

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4712 HJUD HB 340 - HB 344

28

**POSITION PAPER/Department of Health & Social Services**

Position Paper, CSHB 340 (L&C), pg. 2

Recommended by:

Elizabeth A. Ward  
Elizabeth Ward, M.N.  
Director  
Division of Public Health

Date:

February 2, 1988

Approved by:

Myra M. Munson  
Myra M. Munson  
Commissioner  
Department of Health and  
Social Services

Date:

February 9, 1988

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February 12, 1988

OF COUNSEL  
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\*ALASKA AND DISTRICT OF COLUMBIA BARS  
\*\*WISCONSIN BAR  
ALL OTHERS DISTRICT OF COLUMBIA BAR

Honorable Chairman Sund  
House Committee on Judiciary  
State Capitol Bldg.  
P. O. Box V (Mail Stop 3100)  
Juneau, AK 99811

Re: Good Samaritan Law Amendments  
(Our File No. 911.21)

Dear Chairman Sund:

We write on behalf of the Alaska Native Health Board and the Association of Regional Health Directors to comment on H.B. 340, a bill granting immunity from civil liability for individuals providing volunteer emergency services. This bill would amend AS 09.65.090 by adding a new subsection to Alaska's existing "Good Samaritan" statute.

The Good Samaritan statute promotes an important public policy by encouraging citizens (whether trained professionals or lay persons) to provide medical assistance to people suffering a medical emergency. The statute is particularly important given the ever-increasing tendency to turn to the courts to resolve all problems. While we believe that the protection of volunteers (addressed in the bill) is laudable, we also think the Committee should take this opportunity to address two additional serious health care issues in this area: (1) the liability of "Community Health Aides" providing emergency medical services, and (2) the liability of all persons who have a pre-existing duty to provide emergency services. We discuss these issues below.

Community Health Aides are the backbone of the health care delivery system throughout rural Alaska. In most villages, they are the only health care provider available in emergencies. As a consequence, Community Health Aides across the State feel a special obligation to assist those in need, especially those in

Honorable Chairman Sund  
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need of emergency services, and to do so with whatever training and limited resources they may have.

Community Health Aides have a growing fear that as personal injury tort litigation reaches further into rural Alaska, they will soon be faced with lawsuits. Indeed, this trend has already begun. The Health Aides are particularly concerned about their potential exposure when they administer emergency medical care under circumstances where decisions and actions must be taken immediately, guidance from a physician is unavailable, and a person's life is at stake.

Title 11 currently sets forth general protection for individuals who provide emergency care without first receiving the patient's consent (as where the person is unconscious or otherwise unable to give consent) (AS 11.81.430(a)(5)(B)). The more important statute, however is the section now under scrutiny by this Committee, AS 09.65.090 (emphasis added):

(A) A person at a hospital or any other location who renders emergency care or emergency counseling to an injured, ill or emotionally distraught person who reasonable appears to the person rendering the aid to be in immediate need of emergency aid in order to avoid serious harm or death is not liable for civil damages as a result of an act or omission in rendering aid.

(B) This section does not preclude liability for civil damages as a result of gross negligence or reckless or intentional misconduct.

On its face, Section 90 would appear to include Community Health Aides within its scope. Clearly a Community Health Aide would be a "person at a hospital or any other location who renders emergency care ...." In 1971, however, the Alaska Supreme Court construed an earlier version of Section 90 to exclude from coverage any person with a "pre-existing duty" to render aid. Lee v. State, 490 P.2d 1206 (Alaska 1971), overruled in part on other grounds, 545 P.2d 165 (Alaska 1976). A Community Health Aide acting in his or her capacity as a Health Aide would apparently have a pre-existing duty, and under Lee would not be shielded from suit.

The earlier statute construed by the Court in Lee covered "[a] person who, without expecting compensation, renders care to an injured or sick person ...." AS 09.65.090 (1968). Amendment of the law in 1976 to broaden the scope of coverage to "[a] person at a hospital or other location..." reflected the Legislature's intent to include persons with a pre-existing duty

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(such as nurses and doctors in a hospital emergency). The legislative history to the 1976 amendment confirms this point. Despite the Legislature's effort, the courts continue to exclude "pre-existing duty" persons from Alaska's Good Samaritan statute, as demonstrated in a very recent decision from the federal district court in Alaska. See Bunting v. United States, 662 F.Supp. 971, 973 (D.Alaska 1987). For this reason, it is clear that Section 90 requires further amendment.

We note that, Alaska has adopted a separate "good samaritan" statute to specifically protect emergency medical technicians (See AS 18.08.086(a)). This statute was amended in 1986 to broaden its scope to cover emergencies posing risks of serious harm (in addition to risks of death). As we understand it, much of the genesis for this statute and its 1986 amendment was concern over increasing tort litigation arising out of emergency situations where snap decisions must be made in order to save a person's life. The increased risk of litigation has in turn driven up insurance rates astronomically in recent years for emergency medical technicians, an additional strong incentive for this law and its 1986 amendment.

The situation with Community Health Aides is even more compelling than with emergency medical technicians and, we believe, justifies identical treatment by the Alaska Legislature. Specifically, Community Health Aides are required in identical circumstances to provide emergency aide as the only emergency care responders in their villages. In these villages there is no "emergency medical technician." Many (although not all) CHA's have taken EMT courses to enhance their ability to respond in such situations. Nevertheless, we are seeing a rising incidence of litigation and the threat of litigation in recent years. This has led to the same insurance crises for CHA's as for EMTs.

For these reasons, we suggest that this Committee clarify the Good Samaritan law in two ways. First, language should be inserted in Section 90(a) to expressly include Community Health Aides. Second, language should be inserted in the same section to expressly protect persons with a pre-existing duty. Under this proposal, Section 90(a) would be amended as follows, (new language underscored) (before addition of the language proposed in H.B. 340):

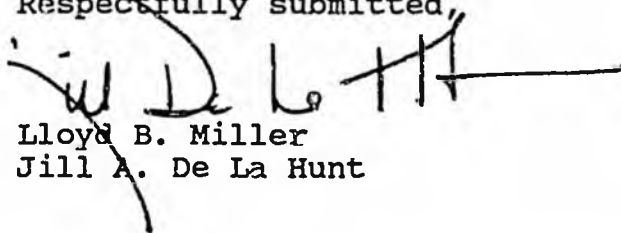
(A) a person at a hospital or any other location, including a community health aide, who renders emergency care or emergency counseling to an injured, ill or emotionally distraught person who reasonably appears to the person rendering the aide to be in immediate need of emergency aide in order to avoid serious harm or death is

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not liable for civil damages as a result of an act or omission in rendering aid, regardless of whether the person is under a pre-existing duty to render assistance.

We would be happy to elaborate at greater length the reasons why this amendment is so important and appropriate, and to furnish you with any additional information which you feel would be helpful.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "Lloyd B. Miller" and "Jill A. De La Hunt" written together. The signature is stylized and includes a long horizontal line extending to the right.

Lloyd B. Miller  
Jill A. De La Hunt

LBM:JAD/kg

cc: John Hartle



## National Ski Patrol System, Inc., Alaska Division

Marc D. Bond  
Winter Emergency Care Supervisor  
1007 West Third Avenue # 400  
Anchorage, Alaska 99501

W: (907) 279-3581  
H: (907) 345-6078

January 18, 1988

Representative Dave Donley  
Chairman, House Labor and Commerce Committee  
Mail Stop 3100  
P.O. Box V  
Juneau AK 99811

Re: House Bill 340: "An Act granting immunity from civil liability for providing volunteer emergency services."

Dear Chairman Donley:

I am a volunteer ski patroller at Alyeska Resort. Virtually all ski patrollers in Alaska are members of the National Ski Patrol System, Inc., a national volunteer organization which trains and provides ski patrollers who volunteer millions of hours each year to promote ski safety and to rescue lost and injured nordic and alpine skiers.

We rigorously train our patrollers in first aid, skiing and rescue techniques. Many people in Alaska owe their lives or physical health to the swift and careful care given them by Alaska ski patrollers.

Now we are finding that our patrollers are reluctant to become involved in rescue situations. Several have quit volunteering their time to patrol activities. These patrollers would like to help, but over the course of the last several years they have become afraid of being sued because of their participation in assisting lost and injured skiers.

Unfortunately we can do little to calm their fears. It is true that ski patrollers are infrequently sued. It is also true that these suits seldom result in judgments against the patrollers. Nevertheless, statistics mean little when you find yourself on the receiving end of a summons and complaint. I enclose a story from the Riverside (California) Mountain Rescue Unit newsletter telling about a \$12 million suit initiated against the organization and several of its members by an individual they had rescued.

It seems grossly unfair that one should volunteer time, money and effort to help others, and then be sued by the very ones helped.

Representative Dave Donley  
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As the late William Prosser stated, "The result of all this is that the good Samaritan who tries to help may find himself mulcted in damages, while the priest and the Levite who pass by on the other side go on their cheerful way rejoicing." W. Prosser, *The Law of Torts* § 56, at 344 (4th ed. 1971).

Our Supreme Court has held that the existing Good Samaritan Act does not apply to individuals who have a pre-existing duty to go to the aid of others. (*Lee v. State*, 490 P.2d 1206 (Alaska 1971)). When we put on our patrol parkas and post ourselves on ski hills and trails throughout the state, we wonder if the court would hold that ski patrollers, although volunteers, have that "pre-existing duty" to rescue injured skiers. If so, we lose the protection of the Good Samaritan Act, and can be sued for real or imagined injuries received during the rescue. We do not believe that represents good public policy, for it discourages volunteers from helping others -- the opposite intent of the Good Samaritan Act.

