after "reasonable and good faith efforts to comply" a) failure to meet the patient's request for gender choice, but provision of intimate care by a licensed professional or b) failure to meet the patient's request for gender choice, but provision of intimate care by a non-licensed professional. Further, the bill would require posting of the notice of the patient's right of gender choice in intimate care situations.

The bill is congruent with the department's desire to accommodate the gender choice of patients, and to protect vulnerable populations from medically unnecessary invasions of privacy. Although there may be an increase in staff workload due to an increase in documentation, the effect is believed to be negligible and no fiscal impact is expected.

Prepared by: Melissa Witzler Stone, Director Phone 269-3410  
 Division Behavioral Health Date/Time 11/27/2007  
 Approved by: Karleen Jackson, Commissioner Date 12/19/2007  
 Agency Department of Health and Social Services

# FISCAL NOTE

STATE OF ALASKA  
2008 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SB008CS(JUD)-DOC-OC-02-05-08  
( ) Publish Date: \_\_\_\_\_

Identifier (file name): SB008CS(JUD)-DOC-OC-02-05-08 Dept. Affected: Corrections  
Title "An act relating to a mental health patient's right to choose RDU Administration and Operations  
the gender of hospital staff providing intimate care ..." Component Office of the Commissioner  
Sponsor Senator's Davis, Ellis, Elton  
Requester Senate Judiciary Component Number 694

## Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required		Information				
	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
<b>OPERATING EXPENDITURES</b>							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>							
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<b>CHANGE IN REVENUES ( )</b>							
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## FUND SOURCE (Thousands of Dollars)

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2008) cost: 0.0

### POSITIONS

	FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Full-time	0	0	0	0	0	0	0
Part-time	0	0	0	0	0	0	0
Temporary	0	0	0	0	0	0	0

### ANALYSIS: *(Attach a separate page if necessary)*

Passage of this legislation should have no fiscal impact on the Department of Corrections.

Prepared by: Sharleen Griffin, Director  
Division: Administrative Services  
Approved by: Dwayne Peoples, Deputy Commissioner  
Department of Corrections

Phone (907) 465-3339  
Date/Time 12/20/07 1:55 PM  
Date 12/20/2007

*Adopted & called  
2/25/08*

25-LS0101\E  
Mischel  
2/4/08

**CS FOR SENATE BILL NO. 8( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): SENATORS DAVIS, Ellis, Elton**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to a mental health patient's right to choose the gender of hospital staff  
2 providing intimate care to the mental health patient and to the duties of hospital staff in  
3 caring for patients receiving mental health treatment."

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

5 \* Section 1. AS 18.20 is amended by adding a new section to read:

6 **Sec. 18.20.095. Mental health patient's right to select staff; duties of**  
7 **hospital staff. (a) Except as provided in (d) of this section, a patient 18 years of age or**  
8 **older who is receiving mental health treatment and being provided intimate care at a**  
9 **hospital shall have a right to have care provided by a staff member who is the gender**  
10 **that the patient requests.**

11 (b) A supervisor or manager employed by a hospital shall

12 (1) post a notice of the right provided under (a) of this section in a  
13 conspicuous place; and

14 (2) if, after reasonable and good faith efforts to comply, the hospital is

1 unable to comply with the requirement under (a) of this section,

2 (A) document in the patient record that intimate care was  
3 provided by a licensed staff member of the gender opposite to the gender  
4 requested by the patient under (a) of this section; or

5 (B) if a licensed staff member is not on duty at the time of the  
6 patient's request under (a) of this section, document in the patient record that  
7 the care was provided by an unlicensed staff member of the gender opposite to  
8 that requested under (a) of this section.

9 (c) Staff members employed by a hospital shall, in regard to patients receiving  
10 mental health treatment,

11 (1) provide privacy for each patient, especially for patients who are the  
12 opposite gender and especially when patient care involves intimate bodily functions,  
13 unavoidable intimate touching, or nudity;

14 (2) except when necessitated by a medical emergency that is  
15 documented in the patient's record, avoid entering patient care areas for a person of the  
16 opposite gender and areas specified for persons of the opposite gender; and

17 (3) only conduct routine safety checks and rounds of bedrooms,  
18 bathrooms, and shower areas of a patient who is the same gender as the staff member.

19 (d) A hospital is exempt from the requirements of (a) of this section if the  
20 treating psychiatrist for the patient at the hospital determines that compliance would  
21 adversely affect patient treatment and the psychiatrist documents the determination in  
22 the patient's record.

23 (e) In this section,

24 (1) "intimate care" means hygienic care, including bathing, dressing,  
25 changing, and toileting that involves a patient's perineal area and, for a female patient,  
26 the patient's breasts; "intimate care" does not include activities done in preparation for  
27 medical procedures;

28 (2) "licensed staff member" means a person who is employed by the  
29 hospital to provide direct patient care and who is licensed or certified in the state as a  
30 physician or physician assistant under AS 08.64, direct-entry midwife under AS 08.65,  
31 nurse or nurse aide under AS 08.68, or physical therapist or occupational therapist

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under AS 08.84;

(3) "mental health treatment" means admission to a hospital primarily for electroconvulsive treatment or treatment with psychotropic medication, or admission to and retention in a health care institution for other mental health treatment;

(4) "staff member" means a person employed by a hospital to provide direct patient care.



James  
Shill/Admin/CORP/UHS  
02/04/2008 10:42 AM

To raygillespie@ak.net  
cc  
bcc

Subject Gender Choice legislation

Ray,

Here are some statistics and estimates on the gender choice legislation. Without pulling each medical record, the exact number of hospital adolescents this legislation could effect is very difficult to determine, as this legislation only affects North Star patients ages 16-17.

- Total number of hospital admission per year during 2007 = 924 (exact number, not an estimate). Some of these total admissions were the same child, i.e. re-admissions.
- North Star only takes children ages 4-17, no adults
- North Star is a voluntary facility, not court-ordered
- An *estimate* of adolescents with sexual issues during 2007 was 80-90
- An *estimate* of the total number adolescent patients who were 16-17 years of age admitted during 2007 was 170 - 180

To remind you of why we oppose to this legislation:

- 16 and 17 year old patients are adolescents, not adults: Medical decisions for the minors involve the parents or guardians, often the State of Alaska OCS. Therefore, there are additional protections against abuse for adolescents that don't exist for adults who are patients in a mental health hospital.
- Adolescent girls and boys will use this opportunity to sexually act out in front of the opposite sex: A significant number of adolescent girls and boys admitted for mental health treatment are sexually acting out
- This bill will unnecessarily subject staff to patients sexually acting out: Assigning staff of the same gender to provide intimate care often discourages sexually acting out by adolescent boys and girls. Subjecting staff to such behavior is not therapeutic for the boy or girl, and is abusive to staff.
- This bill impacts North Star operations when the issue doesn't involve North Star: The "problem" this bill reportedly addresses abuse that involved an adult in a government controlled mental health facility (API) where same gender staff was not present. The State of Alaska has the ability to implement internal controls to prevent this type of abusive situation in state run facilities without involving other mental health providers. Unlike this state run facility, North Star does not treat adults and does not allow staff of different gender to be alone with patients who are not clothed
- Reasonable controls are already exercised by North Star: When a patient is provided intimate care, a staff member of the same gender must be present
- This bill would increase staffing cost: This bill places a requirement on mental health hospitals to make reasonable efforts to provide both men and women medical staff. North Star does not have nurses and Mental Health Specialists of both gender available for all shifts on both adolescent boys and girls units. Accomplishing this goal, if additional male nurses could be recruited, would

Increase staffing costs and make employment decisions based on gender.