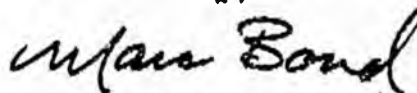
Recently Rep. Mike Davis introduced House Bill 340. I enclose a copy for your information. The Legislative Affairs Agency tells me that it has been initially referred to the Labor and Commerce Committee. Senator Fahrenkamp has introduced identical legislation in the Senate. Senate Bill 346.

House Bill 340 would remove the specter of ruinous litigation for volunteer members of rescue squads. I firmly believe it can be empirically demonstrated that enactment of this legislation would encourage many Alaskans to participate in volunteer rescue squads.

It should be noted that the bill does not attempt to eliminate liability for gross negligence or intentional acts. Such acts would provide a basis for litigation as noted in subsection (b) of AS 09.65.090. Thus, rescued individuals who are the victims of particularly abhorrent care would still be provided a forum to redress the matter.

I urge you to hold prompt hearings on House Bill 340. It is good public policy and ought to be enacted. If I can provide additional information, please let me know.

Sincerely,



Marc Bond

Enc.

cc: Harley Adamson  
Tom Smith  
Bob Janes

Walter  
FYI

no other info

Walker

**Riverside Mountain Rescue Unit Sued for Rescue**

In October, 1983, the Riverside Mountain Rescue Unit, Riverside, California was called to help in the rescue of a stranded man on the side of Box Springs Mountain above Riverside. The terrain was too difficult for the general laity to maneuver safely. Craig Fredborg, 23, was hiking with 2 friends when he slipped from a viewpoint and fell 70 feet. After Craig's friends found him, they moved him a short distance and then just waited. Thirty hours elapsed before the RMRU was called and arrived on the scene. Using the proper equipment and the proper methods, the rescue was carried out as quickly as safety for the injured and rescuers would allow.

A year later, the RMRU, along with several other organizations and individuals, finds itself on the receiving end of a twelve million dollar lawsuit filed by the young man who was rescued. Two of the individuals being sued are Walt Walker, President of RMRU (who was not even on the rescue mission) and his son, Kevin, who was a member of the rescue mission.

The Riverside Mountain Rescue Unit is one of the most active and highly respected rescue units in the country. Walt Walker, who has been with the rescue unit for 24 years, has an estimated 10,000 hours of volunteer time with the unit. He says, "To be sued by someone we voluntarily risked our own safety for is difficult, to say the least, to deal with. We wish to continue—we shall have to wait to see if we can."

Interestingly, since the lawsuit was filed, the RMRU has responded to ten calls within a few weeks, and eight people are alive because they came.

-RMRU Newsletter

# SEADOGS

## South East Alaska Dogs Organized for Ground Search

by Gloria Houston Way

Juneau — It was the day after Thanksgiving, cold, damp and gloomy, when all sane persons were settled in front of their cozy fires doing nothing more energetic than digesting leftovers. By late afternoon at the end of Basin Road, the steep mountains looming over Silver Bow Basin cut off what little direct light was left.

But there I was, shivering and stomping around, waiting for the SEADOGS to arrive, and wondering why I had given up my holiday afternoon to watch them work out. I think it was mostly curiosity to see if they would show up on such a day. But they did, dogs and handlers, just as they do week in and week out, year in and year out to prepare for every kind of weather situation, every kind of emergency and every kind of terrain they might encounter in a search.

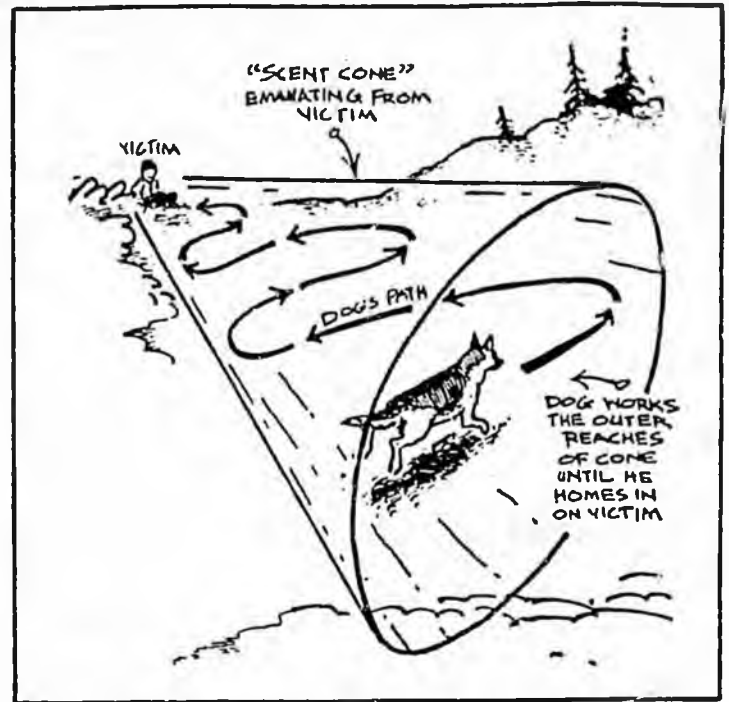
As a result of this constant training, Juneau's SEADOGS can search the wilderness for lost hunters, lost children, disoriented hikers. They can search in the dark, find an avalanche victim buried under thirty feet of snow, or locate victims under the rubble of a collapsed building. The SEADOGS also know how to ride chairlifts, snowcats, and helicopters, and run with skiers to an avalanche site — anything to get where they need to be.

On this November day, the steep wooded hillsides covered with underbrush, dead leaves, and old gold mining debris provided a challenging environment for the task at hand.

Today the practice would focus on grid searches for planted 'victims' hidden in the woods. The group is always recruiting volunteer victims for these practices -- people whose scent is unfamiliar to the dogs. My husband and daughter got roped into it this time. The dogs usually rely on air scenting more than on tracking ground scents. Juneau's climate and terrain — rain washed slopes, slick ledges and numerous bodies of water — make ground tracking useless after about half a day.

An air scent travels in a cone shape out from the victim. The dogs are trained to work from side to side of a theoretical cone until they hone in on a victim. If there is no wind there is little scent; but if there is any wind at all, a dog can pick up a scent a quarter of a mile away. Generally, the dogs will go across and into the wind to pick up a scent.

In avalanche situations, the scent will travel through the snow and 'pool' on the surface of the snow. The previous winter I had watched a demonstration of SEADOGS training for avalanche work. Beginner dogs were practicing finding victims buried in the snow — not too far away and not too deep. It was obvious the dogs loved this game, and especially the rewards and affection heaped on them when they finally led the searchers right to the victim. As their assignments get more challenging, Search and Rescue dogs eventually



become the most efficient method known for finding avalanche victims, once they are on the scene.

On this afternoon, the group quietly got organized, hiding victims and assigning one or more teams to search in different sectors for each victim. A dog can cover a lot of territory back and forth across a sector, saving his handler fruitless effort. When the dog finds the victim, he 'alerts,' then goes back to his handler, then back to the victim, then back and forth between the two until the handler finds the victim. Only then is the dog rewarded.

While the searches were going on, Bruce Bowler, unofficial spokesman for the group, told me a little more about SEADOGS and what it takes to be a successful SAR dog team.

SEADOGS, South East Alaska Dogs Organized for Ground Search, was first organized about ~~over~~ years ago

SEADOGS has been going ever since, although as in most volunteer groups there's been turnover and burn-out. The constant training and practice, as well as the 'on-call' nature of the commitment, insure that only the most dedicated endure.

Currently in Juneau there are four search teams (handler and dog) qualified to be on the Call Out List and five or six teams in the Support Group — still in training. It was obvious to me as I watched these teams work out that each handler loves dogs and each dog loves people. That seems to be the main prerequisite for a successful team.

Dogs are selected for their good disposition and general obedience, as well as their trainability, size, breed and sensitivity. Bruce thinks any medium to large working breed with high endurance can be suitable, providing he has the proper bonding, motivation and training. He also needs a double coat: for warmth, and for protection from Devil's Club — that bane of all

# SEADOGS

SOUTHEAST ALASKA DOGS  
ORGANIZED FOR GROUND SEARCH

PO BOX 244

JUNEAU, ALASKA 99802

1/15/88

REPRESENTATIVE MIKE DAVIS  
ALASKA STATE LEGISLATURE  
PO BOX V  
JUNEAU, AK. 99811

REPRESENTATIVE DAVIS:

I AM WRITING YOU IN SUPPORT OF HOUSE BILL 340, "AN ACT GRANTING IMMUNITY FOR VOLUNTEER EMERGENCY SERVICES". "SEADOGS" IS A STATEWIDE SEARCH AND RESCUE DOG ORGANIZATION WHICH PROVIDES TRAINED SEARCH DOGS AND HANDLERS TO THE STATE TROOPERS, COAST GUARD, AND AIRFORCE RESCUE CENTERS, AS WELL AS LOCAL LAW ENFORCEMENT AGENCIES ON A VOLUNTEER BASIS. OUR HANDLERS DEVOTE MANY HOURS OF THEIR PERSONAL TIME EVERY WEEK TRAINING FOR SEARCHES, AND THE TIME THEY SPEND IN THE FIELD SEARCHING FOR SOMEONE'S CHILD, A LOST HIKER OR HUNTER, OR SOMEONE TRAPPED IN AN AVALANCHE OR EARTHQUAKE RUBBLE IS PAID FOR OUT OF OUR OWN POCKETS. THIS BILL WOULD ALLOW TEAM MEMBERS TO OPERATE CONFIDENT IN THE KNOWLEDGE THAT ANY FIRST AID ADMINISTERED BY THEM, OR ANY ATTEMPTS TO ASSIST A LOST OR INJURED INDIVIDUAL WITHIN THE SCOPE OF OUR TRAINING, WOULD NOT BE MET BY CIVIL LIABILITY.

WE WHOLEHEARTEDLY SUPPORT THE BILL, AND REQUEST THAT YOU GIVE IT YOUR BEST EFFORTS.

SINCERELY,



L. BRUCE BOWLER  
PRESIDENT  
SEADOGS



**NATIONAL SKI PATROL SYSTEM, INC.**  
**ALASKA DIVISION**

\_\_\_\_\_ DIVISION

\_\_\_\_\_ TITLE

101 College Road  
Fairbanks, Alaska  
January 18, 1988

Representative Mike Davis  
Fairbanks Legislative Delegation  
Fairbanks, Alaska

Dear Representative Davis:

Re: House Bill # 340

Thank you for your interest in amending the "Good Samaritan" act in the State of Alaska.

The Ski Patrol is a volunteer organization dedicated to public service by promoting safe skiing and providing rescue services. All members are trained in emergency first aid care to the level of American Red Cross Advanced First Aid, or beyond. This bill will directly and immediately affect our position as volunteers.

As the Director of the Ski Patrol in Alaska, representing three hundred and fifty members, I strongly urge your support of Senate Bill #346 ,and request immediate action on said bill.

Thank you.

Sincerely,

Harley Adamson  
DIVISION DIRECTOR  
ALASKA DIVISION  
NATIONAL SKI PATROL SYSTEM

Put with  
File

PUBLIC OPINION MESSAGE

JAN 26 1988

DEAR: REPRESENTATIVE DAVIS

NAME: PHIL HOCKER  
TITLE: CIVIL AIR PATROL  
ADDRESS: 9631 STIKINE  
CITY: JUNEAU  
PHONE: 789-9507  
BILL NO: HB 340  
SUBJECT: IMMUNITY FOR VOLUNTEER RESCUE GROUPS  
MESSAGE: PLEASE SUPPORT THESE BILLS. THEY WOULD AID THE OPERATIONS OF THE CIVIL PATROL IN PROVIDING EMERGENCY SERVICES IN RESCUE SITUATIONS. SB 346 AND HB 340.

ZIP: 99801

POMID: 00165139  
DATE: 01/25/88  
TIME: 16:51:39  
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COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

ADAMS	BARNES	ABOOD
BOUCHER	BOYER	BINKLEY
BROWN	CATO	COGHILL
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DAVIDSON	DONLEY	ELIASON
ELLIS	FRANK	FAHRENKAMP
FURNACE	GOLL	FAIKS
GRUENBERG	GRUSSENDORF	FANNING
HANLEY	HERRMANN	FISCHER
HOFFMAN	HUDSON	HALFORD
KOPONEN	LARSON	HENSLEY
MARTIN	MENARD	JONES
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PHILLIPS	POURCHOT	KERTTULA
RIEGER	SHULTZ	RODEY
SPRINGER	SUND	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

file  
with  
Bill

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE DAVIS

NAME: JOHN M. KINNEY  
TITLE: CIVIL AIR PATROL  
ADDRESS: 1751 EVERGREEN AVE  
CITY: JUNEAU  
PHONE: 586-1857  
BILL NO: HB 340  
SUBJECT: IMMUNITY FOR VOLUNTEER RESCUE GROUPS  
MESSAGE: SUPPORT THESE BILLS AND URGE THEIR PASSAGE: HB 340 AND SB 346.

ZIP: 99801

POMID: 00110008  
DATE: 01/28/88  
TIME: 11:00:08  
LIONAME: JUNEAU LIO

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ADAMS	BARNES	ABOOD
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DAVIDSON	DONLEY	ELIASON
ELLIS	FRANK	FAHRENKAMP
FURNACE	GOLL	FAIKS
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HOFFMAN	HUDSON	HALFORD
KOPONEN	LARSON	HENSLEY
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MILLER	NAVARRE	JOSEPHSON
PEARCE	PETTYJOHN	KELLY
PHILLIPS	POURCHOT	KERTTULA
RIEGER	SHULTZ	RODEY
SPRINGER	SUND	STURGULEWSKI
SHACKHAMMER	TAYLOR	SZYMANSKI
ULMER	WALLIS	UEHLING
ZAWACKI		ZHAROFF

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 19, 1988

SUBJECT: Immunity for volunteers - CSHB 340(L&C)  
TO: Representative Mike Davis  
FROM: Edward H. Hein *EHA*  
Legislative Counsel

You asked that I comment on the issues raised at the House Judiciary Committee meeting on CSHB 340 (L&C). The issues mentioned and my comments follow.

1. Preexisting duty to rescue. This bill does not remove or impose a preexisting duty on anyone. Nor does the bill clarify who has a preexisting duty. The bill says that whether or not you have a preexisting duty to render assistance in an emergency, if you render aid while acting as a volunteer member of an emergency services organization you will not be held civilly liable for your negligence. The courts have not spelled out who has a preexisting duty and who does not. This bill provides immunity without regard to preexisting duty. The effect is to assure these volunteers that they have immunity just as ordinary citizens do under the good samaritan act, without have to decide whether the volunteers have a preexisting duty. Another way to look at it: the bill overrules the Lee case for emergency services volunteers.

2. Definitions of volunteer and compensation. The word "volunteer" can have different meanings. Ordinarily it refers to a person who does or offers to do something he is not under any obligation or compulsion to do. A volunteer may or may not be compensated in any way for his services. A volunteer may or may not be obligated to perform services or acts after volunteering. An example might be someone who volunteers for military service instead of being drafted. Another example is the Peace Corps or Vista volunteer. Whether the volunteer is to be compensated in any way, and whether the volunteer takes on any legal obligations to do

Representative Mike Davis

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anything, is ordinarily a matter of contract. In the context of this bill, I believe it is necessary to specify by definition who qualifies as a volunteer. Without a definition, it is not clear who is covered by the immunity. The definition in the bill addresses the question, "How much can a person be paid before he is no longer considered a volunteer?" The bill, by its terms, makes it unnecessary to address the question of whether a person must be under no preexisting duty in order to be considered a volunteer. Because questions have been raised about whether the definition of volunteer would allow volunteers to be compensated with ski lift tickets, you may wish to consider an amendment. At page 1, line 20, you could delete "received financial consideration of" and insert "is paid". This, I believe, would make it clear that only money payments are considered.

3. Liability of organizations. The bill provides immunity for organizations that exist for the purpose of providing emergency services, but the immunity applies only to the negligence of the organizations' volunteer members. If you wish to allow injured persons to hold an organization liable for the volunteer's negligence, I would suggest the following amendment: at line 11, delete "An organization and its members are" and insert "A member of an organization that exists for the purpose of providing emergency services is"; at line 14, delete "organization or members are" and insert "member is"; at lines 16 - 18, delete "(1) the organization exists for the purpose of providing the service rendered; and (2)".

4. Advanced life support. It was proposed by Representative Barnes and by the Department of Health and Social Services representative at the meeting that the bill be amended to provide that volunteers would not have immunity if they tried to administer advanced life support procedures without being certified under AS 18.08. If you wish to exempt such services from the immunity provision of AS 09.-65.090(c), I would suggest that you not use the definition of advanced life support in AS 18.08.090. That definition specifies that advanced life support is an emergency care technique provided under the written or oral orders of a physician. It would be clearer if you spelled out the techniques that are excluded from immunity coverage. For example, you might add this amendment: After line 23, insert "(d) The immunity provided under (c) of this section does not apply to civil damages that result from providing

Representative Mike Davis  
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or attempting to provide any of the following advanced life support techniques unless the person who provided them was authorized by law to provide them: (1) electric cardiac defibrillation; (2) administration of antiarrhythmic agents; (3) intravenous therapy; (4) intramuscular therapy; or (5) use of endotracheal intubation devices."

Note that under AS 18.08.084(c) and 18.08.088, a person who provides advanced life support services outside a hospital without being authorized by law is guilty of a misdemeanor, punishable by a maximum fine of \$1,000 and 90 days in jail. Also note that the amendment excluding advanced life support procedures from immunity would apply only to emergency services volunteers and only when they are "on duty." A person might be immune from civil liability for negligently administering advanced life support under the existing good samaritan act, AS 09.65.090(a). The immunity under that subsection would not apply if the person were under a pre-existing duty or if administering advanced life support amounted to gross negligence or reckless conduct.

EHH:bb  
wkb3/006



# Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V  
Juneau, Alaska 99811  
(907) 456-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708  
(907) 456-8161

TO: House Judiciary Committee  
FROM: Rep. Mike Davis  
DATE: March 7, 1988  
RE: HB 340, granting immunity from civil liability for providing volunteer emergency services.

You have back before you House Bill 340. The bill amends the Good Samaritan Act to protect members of volunteer first aid organizations from liability. In effect, this legislation overturns the Alaska Supreme Court decision in Lee v. State of Alaska and Frank Johnson (Alaska 490 P.2d 1206).