- When an adolescent boy or girl requests someone of the opposite gender provide intimate care, North Star would be forced to have two staff present. North Star feels it is inappropriate for staff to be alone with different gender patients when they are undressed. This could double the number of staff required for these activities.
- This bill could result in higher liability risks: There is higher liability risks associated with providing intimate care by staff of a different gender

James Shill  
CEO  
North Star Behavioral Health  
2530 DeBarr Road  
Anchorage, AK 99508  
907-258-7575  
907-277-7844 fax

# Alaska State Legislature

Interim: (May - Dec.)  
716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Phone: (907) 269-0144  
Fax: (907) 269-0148



Session: (Jan. - May)  
State Capitol, Suite 30  
Juneau, AK 99801-1182  
Phone: (907) 465-3822  
Fax: (907) 465-3756  
Toll free: (800) 770-3822

Senator Bellve Davis [bellve.davis@legis.state.ak.us](mailto:bellve.davis@legis.state.ak.us)  
<http://www.akdemocrats.org>

## Senator Bettye Davis

### Senate Bill 8

“An Act relating to a mental health patient’s right to choose the gender of hospital staff providing intimate care to the mental health patient and to the duties of hospital staff in caring for patients receiving mental health treatment.”

### Sponsor Statement

SB 8 provides that a mental health patient 18 years of age or older who is receiving mental health treatment and being provided intimate care at a hospital shall have the right to have care provided by a staff member who is the gender that the patient requests. Many of these patients have been traumatized by sexual and/or physical abuse in the past and they are very sensitive to being touched or assisted by hospital staff who provide intimate care, because the experience may trigger from original abuse feelings of fear, helplessness, distress, humiliation, and loss of trust in staff. The supervisor or manager employed by a hospital shall post notice of this right in a conspicuous place, so patients know they may exercise this right when they are concerned about the gender of staff responsible for their personal intimate care.

While it is understandable that a hospital may not always be able to comply with the requirement of choice of gender in all situations and requests due to staffing schedules and shortages on particular shifts or duty units, the bill requires that the facility document the non-compliance in the patient record that the intimate care was provided by a licensed or unlicensed staff member of a gender opposite that requested by the patient. This information might otherwise be ignored or lost. The information is also useful not only for confirming the good faith effort on the part of the institution to comply with the wishes of the patient, but for medical purposes as well in evaluating the effect on patient outcome, because individuals re-traumatized in this way are subject to chronic stress which can worsen serious mental illness and result in symptomatic relapses and repeated re-hospitalizations. Lastly, this bill will preserve information for inquiry into grievance procedures at mental health facilities under Title 47, which have been described as unduly burdensome by some patients, and easily circumvented or limited because the language is too broad.

RECEIVED

JAN 25 2008

Dear Senator Bert Stedman,  
Co-Chair, Senate Finance Committee,

January 22, '08

From the point of view of psychiatric patients and mental health patient advocates, it is important that Senate Bill 8 be passed.

Senate Bill 8 only asks that psychiatric institutions make a good faith effort at providing patient choice of gender of staff for intimate care services. There is no cost to what Senate Bill 8 is requesting.

There are approximately 80 or 90 psychiatric treatment locations in Alaska—the majority are listed as corporations or institutions. The institutions and corporations that provide intimate care services do not want any changes to the status quo. Corporations and institutions want to continue to provide staff of the gender of the institution's and corporation's choosing—not the patient's. That fact is not going to change until the institutions and corporations are asked to change by statute.

In a recent Alaska Supreme Court decision—the justices stated there is a clear, unavoidable tension between institutions, corporations seeking convenience, economics and patient rights. The justices saw it as a given that institutions and corporations were going to take shortcuts without laws / oversight.

Almost every psychiatric patient organization supports, in principle, the idea of giving patients the right to ask for their choice of gender of staff for intimate care services. It is seen as a way of reducing trauma in psychiatric institutions and reducing recidivism.

Please give Senate Bill 8 a speedy hearing or pass it out of the Senate Finance committee. Thank you for your help.

Mental Health Advocates,  
Faith Myers / Dorrance Collins  
3240 Penland Pkwy, Sp. 35  
Anchorage, AK. 99508  
(907) 929-0532

Cc: Sen. Bettye Davis

*Faith Myers*  
*Dorrance Collins*

Wednesday, February 6, 2008

9:00

SB 8 – Mental Health Patient Rights: Staff Gender

Proposed CS work draft, 25\_LS0101 \ E

Davis/Tom Obermeyer

New DHSS note

New DOC fiscal note

Teleconference:

Pat Higgins, Northstar Behavioral Health

SB 101 – Guardianship and Conservators

Previously Published FN's # 3 and #4

Sen. Ellis/Dana Owen

Deborah Behr, Chief Assistant Attorney General, Legislation and  
Regulation Section, Civil Division, Department of Law

Josh Fink, Public Advocate, Office of Public Advocacy, Department  
of Administration

Questions

Jennifer Strickler, Department of Commerce, Community and  
Economic Development

**SB**

**16**

**SFIN**

**FILE**

# SENATE COMMITTEE REPORT

DATE: 3/2/07

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: 3/27/07

State Affairs Committee considered SENATE BILL NO. 16

## SB 16 EXTEND REGULATORY COMMISSION OF ALASKA

"An Act extending the termination date for the Regulatory Commission of Alaska; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS SB 16 (CRA)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

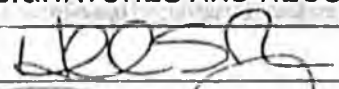

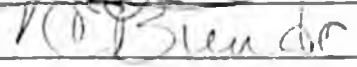
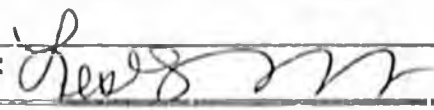
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
CCED	2/14	✓			1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French			X	
	Stevens			X	
	Bunde	✓			
CHAIR: 	McQuinn	✓			

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSSB 16(CRA)  
(S) Publish Date: 3/2/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Exle Regulatory RDU Regulatory Commission of Alaska (399)  
Commission of Alaska Component Regulatory Commission of Alaska  
Sponsor Therriault  
Requester Senate Community & Regional Affairs Component No. 2417

## Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services		5,364.6	5,364.6	5,364.6	5,364.6	5,364.6
Travel		55.0	55.0	55.0	55.0	55.0
Contractual		1,530.9	1,530.9	1,530.9	1,530.9	1,530.9
Supplies		56.9	56.9	56.9	56.9	56.9
Equipment		12.6	12.6	12.6	12.6	12.6
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>

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						
1141 - RCA Receipts		7,020.0	7,020.0	7,020.0	7,020.0	7,020.0
<b>TOTAL</b>	<b>0.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>	<b>7,020.0</b>

Estimate of any current year (FY2007) cost: 6,495.3

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

## POSITIONS

Full-time	57	57	57	57	57	57
Part-time						
Temporary						

## ANALYSIS: (Attach a separate page if necessary)

This legislation extends the Regulatory Commission of Alaska (RCA) to June 30, 2015. In accordance with AS 44.66.010, funding is extended one year following the termination date allowing the commission to conclude its affairs.