The Committee raised several concerns about the legislation. These issues are outlined in Ed Heic's memo, which is in your packet. I believe the CS prepared by the subcommittee addresses the concerns, and I support its passage.

The CS makes the following changes in the bill:

1. removes protection for organizations, while retaining immunity for their volunteers;
2. clarifies that it is emergency aid to injured persons that is protected by the bill;
3. clarifies that cash payments to volunteers are restricted, but not lift tickets or reimbursement for expenses.
4. excludes five advanced life saving techniques from coverage by the legislation.



# Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V  
Juneau, Alaska 99811  
(907) 456-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708  
(907) 456-8161

TO: Rep. John Suna *John*  
Chairman, House Judiciary Committee

FROM: Rep. Mike Davis *Mike*

DATE: February 26, 1988

RE: HB 340, granting immunity from civil liability for providing volunteer emergency services.

As you know, last week the House Judiciary Committee established a subcommittee to consider HB 340. This bill amends the Good Samaritan Act to protect volunteer first aid organizations and their members from liability. The subcommittee consists of Rep. Cotten, Rep. Taylor, and yourself.

The full committee raised several issues related to the bill. Attached is a memo from Ed Hein, legislative counsel, outlining these issues and offering some options for dealing with them. I have incorporated most of those amendments into the attached draft committee substitute.

If you have questions or concerns about the CS, please feel free to contact me. I would be happy to discuss the legislation with you. I hope HB 340 can be brought back before the full House Judiciary Committee early next week.

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

MEMORANDUM

January 11, 1988

SUBJECT: Immunity from civil liability for volunteer  
emergency services (Work Order No. 5-1495)

TO: Representative Mike Davis

FROM: Edward H. Hein *EHA*  
Legislative Counsel

You have asked whether volunteer ski patrol members are in fact open to liability for negligence during rescue operations and whether, therefore, your legislation (Work Order No. 5-1495A) is needed.

Your bill amends AS 09.60.090, Alaska's "Good Samaritan" law. This law provides immunity from civil liability for negligent acts or omissions by persons rendering emergency aid to people in immediate danger of serious harm or death. The purpose of the law is to encourage people to voluntarily come to the aid of persons in need of rescue without having to fear potential civil liability for negligence. Lee v. State, 490 P.2d 1206, 1209 (Alaska 1971).

The Alaska Supreme Court in Lee ruled that the immunity under this statute does not extend to persons, such as state troopers, who are under a "pre-existing duty to rescue." It is an open question whether ski patrollers have a pre-existing duty to rescue. The Alaska courts have not decided that question. It can be argued that ski patrollers are under a pre-existing duty to rescue and are, therefore, not immune from civil liability under Alaska's Good Samaritan Act. In order that ski patrollers and other similar rescue group volunteers are assured of immunity, it would be prudent to have the provisions of your bill or similar language in the statutes.

Representative Mike Davis

Page 2

January 11, 1988

If you have further questions or comments about this matter,  
feel free to contact me at your convenience.

EHH:gc  
WKG1:017

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act granting immunity  
from civil liability for...  
Sponsor: Davis et al.  
Requestor: \_\_\_\_\_

Agency Affected: Health & Social Services  
BRU: State Health Services  
Components: EMS Certification and  
Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 340 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090  
Division: Public Health Date: 1-20-88

Approved by Commissioner: *Maria M. Munson* Date: 1-20-88  
Agency: Department of Health & Social Services

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

STATE OF ALASKA 1987 LEGISLATIVE SESSION  
FISCAL NOTE

REQUEST  
Revision Date: \_\_\_\_\_  
Title: "An Act Granting immunity ... for providing ... emergency services."  
Sponsor: Rep. Davis, etc.  
Requestor: \_\_\_\_\_

Bill Version: HB340  
Publish Date: \_\_\_\_\_  
Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Components: Detachments

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY88	FY89	FY90	FY91	FY92	FY93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

No increase or decrease in the level of expenditures is anticipated as a result of the passage of this legislation.

Prepared by: Francis C. Allan  
Division: Alaska State Troopers  
Approved by Commissioner: Arthur E. English  
Agency: Public Safety  
Distribution: (by preparer):

Phone: 269-5691  
Date: 1/20/88  
Date: 1/20/88

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

# HOUSE COMMITTEE REPORT

Date referred: 1/11/88

FURTHER REFERRALS: Judiciary

DATE: 1/21/88

The Labor & Commerce Committee has considered HB 340

"An Act granting immunity from civil liability for providing volunteer emergency services."

**RECOMMENDS:**

- replace with CS 4B340 (L+C)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published \_\_\_\_\_
- zero with analysis

**SIGNING DO PASS:**

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**SIGNING OTHER RECOMMENDATIONS:**

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[Signature]  
Chairman's signature

HB

344



STATE OF ALASKA  
HOUSE OF REPRESENTATIVES

M E M O R A N D U M

DATE: March 1, 1988  
TO: House Judiciary Committee  
FROM: Representative Peter Goll *Peter Goll*  
SUBJECT: CSHB 344 (HESS)

Attached please find materials related to abuse of the disabled.

Physical and sexual abuse of mentally and physically disabled adults is a problem in Alaska and nationally.

HB 344 establishes mandatory reporting requirements and procedures for investigation of attacks on those adults who are so severely disabled that they are clearly unable to protect themselves.

The Division of Family and Youth Services reports that in 1986, there were 202 actual "reports of harm" to the elderly and 312 "reports of harm" to disabled adults under the age of 65 in Alaska.

That is a total of 514 reported cases in a single year. The reported cases represent only a portion of actual incidents.

Attached are:

1. Letter of support from the "Alaska State Association of Retarded Citizens".
2. Letter of support from the "Association of Retarded Citizens of Anchorage".
3. Letter to Rep. Peter Goll from Mr. David Maltman with original draft bill.
4. Sample case files.
5. An "Analysis of State Law and Proposed Model Legislation" covering this area of concern, published by the School of Social Work, Barry University, Miami Shores, Florida.
6. Samples of statutes similar to the language contained in HB 311, from two other states.
7. News articles.

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-11-88	1:30p.m.
H JUD	3-8-88	1:30p.m.
H. JUD	3-1-88	1:30p.m.

# HOUSE COMMITTEE REPORT

(7)

Date referred: 2/17/88

FURTHER REFERRALS:

DATE: March 11, 1988

The Judiciary Committee has considered HB 344

"An Act relating to physically and mentally disabled persons."

**RECOMMENDS:**

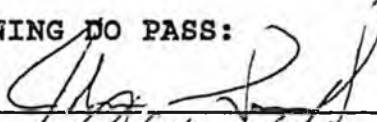
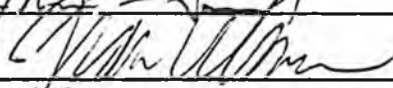
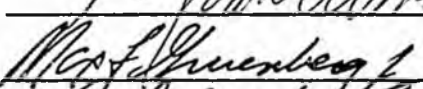
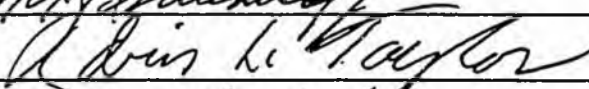
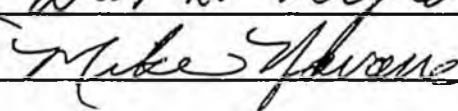
- replace with CS HB 344 (HESS)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

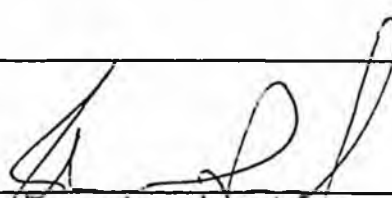
- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/17/88
- zero with analysis

**SIGNING TO PASS:**

  
  
  
  
  
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**SIGNING OTHER RECOMMENDATIONS:**

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Chairman's signature

Original sponsor: Health, Education and  
Social Services Committee

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 344 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the protection of persons with  
7 disabilities and to disabled adults who are victims  
8 of physical or sexual assault."

9

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

10

\* Section 1. AS 09.65.150(a) is amended to read:

11

(a) The driver of a vehicle approaching a physically disabled

12

pedestrian who is carrying a white or metallic-colored cane, or using

13

special equipment for mobility, or using a service animal, shall take

14

precautions necessary to avoid injury to the pedestrian or the service

15

animal. A driver who fails to take necessary precautions and, as a

16

result, causes injury to the pedestrian or the service animal, or

17

causes property damage, is liable [IN DAMAGES] for the injury or

18

damage caused.

19

\* Sec. 2. AS 11.76.130(a) is amended to read:

20

(a) A person commits the crime of interference with the rights

21

of a disabled person if the person intentionally prevents or restricts

22

(1) a physically or mentally disabled person from having

23

full and free pedestrian use of a street, highway, sidewalk, walkway,

24

or other thoroughfare, to the same extent that any other person has a

25

right to pedestrian use; or

26

(2) a physically disabled person from being accompanied or

27

assisted by a certified service animal, without an extra charge for

28

the service animal, in a common carrier, place of public accommoda-

29

tion, or other place to which the general public is invited, except as

1 (15) an employee of a homemaker program or home health aide  
2 program;

3 (16) an emergency medical technician or paramedic in the  
4 mobile intensive care program.

5 (b) A person who knowingly fails or refuses to make a report  
6 required under (a) of this section is guilty of a class B misdemeanor.

7 (c) In this section, "disabled adult" means a person 18 years of  
8 age or older who has a physical or mental disability, or physical or  
9 mental impairment, as defined in AS 18.80.300.

10 Sec. 47.24.120. IMMUNITY FROM LIABILITY; RETALIATION PROHIBITED.

11 (a) A person who in good faith makes a report under AS 47.24.110,  
12 regardless of whether the person is required to do so, is immune from  
13 civil or criminal liability that might otherwise be incurred or im-  
14 posed for making the report.

15 (b) An employer or supervisor of a person who in good faith  
16 makes a report under AS 47.24.110 may not discharge, demote, transfer,  
17 reduce pay or benefits or work privileges of, prepare a negative work  
18 performance evaluation of, or take other detrimental action against  
19 the person because the person made the report. The person making the  
20 report may bring a civil action for compensatory and punitive damages  
21 against an employer or supervisor who violates this subsection. In  
22 the civil action there is a rebuttable presumption that the detri-  
23 mental action by the employer or supervisor was retaliatory if it was  
24 taken within 90 days after the report was made.

25 \* Sec. 4. AS 28.15.031(b)(4) is repealed.

18  
-> unable to report  
-> 18.80.300 definitions

Original sponsor: Health, Education and  
Social Services Committee

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 344 (HESS)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the protection of persons with  
7 disabilities and to disabled adults who are victims  
8 of physical or sexual assault."

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

10 \* Section 1. AS 09.65.150(a) is amended to read:

11 (a) The driver of a vehicle approaching a physically disabled  
12 pedestrian who is carrying a white or metallic-colored cane, or using  
13 special equipment for mobility, or using a service animal, shall take  
14 precaution necessary to avoid injury to the pedestrian or the service  
15 animal. A driver who fails to take necessary precautions and, as a  
16 result, causes injury to the pedestrian or the service animal, or  
17 causes property damage, is liable [IN DAMAGES] for the injury or  
18 damage caused.

19 \* Sec. 2. AS 11.76.130(a) is amended to read:

20 (a) A person commits the crime of interference with the rights  
21 of a disabled person if the person intentionally prevents or restricts

22 (1) a physically or mentally disabled person from having  
23 full and free pedestrian use of a street, highway, sidewalk, walkway,  
24 or other thoroughfare, to the same extent that any other person has a  
25 right to pedestrian use; or

26 (2) a physically disabled person from being accompanied or  
27 assisted by a certified service animal, without an extra charge for  
28 the service animal, in a common carrier, place of public accommoda-  
29 tion, or other place to which the general public is invited, except as

1 provided in (b) of this section.

2 \* Sec. 3. AS 47.24 is amended by adding new sections to read:

3 ARTICLE 2. PROTECTION OF DISABLED ADULTS.

4 Sec. 47.24.110. REPORTS OF PHYSICAL OR SEXUAL ASSAULT. (a) The  
5 following persons who, in the performance of their professional  
6 duties, have reasonable cause to believe that a disabled adult is a  
7 victim of assault under AS 11.41.200 - 11.41.230 or sexual assault  
8 under AS 11.41.410 - 11.41.420, and that the disabled adult is unable  
9 to report the crime, shall promptly report the crime to the nearest  
10 law enforcement agency:

- 11 (1) a physician or other licensed health care provider;
- 12 (2) a mental health professional as defined in AS 47.30.-  
13 915;
- 14 (3) a pharmacist;
- 15 (4) an administrator or employee of a nursing home, resi-  
16 dential care, or health care facility;
- 17 (5) a caretaker of the disabled adult;
- 18 (6) a guardian or conservator of the disabled adult;
- 19 (7) a police officer as defined in AS 18.65.290;
- 20 (8) a village public safety officer;
- 21 (9) a village health aide;
- 22 (10) a social worker;
- 23 (11) a member of the clergy;
- 24 (12) a staff employee of a program or project serving dis-  
25 abled adults;
- 26 (13) a licensed foster care provider;
- 27 (14) a paid employee of a domestic violence and sexual  
28 assault program or a crisis intervention and prevention program as  
29 defined in AS 18.66.900;

*reasonable cause*  
*unable to report*  
*law enforcement*

*check off*  
*deleted*

47.17

0-18  
18-65  
> 65



1 (15) an employee of a homemaker program or home health aide  
2 program;

3 (16) an emergency medical technician or paramedic in the  
4 mobile intensive care program.

5 (b) A person who knowingly fails or refuses to make a report  
6 required under (a) of this section is guilty of a class B misdemeanor.

*Class B*

7 (c) In this section, "disabled adult" means a person 18 years of  
8 age or older who has a physical or mental disability, or physical or  
9 mental impairment, as defined in AS 18.80.300.

10 Sec. 47.24.120. IMMUNITY FROM LIABILITY; RETALIATION PROHIBITED.

11 (a) A person who in good faith makes a report under AS 47.24.110,  
12 regardless of whether the person is required to do so, is immune from  
13 civil or criminal liability that might otherwise be incurred or im-  
14 posed for making the report.

15 (b) An employer or supervisor of a person who in good faith  
16 makes a report under AS 47.24.110 may not discharge, demote, transfer,  
17 reduce pay or benefits or work privileges of, prepare a negative work  
18 performance evaluation of, or take other detrimental action against  
19 the person because the person made the report. The person making the  
20 report may bring a civil action for compensatory and punitive damages  
21 against an employer or supervisor who violates this subsection. In  
22 the civil action there is a rebuttable presumption that the detri-  
23 mental action by the employer or supervisor was retaliatory if it was  
24 taken within 90 days after the report was made.

25 \* Sec. 4. AS 28.15.031(b)(4) is repealed.

47.24      > 65

Sec 47 24.110 REPORTS OF PHYSICAL OR SEXUAL ASSAULT

- (c) In this section, "disabled adult" means a person 18 years of age or older who manifests a degree of impairment by reason of limited mental or physical function as a result of a developmental disability, accident, illness, or other cause.
- (d) In this section, "unable to report" means that the disabled adult is not able to report the assault due to the severity of the person's disability or the conditions of <sup>Care</sup> confinement.

The list of those required to report is based on the elder abuse statute 47.24.010. Peter maintains that members of the clergy should be included.

ourt to hear the  
of this section  
ewhere, before  
unicate the na-  
ommunication  
itive language,  
section applies

Alaska Native  
(Indian Child  
of Native chil-  
gs. (§ 1 art III  
104 SLA 1971;  
am § 132 ch 6  
38 SLA 1986)

lude provisions for  
part" in the sec-  
tituted "may not  
t operate to pro-  
ence.

. Sup. Ct. Op. No.  
422), 690 P.2d 10  
Sup. Ct. Op. No.  
. 704 P.2d 774

(6) "juvenile detention facility" means separate quarters within a city jail used for the detention of delinquent minors;

(7) "juvenile detention home" or "detention home" is a separate establishment, exclusively devoted to the detention of minors on a short-term basis and not a part of an adult jail;

(8) "minor" is a person under 18 years of age. (§ 1 art I ch 145 SLA 1957; am § 5 ch 110 SLA 1967; am §§ 5, 6 ch 27 SLA 1970; am §§ 27 — 28 ch 63 SLA 1977; am §§ 91, 92 ch 138 SLA 1986)

Revisor's notes. — Paragraph (5) was enacted as (a). Renumbered in 1986. Reorganized in 1985 and 1986 to alphabetize the terms defined.

Effect of amendments. — The 1986 amendment inserted "'care' or" and "47.10.120(a) and 47.10.230(c)" in paragraph (1) and added paragraph (5).

NOTES TO DECISIONS

"Minor" and "delinquent minor." — The general definition of "minor" in paragraph (8) is inapplicable to the detention of a delinquent minor until the minor's nineteenth birthday under AS 47.10.080,

47.10.100, and likewise, it is inapplicable to the responsibility to pay support for a delinquent minor committed under those sections. In re S.C.Y., Sup. Ct. Op. No. 3179 (File No. S-1509), P.2d (1987).

Chapter 17. Child Protection.

Section

- 20. Persons required to report
- 22. Training
- 23. Reports regarding child pornography
- 64. Photographs and x-rays

Section

- 68. Penalty for failure to report
- 69. Protective injunctions
- 70. Definitions

Sec. 47.17.010. Purpose.

NOTES TO DECISIONS

Cited in Gerlach v. State, Ct. App. Op. No. 468 (File No. A-501), 699 P.2d 358 (1985).

Sec. 47.17.020. Persons required to report. (a) The following persons who, in the performance of their occupational duties, have cause to believe that a child has suffered harm as a result of child abuse or neglect shall immediately report the harm to the nearest office of the department:

- (1) practitioners of the healing arts;
- (2) school teachers and school administrative staff members of public and private schools;
- (3) social workers;
- (4) peace officers, and officers of the Department of Corrections;
- (5) administrative officers of institutions;
- (6) child care providers;

(7) paid employees of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900.

(b) This section does not prohibit the named persons from reporting cases that have come to their attention in their nonoccupational capacities, nor does it prohibit any other person from reporting a child's harm that the person has cause to believe is a result of child abuse or neglect. These reports shall be made to the nearest office of the department.

(c) If the person making a report of harm under this section cannot reasonably contact the nearest office of the department and immediate action is necessary for the well-being of the child, the person shall make the report to a peace officer. The peace officer shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest office of the department.