The RCA 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 it regulates.

Prepared by: Kate Giard, Chairman  
Division: Regulatory Commission of Alaska  
Approved by: Emil Notti, Commissioner  
Agency: Commerce, Community, and Economic Development

Phone 907-276-6222  
Date/Time 2/14/07 11:00 AM  
Date 2/14/2007

**SB**

**19**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 FEB 12 2007  
 SENATE FINANCE COMMITTEE

DATE: 2/2/07

FURTHER:

 DATE TURNED IN TO OFFICE: 12 Feb 2007
Finance Committee considered SENATE BILL NO. 19

## SB 19 EXEC. BRANCH ETHICS: INTERESTS & ACTIONS

"An Act relating to a public officer's taking official action regarding a matter in which the public officer has a financial interest; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

and recommends:

- be replaced with  SCS or  CS SB 19 (FIN)  
 adopt previous  SCS or  CS CS forthcoming  
 attached amendment(s)  
 adopt \_\_\_\_\_ Letter of Intent  
 further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

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**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

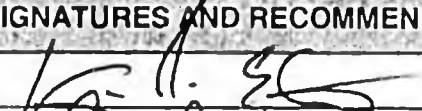

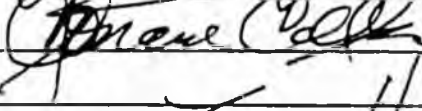
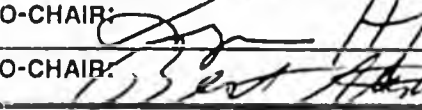

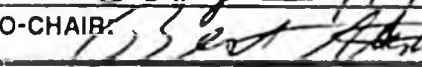
### NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	2/6/07			✓	

### PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	1/18/07			✓	#1
Admin	1/22/07			✓	#2

 APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton	✓			
	Thomas	✓			
	Huggins	✓			
	Olson	✓			
CO-CHAIR: 		✓			
CO-CHAIR: 	STRÖMMAN	✓			

REPORTED OUT  
 FEB 12 2007  
 SENATE FINANCE COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
 2007 LEGISLATIVE SESSION

Fiscal Note Number: 1  
 Bill Version: CSSB 19(JUD)  
 (S) Publish Date: 1/26/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title An Act relating to Executive branch ethics and RDU Civil Division  
the financial interests of public officers. Component Opinions, Appeals & Ethics  
 Sponsor Senator French  
 Requester Senate Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill amends the Ethics Act. It is unclear whether these amendments will change the department's workload. The amendments may result in increased detailed evaluation of the business interests of public officers; however, the budget impact is indeterminable since it is impossible to predict with any certainty how many complaints or questions will arise.

Prepared by: Robert Meinors, Acting Director  
 Division: Administrative Services Division  
 Approved by: Robert Meinors for Talis Colberg, Attorney General  
 Agency: Department of Law

Phone: 465-5427  
 Date/Time: 1/18/07 11:07 AM  
 Date: 1/18/2007

# FISCAL NOTE

REPORTED OUT  
**FEB 12 2007**  
 SENATE FINANCE COMMITTEE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: CSSB19-DOA-DOP-2-6-07  
 Bill Version: CSSB19(STA)  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title Exec Branch Ethics: Interests & Actions RDU Central Administrative Services  
 Component Personnel  
 Sponsor Senator(s) French, Elton, Mcguiro, Wielechowski..  
 Requester Senate Finance Component No. 56

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill will have no fiscal impact on the Division of Personnel. May require personnel board review.

Prepared by: Dianne Kiesel, Director  
 Division Division of Personnel & Labor Relations  
 Approved by: Kevin Brooks, Deputy Commissioner  
 Agency Department of Administration

Phone 465-4429  
 Date/Time 2/6/07 8:25 AM  
 Date 2/6/2007



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 12 Feb 2007 TIME: 9:40 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 2

FROM: MINDY ROWLAND  
SENATE FINANCE COMMITTEE SECRETARY  
PHONE: 465-4935  
FAX: 465-2187

NOTES: Final Please  
CS SB 19 FIN 25-LS0160\0

Cook/Wayne

2/9/07

Plus 1 amendment - attached

Thanks

Mindy

no rush

Won't need before Tues afternoon 2/13/07

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exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, [OR] determination, [BUT DOES NOT INCLUDE THE] proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures, [;] or [THE] proposal, consideration, or adoption of administrative regulations.

\* Sec. 4. AS 39.52.180(d) is amended to read:

(d) An individual who formerly held a position listed in this subsection [A FORMER GOVERNOR, LIEUTENANT GOVERNOR, OR HEAD OF A PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving that position [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. This subsection applies to the position of

(1) governor;

(2) lieutenant governor;

(3) head or deputy head of a principal department in the executive branch;

(4) director of a division or legislative liaison within a principal department in the executive branch;

(5) legislative liaison, administrative assistant, or other employee of the Office of the Governor or Office of the Lieutenant Governor in a policy-making position;

(6) <sup>member</sup> chair of a state board or commission that has the authority to adopt regulations, other than a board or commission named in AS 08.01.010;

(7) <sup>member</sup> chair of the governing board and executive officer of a state public corporation.

\* Sec. 5. AS 39.52.960(14) is amended to read:

(14) "official action" means performance of any duties in the course and scope of a public officer's employment, including review, advice,

CS FOR SENATE BILL NO. 19(FIN)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATORS FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS AND HUGGINS,  
Ellis, Stevens, Green, Kookesh, Davis, Olson, Hoffman, Cowdery, Stedman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to a public officer's taking official action regarding, or influencing, a  
2 matter in which the public officer has a personal or financial interest; relating to  
3 restrictions on employment after leaving state service; prohibiting certain persons from  
4 engaging in activity as lobbyists; and defining 'official action' under the Alaska  
5 Executive Branch Ethics Act and related law."

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

7 \* Section 1. AS 24.45.121 is amended by adding a new subsection to read:

8 (d) A former public official in the executive branch may not engage in  
9 activities as a lobbyist to the extent prohibited under AS 39.52.180(d).

10 \* Sec. 2. AS 39.52.110(b) is repealed and reenacted to read:

11 (b) Notwithstanding (a) of this section, a public officer's action or influence  
12 with respect to the officer's personal or financial interest in a specific matter is not a  
13 violation of public trust or a violation of this chapter

1 (1) if the public officer's action or influence in the matter would have  
2 only an insignificant or conjectural effect on the matter; or

3 (2) if the public officer's

4 (A) personal or financial interest is of a type that is possessed  
5 generally by the public or a large class of persons to which the public officer  
6 belongs;

7 (B) personal interest is insignificant; or

8 (C) financial interest is solely in regard to a business and  
9 neither the public officer nor a member of the public officer's immediate  
10 family

11 (i) owns a controlling interest in the business and the  
12 controlling interest has a fair market value of \$5,000 or more;

13 (ii) owns stock or options to buy stock that, when  
14 combined, equal more than one percent of the stock in the business or  
15 have a total fair market value of more than \$5,000;

16 (iii) owns or has an option to buy an equity interest in  
17 the business the fair market value of which is more than \$5,000 or one  
18 percent of the total fair market value of the business, whichever is less;

19 (iv) is a member of the board of directors or another  
20 governing body of the business;

21 (v) is an officer of the business;

22 (vi) provides or has an option to provide personal or  
23 professional services to the business;

24 (vii) has a contract or an option for a contract with the  
25 business; or

26 (viii) is an employee of the business.