(d) This section does not require a religious healing practitioner to report as neglect of a child the failure to provide medical attention to the child if the child is provided treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner of the church or denomination.

(e) A person listed in (a) of this section, who in the performance of the person's occupational duties has cause to believe that a child has suffered harm as a result of abuse, shall promptly report the harm to the nearest law enforcement agency if the person making the report (1) has cause to believe that the harm was caused by a person who is not responsible for the child's welfare; or (2) is unable to determine (A) who caused the harm to the child; or (B) whether the person who is believed to have caused the harm has responsibility for the child's welfare. If a person making a report under this subsection cannot reasonably contact the nearest law enforcement agency, and immediate action appears necessary for the well-being of the child, the person shall make the report to the nearest office of the department. The department shall take immediate action to protect the child and shall, at the earliest opportunity, notify the nearest law enforcement agency. In this subsection, "abuse" means the physical injury, sexual abuse, sexual exploitation, or maltreatment of a child by any person under circumstances that indicate that the child's health or welfare is harmed or threatened. (§ 1 ch 100 SLA 1971; am §§ 4, 5 ch 104 SLA 1982; am E.O. No. 55, § 42 (1984); am §§ 8 — 10 ch 39 SLA 1985; am § 2 ch 114 SLA 1986)

Effect of amendments. — The 1985 amendment rewrote subsections (a) and (b) and added subsection (d).

The 1986 amendment added subsection (e).

*Sec. 28.15.030. Persons not to be licensed. [Repealed, § 19 ch 178 SLA 1978.]*

**Sec. 28.15.031. Persons not to be licensed.** (a) The department may not issue a driver's license to a person who is under the age of 16 years, except that the department may issue a permit under AS 28.15.051 or a restricted license under AS 28.15.121.

(b) The department may not issue an original or duplicate driver's license to, nor renew or reinstate the driver's license of, a person

(1) whose license is suspended or revoked, except as otherwise provided in this chapter;

(2) who fails to appear in court for the adjudication of a certain vehicle, driver or traffic offense when the person's appearance is required by statute, regulation or court rule;

(3) who is an habitual user of alcohol or another drug to such a degree that the person is incapable of safely driving a motor vehicle;

(4) who has previously been adjudged to be afflicted with, or suffering from, a mental disability or a disease and who has not, at the time of application for the license, been restored to competency by the methods provided by law;

(5) when the department, based upon medical evidence, has determined that because of the person's physical or mental disability the person is not able to drive a motor vehicle safely;

(6) who is unable to understand official traffic control devices as displayed in this state or who does not have a fair knowledge of traffic laws and regulations, as demonstrated by an examination;

(7) who has knowingly made a false statement in the person's application for a license or has committed fraud in connection with the person's application for, or in obtaining or attempting to obtain, a license, or who has not applied under oath on the form provided for the purpose of obtaining or attempting to obtain a license or permit; or

(8) who is required under AS 28.20 to furnish proof of financial responsibility and who has not done so. (§ 19 ch 178 SLA 1978)

NOTES TO DECISIONS

Stated in Commercial Fisheries Entry 2011 (File No. 4464), 606 P.2d 1255 (1980).  
Comm'n v. Apokedak, Sup. Ct. Op. No.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 108 to 111.

60 C.J.S., Motor Vehicles, §§ 154, 155.

Constitutionality of statute which makes proof of financial responsibility condition of granting, or of nonsuspension

of, automobile registration license. or driver's license, 115 ALR 1376, 35 ALR2d 1011.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

HB 344  
Sec. 4  
Repeals  
(4)

Effect of amendments. — The 1984 amendment repealed paragraph (8), which defined "disposable earnings."

### Chapter 24. Protection of the Elderly.

Section	Section
10. Reports of harm	60. Authority of the department
20. Action on reports	70. Regulations
30. Protective services	75. Quarterly report
40. Review and referral	100. Definitions
50. Confidentiality of reports	

Cross references. — For statement of legislative purpose in enacting AS 47.24, see § 1, ch. 36, SLA 1983, in the Temporary and Special Acts.

81 C.J.S., Social Security and Public Welfare, § 1 et seq.

Licensing and regulation of nursing or rest homes, 97 ALR2d 1187.

Collateral references. — 70 Am. Jur. 2d, Social Security and Medicare, § 1 et seq.

Sec. 47.24.010. Reports of harm. (a) The following persons who, in the performance of their professional duties, have reasonable cause to believe that an elderly person has suffered harm shall, not later than 24 hours after first having cause for the belief, report the harm to the Department of Health and Social Services:

- (1) a physician or other licensed health care provider;
- (2) a mental health professional as defined in AS 47.30.915(11);
- (3) a pharmacist;
- (4) an administrator of a nursing home, residential care or health care facility;
- (5) a guardian or conservator;
- (6) a police officer;
- (7) a village public safety officer;
- (8) a village health aide;
- (9) a social worker;
- (10) a member of the clergy;
- (11) a staff employee of a project funded by the Older Alaskans Commission;
- (12) an employee of a homemaker program or home health aide program;
- (13) an emergency medical technician or a paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include

- (1) the name and address of the elderly person;

ingly, we hold the entry to have been unlawful. It follows that the motion to suppress should have been granted. Since no harmless error contention is made, the judgment must be reversed.

REVERSED.

BRYNER, C.J., not participating.



Gerald NICHOLSON, Appellant,

v.

STATE of Alaska, Appellee.

No. 6192.

Court of Appeals of Alaska.

Dec. 30, 1982.

Defendant was convicted before the Superior Court, Third Judicial District, Anchorage, Eben H. Lewis, J., of sexual assault in the second degree, and he appealed. The Court of Appeals, Singleton, J., held that: (1) although grand jury was improperly impaneled, defendant's failure to show prejudice rendered error harmless; (2) evidence was sufficient to take issue of attempted first-degree sexual assault to both grand jury and petit jury; (3) evidence was sufficient to sustain conviction of second-degree sexual assault; and (4) sentence of seven years imprisonment with six years suspended was not excessive.

Affirmed.

#### 1. Grand Jury ⇐26

Where order purporting to permit grand jury in judicial district other than one in which crime occurred to hear evidence of crime at apparent option of district attorney did not address defendant's case specifically, it could not authorize such grand jury to hear defendant's case. Rules Crim.Proc., Rule 6.

#### 2. Indictment and Information ⇐144.1(2)

Showing that a cognizable group of citizens existed and that such group was underrepresented on grand jury which returned indictment was insufficient to warrant dismissal of the indictment issued by grand jury that was improperly impaneled in judicial district other than one in which crime was committed.

#### 3. Criminal Law ⇐617

Where no formal motion for continuance to gather evidence to satisfy requirement of showing that cognizable group of citizens had been systematically excluded from grand jury selection process through improper impaneling of grand jury in judicial district other than one in which crime was committed was ever made or ruled upon, but only a passing reference was made to possible need for continuance in body of defendant's memorandum supporting motion to dismiss for improper impaneling of grand jury, and defendant never followed up on such issue or mentioned continuance at omnibus hearing when motion to dismiss was argued, request for continuance was abandoned.

#### 4. Indictment and Information ⇐10.2(9)

##### Rape ⇐57(1)

Evidence, including facts that defendant entered victim's home uninvited in early morning hours and undressed before entering her bed, was sufficient to take issue of attempted first-degree sexual assault to both grand jury and petit jury. AS 11.31.100(a), 11.41.41D, 11.41.470, 11.81.900(b)(40).

#### 5. Grand Jury ⇐1

Grand juries are concerned with facts, not statutes.

#### 6. Rape ⇐51(4)

Evidence of defendant's coercion in fondling victim's breasts was sufficient to sustain conviction of sexual assault in the second degree. AS 11.41.420(a).

#### 7. Rape ⇐64

Sentence of seven years imprisonment with six years suspended upon conviction of

sexual assault in the second degree, which was substantially more favorable than presumptive term for defendant as a second offender, was not excessive. AS 11.41.420(b), 12.55.125(d).

Myron E. Angstman, Bethel, and Walter Share, Anchorage, for appellant.

Charles M. Merriuer, Asst. Atty. Gen., Anchorage, and Wilson L. Condon, Atty. Gen., Juneau, for appellee.

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

### OPINION

SINGLETON, Judge.

Gerald Nicholson was convicted of sexual assault in the second degree, AS 11.41.420, and sentenced to seven years' imprisonment with six years suspended. He was also fined. He appeals, raising four issues for consideration. (1) The grand jury was improperly impaneled in Anchorage rather than Kodiak. (2) The evidence presented respectively to the grand and trial juries was insufficient to establish attempted sexual assault in the first degree. (3) The trial court erred in instructing the trial jury on second degree sexual assault because it was not charged in the indictment and it is not a lesser-included offense of attempted first degree sexual assault. (4) The sentence is excessive.

We hold that the grand jury was improperly impaneled in Anchorage rather than Kodiak but Nicholson has failed to show prejudice. We find sufficient evidence of attempted first degree sexual assault to sustain the indictment and warrant presentation to a trial jury and hold that Nicholson could be convicted of second degree sexual assault on this record. We also hold that his sentence was not excessive. We therefore affirm Nicholson's conviction and sentence.