27 \* Sec. 3. AS 39.52.180(a) is amended to read:

28 (a) A public officer who leaves state service may not, for two years after  
29 leaving state service, represent, advise, or assist a person for compensation regarding a  
30 matter that was under consideration by the administrative unit served by that public  
31 officer, and in which the officer participated personally and substantially through the

1 exercise of official action. For the purposes of this subsection, "matter" includes a  
 2 case, proceeding, application, contract, [OR] determination, [BUT DOES NOT  
 3 INCLUDE THE] proposal or consideration of legislative bills, resolutions and  
 4 constitutional amendments, or other legislative measures, [;] or [THE] proposal,  
 5 consideration, or adoption of administrative regulations.

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 9 PRINCIPAL DEPARTMENT IN THE EXECUTIVE BRANCH] may not engage in  
 10 activity as a lobbyist under AS 24.45 for a period of one year after leaving that  
 11 position [SERVICE AS THE GOVERNOR, LIEUTENANT GOVERNOR, OR  
 12 DEPARTMENT HEAD, AS APPROPRIATE]. This subsection does not prohibit  
 13 service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational  
 14 lobbyist as defined under regulations of the Alaska Public Offices Commission. This  
 15 subsection applies to the position of

16 (1) governor;

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 19 branch;

20 (4) director of a division or legislative liaison within a principal  
 21 department in the executive branch;

22 (5) legislative liaison, administrative assistant, or other employee  
 23 of the Office of the Governor or Office of the Lieutenant Governor in a policy-  
 24 making position;

25 (6) member of a state board or commission that has the authority  
 26 to adopt regulations, other than a board or commission named in AS 08.01.010;

27 (7) member of the governing board and executive officer of a state  
 28 public corporation.

29 \* Sec. 5. AS 39.52.960(14) is amended to read:

30 (14) "official action" means performance of any duties in the course  
 31 and scope of a public officer's employment, including review, advice,

Amend.  
#1

1 participation, assistance, or another kind of involvement regarding a matter,  
2 such as a recommendation, decision, approval, disapproval, vote, or other similar  
3 action, including inaction, by a public officer;

4 \* Sec. 6. AS 39.52.180(c) is repealed.

5 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
6 read:

7 APPLICABILITY. Sections 3, 4, and 6 of this Act apply to a person who leaves state  
8 service on or after the effective date of secs. 3 and 4 of this Act.

ADOPTED  
2/12/07

WORK DRAFT

WORK DRAFT

WORK DRAFT

25-LS01600  
Cook/Wayne  
2/9/07

CS FOR SENATE BILL NO. 19( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY

Offered:

Referred:

Sponsor(s): SENATORS FRENCH, ELTON, MCGUIRE, WIELECHOWSKI, THOMAS AND HUGGINS,  
Ellis, Stevens, Green, Kookesh, Davis, Olson, Hoffman, Cowdery, Stedman

A BILL

FOR AN ACT ENTITLED

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2 matter in which the public officer has a personal or financial interest; relating to  
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1 (1) if the public officer's action or influence in the matter would have  
2 only an insignificant or conjectural effect on the matter; or

3 (2) if the public officer's

4 (A) personal or financial interest is of a type that is possessed  
5 generally by the public or a large class of persons to which the public officer  
6 belongs;

7 (B) personal interest is insignificant; or

8 (C) financial interest is solely in regard to a business and  
9 neither the public officer nor a member of the public officer's immediate  
10 family

11 (i) owns a controlling interest in the business and the  
12 controlling interest has a fair market value of \$5,000 or more;

13 (ii) owns stock or options to buy stock that, when  
14 combined, equal more than one percent of the stock in the business or  
15 have a total fair market value of more than \$5,000;

16 (iii) owns or has an option to buy an equity interest in  
17 the business the fair market value of which is more than \$5,000 or one  
18 percent of the total fair market value of the business, whichever is less;

19 (iv) is a member of the board of directors or another  
20 governing body of the business;

21 (v) is an officer of the business;

22 (vi) provides or has an option to provide personal or  
23 professional services to the business;

24 (vii) has a contract or an option for a contract with the  
25 business; or

26 (viii) is an employee of the business.

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30 matter that was under consideration by the administrative unit served by that public  
31 officer, and in which the officer participated personally and substantially through the

1 exercise of official action. For the purposes of this subsection, "matter" includes a  
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4 constitutional amendments, or other legislative measures, [;] or [THE] proposal,  
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7 (d) An individual who formerly held a position listed in this subsection [A  
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18 (3) head or deputy head of a principal department in the executive  
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20 (4) director of a division or legislative liaison within a principal  
21 department in the executive branch;

22 (5) legislative liaison, administrative assistant, or other employee  
23 of the Office of the Governor or Office of the Lieutenant Governor in a policy-  
24 making position;

25 (6) chair of a state board or commission that has the authority to  
26 adopt regulations, other than a board or commission named in AS 08.01.010.

27 (7) chair of the governing board and executive officer of a state  
28 public corporation.

29 \* Sec. 5. AS 39.52.960(14) is amended to read:

30 (14) "official action" means performance of any duties in the course  
31 and scope of a public officer's employment, including review, advice,

1           participation, assistance, or another kind of involvement regarding a matter,  
2           such as a recommendation, decision, approval, disapproval, vote, or other similar  
3           action, including inaction, by a public officer;

4           \* Sec. 6. AS 39.52.18<sup>(c)</sup> is repealed.

5           \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
6           read:

7           APPLICABILITY. Sections 3, 4, and 6 of this Act apply to a person who leaves state  
8           service on or after the effective date of secs. 3 and 4 of this Act.

# Alaska State Legislature



Senator Hollis French

## Sponsor Statement

### SB 19 – Executive Ethics

---

SB 19 is a responsible step towards making the Executive Branch Ethics Act clearer, easier to understand, and easier to follow.

Currently the Ethics Act does not spell out clearly what sorts of financial interests constitute a conflict of interest. The bill sets out a series of bright financial lines for executive branch employees. For example, current law provides no guidance whatsoever as to the size of investment that an executive branch employee may own and still take official state action that affects the investment. SB 19 declares that either \$5000 worth of stock, or one percent of a company's stock, whichever is *less*, means that the executive branch employee must not be involved in state actions that impact that investment. While it seems like common sense to have such a concrete definition, current law does not provide one.

It is important to keep in mind that the key question is whether an executive branch employee owns the financial interest and then performs an official act that affects the financial interest. Either one without the other is not a violation.

The bill also describes with particularity other sorts of forbidden financial interests. An executive branch employee may not own a controlling interest in a business, may not own an equity interest in a business worth more than \$5000, may not be a member of a company's board of directors and may not be an employee of a business.

The bill also expands the definition of "official action" to more clearly capture the day to day duties of our executive branch employees.

The state's ethics laws should be clear to executive branch employees, and to the public those employees serve. Please join me in supporting SB 19.

**LEGAL SERVICES**

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

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

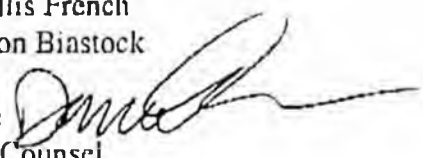
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

**MEMORANDUM**

February 6, 2007

**SUBJECT:** Sectional Analysis of CSSB 19(STA)  
(Work Order No. 25-LS0160L)

**TO:** Senator Hollis French  
Attn: Allison Biastock

**FROM:** Dan Wayne   
Legislative Counsel

You have requested a sectional analysis of the above-described bill.

As a preliminary matter, note that a sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 repeals AS 39.52.110(b), which currently says:

- (b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's
- (1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or
  - (2) action or influence would have insignificant or conjectural effect on the matter.

It would replace "substantial impropriety" in the first sentence with the proposed "violation of public trust or a violation of this chapter." It adds language, in subparagraph (C), that specifically describes types of financial interests that the bill considers ethical conflicts, instead of requiring a person interpreting the statute to make a subjective decision about whether or not a matter is "insignificant."

Section 2. In this section, the bill expands an existing provision that prohibits certain appointed or elected officials from serving as lobbyists for a year after leaving their post. The language was intended to exclude from the prohibition persons that are not in positions of authority or great influence in government law-making or policy-making, for example, as proposed by the committee, a "chair of a state board or commission that has

Senator Hollis French  
February 6, 2007  
Page 2

the authority to adopt regulations, other than a board or commission named in AS 08.01.010."<sup>1</sup>

Section 3 expands the existing definition of "official action" to include "performance of any duties" regarding a matter, instead of limiting the term to include only "recommendations, decisions, approval, disapproval, vote, or other similar action, including inaction." The change is not insignificant, as the term "official action" appears 9 other times in the Executive Branch Ethics Act.<sup>2</sup>

DCW:med  
07-081.med

---

<sup>1</sup> AS 08.01.010 lists various boards that appear to be occupied primarily with licensing requirements and professional standards.

<sup>2</sup> AS 39.52.110, 39.52.120, 39.52.130, 39.52.150(a), 39.52.150(b), 39.52.150(c), 39.52.180(a), 39.52.410(a), and 39.52.920.

# Alaska State Legislature



## Senator Hollis French

### Changes to SB19 in the Senate Judiciary Committee:

#### To Section 1:

- Language outlining what constitutes a conflict of interest was repealed and reenacted to clarify when a public officer's actions do not constitute a violation of the chapter.
- Language was added to clarify that business interests would be valued at fair market value; added language to make controlling interests consistent at \$5,000 with other caps, and added language in the title and at line six to ensure that the use of influence as well as specific action on behalf of personal or financial interests was covered under the act.
- Several small technical language changes were made at the request of the Department of law.

### Changes to SB19 in the Senate State Affairs Committee:

#### To Section 2:

- Inserted a "revolving door" provision from the Governor's ethics bill. Language added would exclude Deputy Department heads, Chairs of State Boards and Commissions who have the authority to adopt regulations (excluding licensing boards), Division Directors, and employees of the Office of the Governor involved in policy making from lobbying for a period of one year after leaving their position. This addition resulted in a bill title change.

Distributed by Senator Stedman  
February 7, 2007

903

ALASKA EXECUTIVE BRANCH ETHICS ACT

§ 39.52.190

**Sec. 39.52.170. Outside employment restricted.** (a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs.

(c) The head of a principal executive department of the state may not accept employment for compensation outside the agency that the executive head serves. (§ 1 ch 87 SLA 1986; am § 85 ch 74 SLA 1998)

NOTES TO DECISIONS

**Conflict of interest.** — Substantial evidence supported a finding that a consultancy created a conflict for a public official where he was hired by a Canadian governmental agency to count salmon on a river at a time when the United States and Canada were engaged in a dispute over fisheries management. *Skvorc v. State Personnel Bd.*, 998 P.2d 1192 (Alaska 2000).

**Compensation.** — Because current receipt of compensation is not required under this provision, the obtaining of a business license offering only a prospect of future compensation was sufficient to constitute a violation. *Skvorc v. State Personnel Bd.*, 998 P.2d 1192 (Alaska 2000).

\*

**Sec. 39.52.180. Restrictions on employment after leaving state service.** (a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval.

(d) A former governor, lieutenant governor, or head of a principal department in the executive branch may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving service as the governor, lieutenant governor, or department head, as appropriate. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. (§ 1 ch 87 SLA 1986; am § 86 ch 74 SLA 1998)

Distributed by Senator Stedman  
February 7, 2007

- 131. Examination of statements, reports
- 141. Civil penalty: Late registration, filing of required statements or reports

*Sec. 24.45.120. [Repealed, § 1 ch 167 SLA 1976.]*

**Sec. 24.45.121. Prohibitions.** (a) A lobbyist may not

- (1) engage in any activity as a lobbyist before registering under AS 24.45.041;
- (2) do anything with the intent of placing a public official under personal obligation to the lobbyist or to the lobbyist's employer;
- (3) intentionally deceive or attempt to deceive any public official with regard to any material fact pertinent to pending or proposed legislative or administrative action;
- (4) cause or influence the introduction of a legislative measure solely for the purpose of thereafter being employed to secure its passage or its defeat;
- (5) cause a communication to be sent to a public official in the name of any fictitious person or in the name of any real person, except with the consent of that person;
- (6) accept or agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action;
- (7) serve as a member of a state board or commission, if the lobbyist's employer may receive direct economic benefit from a decision of that board or commission;
- (8) serve as a campaign manager or director, serve as a campaign treasurer or deputy campaign treasurer on a finance or fund-raising committee, host a fund-raising event, directly or indirectly collect contributions for, or deliver contributions to, a candidate, or otherwise engage in the fund-raising activity of a legislative campaign or campaign for governor or lieutenant governor if the lobbyist has registered, or is required to register, as a lobbyist under this chapter, during the calendar year; this paragraph does not apply to a representational lobbyist as defined in the regulations of the Alaska Public Offices Commission, and does not prohibit a lobbyist from making personal contributions to a candidate as authorized by AS 15.13 or personally advocating on behalf of a candidate;
- (9) offer, solicit, initiate, facilitate, or provide to or on behalf of a person covered by AS 24.60, during a legislative session, a gift, other than food or beverage for immediate consumption; however, this paragraph does not prohibit a lobbyist from providing, during a legislative session or at any other time of the year, tickets to a charity event described in AS 24.60.080(c)(10), or a contribution to a charity event under AS 24.60.080(c)(11);
- (10) make or offer a gift or a campaign contribution whose acceptance by the person to whom it is offered would violate AS 24.60.

(b) A person may not employ for pay, or any consideration, or pay or agree to pay consideration to, a person to lobby who is not registered under AS 24.45.041 unless that person registers and that person does in fact so register before engaging in lobbying.