### FACTS

K.R., age fifteen, and her sister, A.R., age fourteen, remained at their home in Dillingham

the night of June 10, 1980 and the early morning of June 11 while their parents were away from home commercially fishing. The two girls slept together in their parents' room. K.R. awoke at approximately 5:00 a.m. to find a naked Gerald Nicholson uninvited in bed with her, fondling her breasts, and kissing her. Taken by surprise, K.R. testified she hesitated for a moment, then jumped up, awakening A.R. who also immediately exited the bed. The frightened girls fled downstairs, armed themselves with butcher knives, telephoned a neighbor for help, and hid until the neighbor arrived. Nicholson was apprehended and identified.

While K.R. had seen Nicholson before, there is nothing in the record to suggest that he had reason to expect that K.R. would expect or welcome a visit from him during the early morning hours of June 11.

### SITUS OF THE GRAND JURY

Nicholson accosted K.R. in Dillingham in Election District Thirteen in the Third Judicial District. Grand juries convened in Kodiak are established to consider offenses occurring in Dillingham. See Alaska R.Crim.P. 6(b)(1)(v). Thus, it appears that the Anchorage grand jury impermissibly heard Nicholson's case. *Peterson v. State*, 562 P.2d 1350, 1365-66 (Alaska 1977). The state attempts to avoid this conclusion by pointing to an order by the then presiding judge of the Third Judicial District which read as follows:

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

In the Matter of Convening )  
Grand Juries in the Third )  
Judicial District )

#### ORDER

IT IS ORDERED that pursuant to Alaska Rule of Criminal Procedure 6(b)(2), Grand Juries may be convened in Anchorage, Alaska for crimes occurring in election districts 11, 12, 13 and 15 for the convenience of witnesses, defendants, other parties and for the court to provide for the expeditious resolution of criminal cases in the public interest.

DONE at Anchorage, Alaska this 1 day of July, 1980.

(SEAL)

Ralph E. Moody  
Presiding Superior  
Court Judge  
Third Judicial  
District

The state argues that this order permits Anchorage grand juries to hear evidence of any offense occurring in Election District Thirteen, at the apparent option of the district attorney, and is justified by Alaska Rule of Criminal Procedure 6(b)(2) which reads:

*Special Sites.* The presiding judge of a judicial district shall be empowered to call a special grand jury to be convened at a site other than the site designated in the preceding subsection, if the presiding judge determines that the designation of a special site is necessary in the interests of justice.

In *Peterson*, the court rejected this argument holding that an order by the presiding judge which establishes an alternate site for a grand jury to consider all offenses within a given election district exceeded the authorization provided in Criminal Rule 6(b)(2). 562 P.2d at 1365. We read *Peterson* to hold that a valid order under this subsection must address a specific case or specific subject for investigation and establish that factors differentiating that case or subject from typical cases warrants a special grand jury. Since the order in question did not address Nicholson personally, it could not authorize an Anchorage grand jury to hear his case.

[1] It could always be argued that grand juries in Anchorage cost the court system less and are more convenient for the district attorney's office than grand juries convened in Kodiak. These factors standing alone cannot justify a special grand jury under Criminal Rule 6(b)(2). We conclude that the presiding judge's order of July 1, 1980 violated Criminal Rule 6 and is, therefore, invalid.

[2] The *Peterson* court held that a dismissal of the indictment is not warranted for violations of Criminal Rule 6 unless the defendant establishes that a cognizable group of citizens has been systematically excluded from the grand jury selection process. The supreme court concluded that merely showing that a cognizable group exists and that such a group is underrepresented on the grand jury which returned

the indictment will not suffice. 562 P.2d at 1366. Here, Nicholson's showing parallels the showing found insufficient in *Peterson*. We therefore uphold the trial court's order denying dismissal of the indictment.

[3] Nicholson argues that he sought a continuance to gather evidence to satisfy the *Peterson* requirement and that the trial court abused its discretion in denying him a continuance for that purpose. No formal motion for a continuance was ever made or ruled upon. Nicholson made a passing reference to the possible need for a continuance in the body of his memorandum supporting his motion to dismiss. He never followed up on this issue or mentioned a continuance at the omnibus hearing when his motion to dismiss was argued. Therefore, we deem the request for a continuance abandoned.

We recognize that the order by the presiding judge relied upon by the state in this case violated Criminal Rule 6 as interpreted in *Peterson* in general and not only in this case. We also recognize that the showing that a cognizable group was completely excluded as required by *Peterson* will rarely be possible. For this reason, Nicholson argues that his indictment should be dismissed to insure future conformity to the rule. We do not believe such action is warranted at this time. We are confident that the superior court will henceforth follow *Peterson* and uniformly call grand juries at the designated sites to consider offenses arising within these election districts specified in Criminal Rule 6. We are further satisfied that the superior court will only utilize a special grand jury where the exigencies of a specific case demand it.

#### SUFFICIENCY OF THE EVIDENCE

[4] Nicholson argues that there was insufficient evidence to take the issue of attempted first degree sexual assault to either the grand jury or the petit jury. Nicholson did not testify. He argues, nevertheless, that his conduct would only support an inference that he wished to have sexual contact with a sleeping woman, i.e., fondle

her breast. He notes that uninvited sexual contact with a sleeping woman is not a crime under current Alaska law.

AS 11.31.100(a) provides:

A person is guilty of an attempt to commit a crime if, with intent to commit a crime, he engages in conduct which constitutes a substantial step toward the commission of that crime.

AS 11.41.410 provides in part:

(a) A person commits the crime of sexual assault in the first degree if,

(1) [B]eing any age, he engages in sexual penetration with another person without consent of that person. . . .

AS 11.41.470 provides in part:

(3) "[W]ithout consent" means that a person

(A) With or without resisting, is coerced by the use of force against a person . . . or by the express or implied threat of . . . imminent physical injury

Finally, AS 11.81.900(b)(40) provides:

"[P]hysical injury" means physical pain or an impairment of physical condition.

We believe a jury could reasonably infer that Nicholson intended to "penetrate" K.R. and that entering her bed naked and uninvited and fondling her were "substantial steps" toward the commission of that crime. We are satisfied that a jury could conclude that if Nicholson had intended only sexual contact, he would not have undressed before entering her bed and that if he did not intend to coerce her he would not have entered her home uninvited in the early morning hours when a jury could find that he knew her parents would be gone.

The issue of attempted first degree sexual assault was properly submitted to the grand jury and the petit jury. See *State v. Kekauialua*, 50 Hawaii 130, 433 P.2d 131 (1967); *People v. Shealy*, 51 N.Y.2d 933, 434 N.Y.S.2d 986, 415 N.E.2d 974 (1980).

Nicholson argues that he could not be convicted of second degree sexual assault because it was not mentioned in the indictment and is not a lesser-included offense of attempted first degree sexual assault.

[5] We agree that second degree sexual assault and attempted first degree sexual assault are both class B felonies, but the adjective "lesser" in Criminal Rule 31(c) refers to the relation between the elements of an offense not the relation between their penalties. Grand juries are concerned with facts, not statutes. See *State v. Thomas*, 525 P.2d 1092 (Alaska 1974). Under the cognate theory of lesser-included offenses generally followed in Alaska, see *Elisovsky v. State*, 592 P.2d 1221, 1226 (Alaska 1979), the facts found by the grand jury in this case should be examined to determine whether Nicholson had notice that he might be convicted of second degree sexual assault. Attempted sexual assault in the first degree and sexual assault in the second degree are closely related. Sexual penetration involves sexual contact and both offenses proceed on a theory of coerced assent. We conclude that the grand jury proceedings gave Nicholson sufficient notice of the risk that he might be convicted of second degree sexual assault to satisfy due process. The evidence before the grand jury did not differ materially from the evidence at trial. We note that Nicholson had access to a transcript of the grand jury proceedings. Alaska R.Crim.P. 6(m). It is clear that the indictment for first degree sexual assault was premised on Nicholson's sexual contact with K.R. when she woke up.

[6] Nicholson argues that there was insufficient evidence to convict him of sexual assault in the second degree. AS 11.41.420(a) provides:

A person commits the crime of sexual assault in the second degree if he coerces another person to engage in sexual contact by the express or implied threat of imminent death, imminent physical injury, or imminent kidnapping to be inflicted on anyone or by causing physical injury to any person, regardless of whether the victim resists.

AS 11.81.900(b)(51) provides:

"[S]exual contact" means

(A) the intentional touching, directly or through clothing, by the defendant of

the victim's genitals, anus, or female breast; or

- (B) the defendant's intentionally causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast.

AS 11.81.900(a)(1) provides:

[A] person acts "intentionally" with respect to a result described by a provision of law defining an offense when his conscious objective is to cause that result.

Nicholson intentionally engaged in sexual contact when he fondled K.R.'s breast. He argues, however, that he did not "coerce her to engage in sexual contact." We disagree. The evidence supports a finding that Nicholson could reasonably foresee that K.R. would be momentarily stunned by fear caused by Nicholson's unexpected and uninvited entry into her bed, in the early morning hours, enabling him to continue to caress her after she awoke. She testified she was temporarily in shock, and that she was afraid he would hurt her. Under these circumstances, we believe that a jury could find that K.R.'s momentary acquiescence in Nicholson's fondling her breast was "coerced by an implied threat of imminent physical injury" and thus constituted second degree sexual assault.