(c) A former member of the legislature may not engage in activity as a lobbyist before the legislature for a period of one year after the former member has left the legislature. This subsection does not prohibit a former member from acting as a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the commission. (§ 2 ch 167 SLA 1976; am § 1 ch 159 SLA 1984; am §§ 37, 38 ch 127 SLA 1992; am § 26 ch 48 SLA 1996; am § 1 ch 115 SLA 2003; am § 1 ch 10 SLA 2006)

# SENATE COMMITTEE REPORT

DATE: 1/26/07

FURTHER: Finance

DATE TURNED IN TO OFFICE: 2/2/07

State Affairs Committee considered SENATE BILL NO. 19

## SB 19 EXEC. BRANCH ETHICS: INTERESTS & ACTIONS

"An Act relating to a public officer's taking official action regarding a matter in which the public officer has a financial interest; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

and recommends:

- be replaced with  SCS or  CS SB 19 (STA)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

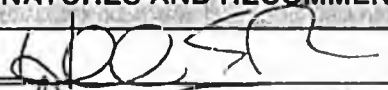


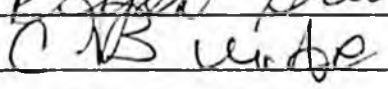
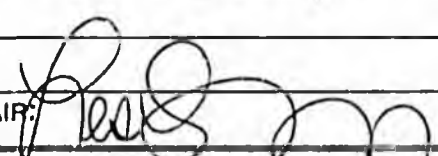
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
LAW	1/18			✓	1
ADMN	1/22			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	X			
	Stevens			X	
	Green	✓			
	Bunde			✓	
CHAIR: 	McLeure	X			

# SENATE COMMITTEE REPORT

## First Committee of Referral

DATE: 1/16/07

FURTHER: State Affairs  
Finance

Date of 5-Day Notice: 1/18/07  
(in accordance with Uniform Rule 23)

DATE TURNED  
IN TO OFFICE: 1/25/07

Judiciary Committee considered SENATE BILL NO. 19

### SB 19 EXEC. BRANCH ETHICS: INTERESTS & ACTIONS

"An Act relating to a public officer's taking official action regarding a matter in which the public officer has a financial interest; and defining 'official action' under the Alaska Executive Branch Ethics Act and related law."

and recommends:

- be replaced with  SCS or  CS SB19 (JUD)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Law	1/19/07			✓	1
Admin	1/22/07			✓	2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins	✓			
	Wielachowski	✓			
	French	✗			
	Theriault	✗			
	McClure	✓			
CHAIR:					

**SB**

**20**

**SFIN**

**FILE**

SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
FEB 12 2007  
SENATE FINANCE COMMITTEE

DATE: 2/2/07

FURTHER:

DATE TURNED IN TO OFFICE: 12 Feb 2007

Finance Committee considered SENATE BILL NO. 20

SB 20 LEGISLATIVE DISCLOSURES

"An Act relating to disclosure to the Alaska Public Offices Commission of information about certain income received as compensation for personal services by legislators, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous  SCS or  CS SB 20 (STA)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

**SENATE BILL:**  
 Same Title  
 New Title

---

**HOUSE BILL:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indef.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indef.	Zero	FN#
Admin	1/29/07			✓	#2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Elton	✓			
	Thomas	✓			
	Nugams	✓			
		✓			
CO-CHAIR:					
CO-CHAIR:	STEDMAN	✓			

# FISCAL NOTE

REPORTED OUT  
FEB 12 2007  
SENATE FINANCE COMMITTEE

**STATE OF ALASKA**  
**2007 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
Bill Version: CSSB 20(JUD)  
(S) Publish Date: 1/26/2007

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: An Act relating to disclosure to the Alaska Public RDU: AK Public Offices Commission  
Offices Commission of information about... Component: AK Public Offices Commission  
Sponsor: Senators French, Elton, McGuire, et al.  
Requester: Senate Judiciary Component No.: 70

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill requires that dividends received from a limited liability company must be reported as a source of income on a legislator's financial disclosure statement. It also requires that when a legislator performs services, such as consulting services, he or she must provide a description of the services provided and the total number of hours that are spent performing the services. Lastly, it removes the requirement that amount of income need only be disclosed for sources that have a substantial interest in legislative, administrative, or political action. Rather amounts will be required for all income in excess of \$1000.

Prepared by: Brooke Milos, Executive Director  
Division: Alaska Public Offices Commission  
Approved by: Melanie Millhorn, Deputy Commissioner  
Agency: Department of Administration

Phone 465-2200  
Date/Time 1/22/2007 11:10 a.m.  
Date 1/22/2007

(Revised 1/11/2006 OMB)

# FISCAL NOTE

REPORTED OUT  
FEB 12 2007  
SENATE FINANCE COMMITTEE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 20(STA)  
(S) Publish Date: 2/2/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
Title: An Act relating to disclosure to the Alaska Public RDU: AK Public Offices Commission  
Offices Commission of information about... Component: AK Public Offices Commission  
Sponsor: Senators French, Elton, McGuire, et al.  
Requester: Senate State Affairs Component No.: 70

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES ( )</b>	0.0	0.0	0.0	0.0	0.0	0.0
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2007) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill requires that dividends received from a limited liability company must be reported as a source of income on a legislator's financial disclosure statement. It also requires that when a legislator performs services, such as consulting services, he or she must provide a description of the services provided and the total number of hours that are spent performing the services. Lastly, it removes the requirement that amount of income need only be disclosed for sources that have a substantial interest in legislative, administrative, or political action. Rather amounts will be required for all income in excess of \$1000.

This bill should have no fiscal impact on the Alaska Public Offices Commission.

Proposed by: Brooke Miles, Executive Director  
Division: Alaska Public Offices Commission  
Approved by: Kevin Brooks  
Agency: Department of Administration

Phone: 465-2200  
Date/Time: 1/29/07 1:26 PM  
Date: 1/29/2007

# Alaska State Legislature



Senator Hollis French

## Sponsor Statement

### SB 20 – Legislative Disclosures

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SB20 is a simple bill designed to clarify Alaska Public Office Commission reporting requirements for legislators and other public officials.

Under the current legislative ethics code a public official must disclose the nature of any work performed as personal services for which compensation greater than \$1000 is received. SB20 simply adds language to the existing statute to require the filer to provide a substantive description of what was done for the contract, as well as the approximate number of hours spent.

The public has repeatedly appealed for more substantive disclosures, and SB20 provides the increased degree of openness they are calling for. This will assure the public that the compensation public officials receive for outside work does not conflict in any way with their public duties, without unduly burdening citizen legislators who perform legitimate duties outside of the public realm.

The clarification the bill provides will also help APOC fulfill its mission of encouraging the public's confidence in their elected and appointed officials.

Please join me in support of this important ethics legislation.

**LEGAL SERVICES**

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

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


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

**MEMORANDUM**

February 6, 2007

**SUBJECT:** Sectional Analysis of CSSB 20(STA)  
(Work Order No. 25-LS0161K)

**TO:** Senator Hollis French  
Attn: Allison Biastock

**FROM:** Dan Wayne   
Legislative Counsel

You have requested a sectional analysis of the above-described bill.

As a preliminary matter, note that a sectional analysis of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1 addresses an issue the Select Committee on Legislative Ethics identified in a recent advisory opinion. The deletion of "the" on line 11 and the insertion of language clarifies the statute's meaning. Until recently the statute had been interpreted to mean that unless a provision allowing, requiring, or prohibiting something under the Legislative Ethics Act specifically made itself applicable to former legislators, former public members of the committee, and former legislative employees, then those individuals were exempt from the provision. The Select Committee on Legislative Ethics has determined that this was a misinterpretation which, if followed, encouraged former legislators, former public members of the committee, and former legislative employees to believe that once they left service they would not have to disclose potential ethical conflicts that arose during the "interim reporting period," which begins 30 days before the end of the regular session and ends on the first day of the next following regular session.<sup>1</sup>

Section 2 proposes adding a new statute that clarifies the duty of former legislators, former legislative employees, and former public members of the public committee to disclose potential ethical conflicts that may have arisen during the time they served but were not reported before they left service, as described in the first section of this memo.

---

<sup>1</sup> AO-06-03.

Senator Hollis French  
February 6, 2007  
Page 2

Section 3 would amend the description of the type of financial information legislators, legislative directors, and public members of the committee are required to disclose under AS 24.60.200.<sup>2</sup> The new (underlined) language addresses an apparent gap in the existing law for dividend income from a limited liability company, adds a requirement that income in excess of \$1,000 for personal services be disclosed with a detailed description of services provided, hours worked, and, if the recipient of the income is a legislator or legislative director, the amount of income received from the source. (The existing law does not require the amount of income to be disclosed by anyone, unless the "source of income is known or reasonably should be known to have a substantial interest in legislative, administrative, or political action.")

Section 4 gives sec. 2 retroactivity to apply to former legislators, former public members of the committee, and former legislative directors that may have left service before the proposed effective date of the statute without being aware that they were required to make the ethical disclosures described in both section 2 and ethics advisory opinion AO 06-03.

Section 5 gives the Act a proposed effective date of July 1, 2007.

DCW:med  
07-082.med

Enclosure

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<sup>2</sup> There are other statutes within the Legislative Ethics Act that require legislative employees, in addition to legislators, public members of the committee, and directors, to disclose other types of information, including information about gifts received, close economic associations, etc.

716 W. 4th, Suite 230 Mailing Address:  
Anchorage, AK P.O. Box 101468  
(907) 269-0150 Anchorage, AK  
FAX: 269-0152 99510-1468

December 4, 2006

### ADVISORY OPINION 2006-03

#### Subject: Conflict of Interest - Disclosures

RE: Does AS 24.60 require a former legislator to disclose matters relating to potential conflicts of interest that existed during the time the legislator was in office?

You are a legislator and therefore covered by the Legislative Ethics Act. You have requested an advisory opinion concerning facts and circumstances that you have related. You have waived confidentiality. The committee relies on facts that you have described in answering your question.

#### Statement of Facts

Legislators are required by AS 24.60, the Legislative Ethics Act, to disclose matters relating to certain actual and potential conflicts of interest, within deadlines fixed by statute.<sup>1</sup> You have asked if disclosures under AS 24.60.105, 24.60.080(d), and 24.60.210, statutes which have a reporting date of March 15, 2007, must be filed by all legislators who held office in 2006 or only those legislators who are in office on March 15, 2007? Past practice has exempted former legislators, former legislative employees and former public members of the Select Committee on Legislative Ethics from filing requirements concerning the final reporting period of their tenure in office.

#### Discussion

Although nothing in the statutes cited in your request specifically exempts former legislators, former legislative employees, and former members of the select committee on legislative ethics from filing requirements, it has become the practice to exempt them from final reports due on March 15. AS 24.60.020(a) and (a)(1) (emphasis added) say:

- (a) *Except as otherwise provided in this subsection, this chapter applies to a member of the legislature, to a legislative employee, and to public members of the committee. This chapter does not apply to*  
(1) *a former member of the legislature or to a person formerly employed by the legislative branch of government unless the provision specifically states that it applies;*

This can be read to suggest that legislators and legislative employees are exempt from disclosure requirements the moment they become "former." However, the duty to disclose arises the moment the matter to be disclosed occurs, not on the final date a statute requires a report on the matter to be filed. The status of "former" is irrelevant in that respect. If a disclosable matter arises before a legislator, legislative employee, or public member of the Select Committee on Legislative Ethics becomes "former," then it must be disclosed; if it arises after, then it need not be disclosed. Leaving office does not amount to an amnesty from ethics disclosure requirements -- if it did then there would be a period in every legislator's career where the legislator could disregard much of the code of legislative ethics, safe in the knowledge that, once the legislator makes it past the last day of office, he or she will be safe from ethics-based scrutiny. It could also lead to the resignation of legislators who, suddenly accused of not making a disclosure, could resign rather than disclose a conflict that may have long existed.

Additional support for a reading of AS 24.60.020(a) that does not exempt former legislators and former legislative employees from filing final reports by March 15 is found in AS 24.60.010 (emphasis added), which says:

The legislature finds that

- (1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;
- (2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that *preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest*;
- (3) the public's commitment to a part-time citizen legislature requires legislators be drawn from all parts of society and the best way to attract competent people is to acknowledge that they provide their time and energy to the state, often at substantial personal and financial sacrifice;
- (4) a part-time citizen legislature implies that legislators are expected and permitted to earn outside income and that the rules governing legislators' conduct *during and after leaving public service must be clear, fair, and as complete as possible*; the rules, however, should not impose unreasonable or unnecessary burdens that will discourage citizens from entering or staying in government service;
- (5) in order for the *rules governing conduct to be respected both during and after leaving public service*, the code must be administered fairly without bias or favoritism;
- (6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment;
- (7) compliance with a code of ethics is an individual responsibility; thus all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates;
- (8) the purpose of this chapter is to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter.

AS 24.60.010(2) notes the importance of avoiding even the *appearance* of a conflict of interest.

Although AS 24.60.010 discourages imposing unreasonable or unnecessary burdens that will discourage legislators from seeking or staying in office, AS 24.60.010(4) and 24.60.010(5) suggest that compliance with disclosure requirements after leaving office is part of being a legislator.

### Conclusion

The committee finds that an appearance of a conflict of interest is too easily created when disclosure is not required in the circumstances you have described, and actual conflicts become too easy to conceal.

All of the reporting requirements in the Legislative Ethics Act apply for each day a legislator is in office, and although there are deadlines for filing reports, a legislator may file a report as soon as a disclosable matter arises, before the reporting deadline. Therefore, and for the reasons stated above, the committee finds that, as to any disclosable matter that arises during the time a legislator is in office, the former legislator is still required to disclose under AS 24.60 as if the legislator were still in office; but, as to any matter that arises after a legislator leaves office, the former legislator is not required by AS 24.60 to

make a disclosure.

Because of prior practice contrary to this opinion, this opinion shall be applied prospectively -- to legislators, legislative employees, and public members of this committee. In this instance, a legislator leaving office on the third Tuesday of January, 2007, which is January 16, is subject to the March 15, 2007, disclosure deadline for any previously unreported matter or interest that began or was in existence between April 10, 2006 (which is the 30th day before the regular session ended in 2006) and December 31, 2006. The same legislator is subject to the March 15, 2008 disclosure deadline for any matter or interest that began or was in existence between January 1, 2007 and January 16, 2007; however, the report can be filed at any time between January 16, 2007 and March 15, 2008, and may be filed separately from, or as an addendum to, the report due March 15, 2007.<sup>2</sup>

Adopted by the Select Committee on Legislative Ethics on December 4, 2006.

Members present and concurring in this opinion were:

H. Conner Thomas, Chair  
Representative Bruce Weyhrauch  
Senator Hollis French  
Senator Ralph Seekins  
Hernan G. Walker, public member  
Ann Rabinowitz, public member  
Dennis (Skip) Cook, public member  
Gary J. Turner, public member

Members dissenting from this opinion were: None.

Members absent were: Representative Les Gara

DCW:ljw:med  
06-329.ljw

<sup>1</sup> Among statutes with disclosure deadlines are: AS 24.60.030, 24.60.040, 24.60.050, 24.60.070, 24.60.080, 24.60.105, 24.60.200, and 24.60.210.

<sup>2</sup> AS 24.60.105(a):

(a) When a legislator or legislative employee is required to file a disclosure under this chapter and a date by which the disclosure must be filed is not otherwise set by statute, the deadlines set out in this section shall apply. *For disclosure of a matter or an interest that began or was acquired during the interim between regular legislative sessions, whether or not the regular session is extended or there is a special session, or during the last 30 days of a regular session, the legislator or legislative employee shall disclose the matter by March 15.* For disclosure of a matter or an interest that began or was acquired during a regular legislative session, but not during the last 30 days of the regular session, the disclosure must be made within 30 days after the commencement of the interest or representation. (Emphasis added)

# Alaska State Legislature



## Senator Hollis French

### **Changes to SB20 in Senate Judiciary:**

- Amended bill to make reportable dividend income consistent with \$1,000 reporting requirement elsewhere in the bill for other kinds of income;
- Deleted language that provided an exception for licensed professionals to provide a more limited description of their services, as well as the section defining "licensed professionals" as it pertained to that provision.

### **Changes to SB20 in Senate State Affairs:**

- Added language from the Governor's bill that states Legislators, legislative staff and public members of the Select Committee on Legislative Ethics file ethics disclosure forms within 90 days of leaving their position. This ensures that Legislators who are defeated in an election or leave office file disclosures for their last year of service. Title changed to reflect changes in the body of the bill.
- Added a new section that makes the above provision applicable to a person who is not a legislator on the effective date of this bill but served as a legislator between April 9, 2006 and the effective date, July 1, 2007.

# SENATE COMMITTEE REPORT

DATE: 1/26/07

FURTHER: Finance

DATE TURNED IN TO OFFICE: 2/2/07

State Affairs Committee considered SENATE BILL NO. 20

## SB 20 LEGISLATIVE DISCLOSURES

"An Act relating to disclosure to the Alaska Public Offices Commission of information about certain income received as compensation for personal services by legislators, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and providing for an effective date "

and recommends:

- be replaced with  SCS or  CS SB 20 (STA)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input type="checkbox"/> Same Title	
<input checked="" type="checkbox"/> New Title	
<hr/>	
<b>HOUSE BILL:</b>	
<input type="checkbox"/> Same Title	
<input type="checkbox"/> Technical Title Change	
<input type="checkbox"/> New Title w/ SCR # _____	



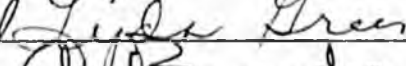


**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
ADMN	01/29			✓	2

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DC PASS	DO NOT PASS	NO REC	AMEND
	French	✗			
	Stevens	✗			
	Green	✓			
	Bunde	✓			
CHAIR: 	McGuire	✓			

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/16/07

FURTHER: State Affairs  
 Finance

Date of 5-Day Notice: 1/18/07  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 1/25/07

Judiciary Committee considered SENATE BILL NO. 20

**SB 20 LEGISLATIVE DISCLOSURES**

"An Act relating to disclosure to the Alaska Public Offices Commission of information about certain income received as compensation for personal services by legislators, public members of the Select Committee on Legislative Ethics, and legislative directors subject to the Legislative Ethics Act; and providing for an effective date."

and recommends:

- be replaced with  SCS or  CS SB 20 (JRO)
- adopt previous  SCS or  CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt \_\_\_\_\_ Letter of Intent
- further referral to \_\_\_\_\_ Committee

<b>SENATE BILL:</b>	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>HOUSE BILL:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	1/22/07			<input checked="" type="checkbox"/>	1

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	Huggins				<input checked="" type="checkbox"/>
	Wietechowski				<input checked="" type="checkbox"/>
	THERRAULT				<input checked="" type="checkbox"/>
	McGuire	<input checked="" type="checkbox"/>			
CHAIR:	French	<input checked="" type="checkbox"/>			

**SB**

**25**

**SFIN**

**FILE**

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSSB 25(STA)  
(S) Publish Date: 1/26/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue 04  
Title: State Planning and Budget RDU: Taxation and Treasury  
Component: Tax Division  
Sponsor: Senator Dyson  
Requester: Senate State Affairs Component No.: 2476

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

CAPITAL EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013

CHANGE IN REVENUES ( )	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
	0.0	0.0	0.0	0.0	0.0	0.0

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Part-time						
Temporary						

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

See attached.

Prepared by: Nels Tomlinson  
Division: Tax  
Approved by: Jerry Burnett  
Agency: Dept. of Revenue

Phone: (907) 465-5636  
Date/Time: \_\_\_\_\_  
Date: 1/24/2007

FISCAL NOTE # 3

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. CSSB 25(STA)

**ANALYSIS CONTINUATION**

**Bill Language:** This bill would require the governor to provide a long range financial plan for the state, including:

- \*a projection of revenue for the succeeding 25 years categorized by each major source of revenue,
- \*an explanation of any significant changes from previous projections
- \*and the assumptions on which the projections are made.

**Revenues:** This bill will have no effect on revenues.

**Expenditures:** The additional expenditures associated with this bill are indeterminate. After consulting with the bill's sponsor and with the governor's Office of Management and Budget, we believe that the projections required by this bill could be provided by a minor extension of our current revenues forecasts. The Tax Division of the Department of Revenue currently produces semi-annual revenue forecasts, and the succeeding two years' forecasts are published in the Revenue Sources Book. If the new projections can be fitted into our current framework of revenue projections, there would be no significant additional costs associated with this bill. Whether we can fit the required forecasts into our existing forecasting framework will depend upon the governor's eventual decision as to the level of accuracy and detail required.

# FISCAL NOTE

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSSB 25(STA)  
(S) Publish Date: 1/26/07

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Multiple  
Title: State Budget and Planning RDU \_\_\_\_\_  
Component \_\_\_\_\_  
Sponsor: Sen. Dyson  
Requester: Sen. State Affairs Committee Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**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)						
<b>TOTAL</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

Estimate of any current year (FY2007) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2008 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill would amend the Executive Budget Act to require the Governor's Office to prepare an annual 25 year long-range financial plan. In addition, the bill would impose a number of additional requirements that would affect a number of State Departments, relating to revenue projections, public building upgrades, State debt projections and strategies, and unfunded state liabilities.

The provisions relating to revenue projections and State debt affect the Department of Revenue. The provisions relating to public building upgrades would affect all State agencies that manage facilities, including the Departments of Administration, Corrections, Education, Commerce, Fish and Game, Health and Social Services, Military and Veterans Affairs, (continued)

Prepared by: Jack Kreinheder, Senior Analyst Phone 465-4676  
Division: Office of Management and Budget Date/Time 1/24/07 10:30 AM  
Approved by: Karen J. Rohfeld, Director Date 1/24/2007  
Agency: Office of Management and Budget

FISCAL NOTE # 2

STATE OF ALASKA  
2007 LEGISLATIVE SESSION

BILL NO. CSSB 25(STA)

ANALYSIS CONTINUATION

Natural Resources, Public Safety, and Transportation and Public Facilities. The provisions relating to unfunded state liabilities would primarily affect the Department of Administration.

In total, the provisions of SB 25 would require a considerable amount of staff time to conduct the work that is called for in the bill. It is likely that additional staff would have to be hired in the Governor's Office, and potentially in other departments, to conduct this work. The exact cost is difficult to determine without further analysis and workload planning; therefore, this fiscal note shows the costs as indeterminate.