#### SENTENCE

[7] Nicholson argues that his sentence of seven years with ~~six years~~ suspended is excessive. Sexual assault in the second degree is a class B felony. AS 11.41.420(b). The maximum sentence is ten years' imprisonment. Presumptive sentences are respectively four and six years for second and third felony convictions. AS 12.55.125(d). The trial court carefully considered the criteria established by our supreme court in *State v. Chaney*, 477 P.2d 441 (Alaska 1970). In suspending most of the sentence imposed, the trial court specifically addressed rehabilitation and emphasized Nicholson's need for alcohol counseling. We have reviewed the record in light of *Austin v. State*, 627 P.2d 657 (Alaska App.1981), and have concluded that the sentence imposed

was substantially more favorable than the presumptive term for a second offender, *Connors v. State*, 652 P.2d 110 (Alaska App. 1982), and was not clearly mistaken. *McClain v. State*, 519 P.2d 811 (Alaska 1974).

The judgment and sentence of the superior court are AFFIRMED.



Arthur K. WETTANEN, Appellant,

v.

STATE of Alaska, Appellee.

No. 6352.

Court of Appeals of Alaska.

Jan. 14, 1983.

Defendant was convicted in the Superior Court, Fourth Judicial District, Gerald J. Van Hoomissen, J., of assault in the first degree, and he appealed. The Court of Appeals, Singleton, J., held that defendant's feet, whether shod or unshod, were "dangerous weapons" within meaning of assault in the first degree statute, where defendant used them to kick the victim whom he had already knocked down and the victim thereby suffered two broken ribs and a punctured lung.

Affirmed.

#### 1. Criminal Law ⇐1158(1)

In prosecution for assault in the first degree, trial court's finding that defendant caused the victim's physical injuries was not clearly mistaken. AS 11.41.200(a)(1).

#### 2. Assault and Battery ⇐56

Defendant's feet, whether shod or unshod, were "dangerous weapons" within meaning of assault in the first degree statute, where defendant used his feet to kick

DEPARTMENT OF PUBLIC SAFETY

BILL NO: CS HB 344

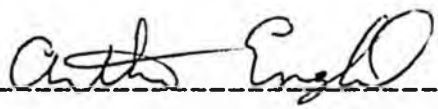
DATE: February 29, 1988

TITLE: An act relating to the protection of persons with disabilities and to disabled adults who are victims of physical or sexual assault

CONTACT: Barbara Miklos  
Council on Domestic Violence and Sexual Assault  
Department of Public Safety

The Council on Domestic Violence and Sexual Assault supports CS for House Bill 344 (HESS).

Section 3 protects persons with disabilities, who are themselves unable to report, from continued physical or sexual assaults by requiring reporting of these crimes to law enforcement. Although we all want to believe that people would automatically report these crimes against people who are very vulnerable, this is not always true. Not only does this legislation require reporting, it makes the statement that protecting people with disabilities is a priority in Alaska. It is also important that advocates who are skilled in crisis intervention and trained in the issues of people with disabilities are available to assure that victims with disabilities are given the services they require to overcome the trauma of the assault and are protected from future assaults.



Arthur English  
Commissioner

POSITION PAPER

CSHB 344

"An Act relating to the protection of persons with disabilities and to disabled adults who are victims of physical or sexual abuse."

EFFECT OF CSHB 344

Section 1 amends A.S. 09.65.150(a) to include responsibility for property damage incurred when a driver fails to yield for a physically disabled pedestrian so identified in this Section. "Property" under this Section could relate to the mobility aids and appliances utilized by the pedestrian.

Section 2 amends A.S. 11.76.130(a) and limits the crime of interference to those situations where the rights of a disabled person are intentionally prevented or restricted as described.

Section 3 requires certain professionals to report suspected criminal physical and sexual abuse of a disabled adult to the nearest law enforcement agency provided that the disabled adult is unable to report the abuse. CSHB 344 also provides immunity from liability and retaliation to the individual who is reporting the suspected abuse.

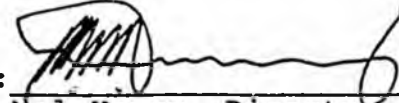
The bill appropriately distinguishes between those disabled people who are capable of reporting crimes themselves from those who cannot due to their disabilities. The former should be allowed to make their own decisions regarding reporting of crimes, while the latter must have assistance or they will go entirely unprotected.

Section 4 repeals A.S. 28.15.031(b) (4) which restricts the issuance of a driver's license if a person has a mental disability and has not been restored by the methods provided by law. This provision is unnecessarily restrictive and redundant. AS 28.15.031 (b) (5) provides the Department of Public Safety the authority to revoke or not grant a driver's license to a person with a mental or physical disability.

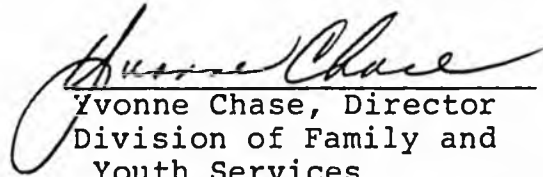
The Department of Health and Social Services (DHSS) supports CSHB 344. The department estimates that 312 reports of harm to disabled adults were received in 1986. Although DHSS attempts to respond to reports of abuse of disabled adults, DHSS currently does not have the necessary resources to provide an adequate level of adult protection services statewide. Further, this bill addresses reports of criminal conduct against adults which is appropriately investigated by law enforcement. The efforts of the two agencies working cooperatively in appropriate cases will further the protection available to disabled people.

CSHB 334 helps by providing a mechanism by which people who are aware of criminal physical and sexual abuse of disabled people are required to report these crimes to the appropriate law enforcement agency. In addition, CSHB 344 clarifies existing law with regard to interference with disabled persons.

Recommended by:

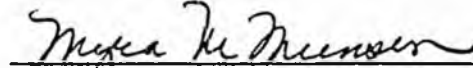


Mel Henry, Director  
Division of Mental Health  
and Developmental Disabilities



Yvonne Chase, Director  
Division of Family and  
Youth Services

Approved by:



Myra M. Munson  
Commissioner  
Department of Health  
and Social Services

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 344 (HESS)  
PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Relating to the Protection of  
Persons with Disabilities...  
Sponsor: HESS COMMITTEE  
Requestor: \_\_\_\_\_

Agency Affected: HEALTH and SOCIAL SERVICES  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-


FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

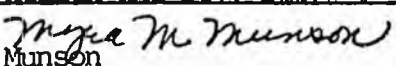
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Mel Henry, Director  Phone: 465-3370

Division: Division of Mental Health and Dev. Disabil. Date: 2/29/88

(P) Approved by Commissioner: Myra M. Munson  Date: 3/1/88  
Agency: Health and Social Services

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

POSITION PAPER

HB 344

"An Act relating to the rights of physically and mentally disabled persons."

EFFECT OF House Bill 344

A.S. 09.65.150(a) is amended to include responsibility for property damage incurred when a driver fails to yield for a physically disabled pedestrian so identified in this Section.

"Property" under this section could relate to the mobility aids and appliances utilized by the pedestrian.

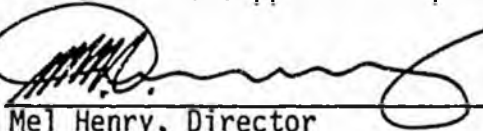
A.S. 11.76.130(a) is amended to limit the crime of interference to those situations where the rights of a disabled person are intentionally prevented or restricted as described.

A.S. 28.15.031(b)(4) repeals existing statutory authority to restrict the issuance of a driver's license if a person has a mental disability and has not been restored by the methods provided by law. This need is already addressed in subsection (5).

RECOMMENDATION

The Department of Health and Social Services supports the passage of House Bill 344.

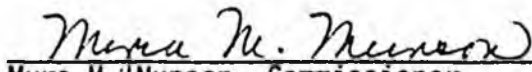
Recommended by:

  
\_\_\_\_\_  
Mel Henry, Director

Date:

21<sup>st</sup> January, 1988

Approved by:

  
\_\_\_\_\_  
Myra M. Munson, Commissioner

Date:

Feb 1, 1988

STATE OF ALASKA  
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 344 (HESS)  
PUBLISH DATE: HOUSE 2/17/88

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Health & Social Services  
 Title: relating to the rights of physically and mentally disabled persons BRU: \_\_\_\_\_  
 Sponsor: HESS Committee Components: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	-0-					
TRAVEL	-0-					
CONTRACTUAL	-0-					
SUPPLIES	-0-					
EQUIPMENT	-0-					
LAND & STRUCTURES	-0-					
GRANTS, CLAIMS	-0-					
MISCELLANEOUS	-0-					
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 344 would have no direct fiscal impact on the Department of Health & Social Services.

Prepared by: Mel Henry, Director of Mental Health & D.D.  
 Division: Division of Mental Health & Develop. Dis.

Phone: 465-3370  
 Date: 1/21/88

Approved by Commissioner: Myra Munson  
 Agency: Health & Social Services

Date: 2-1-88

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An act relating to the protection of persons w/ disabilities  
Sponsor: HESS  
Requestor: House Judiciary

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

\_\_\_\_\_

Prepared by: Barbara Miklos <sup>bmm</sup> Phone: 465-4356  
Division: Council on Domestic Violence & Sexual Assault Date: February 29, 1988  
Approved by Commissioner: [Signature] Date: 2-29-88  
Agency: [Signature]

Distribution (by preparer):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

# HOUSE COMMITTEE REPORT

2/17

(7)

Date referred: 1/11/88

FURTHER REFERRALS:

Judiciary

DATE: 2-16-88

The Health, Education and Social Services Committee has considered HB 344

"An Act relating to physically and mentally disabled persons."

**RECOMMENDS:**

- replace with CS HB 344 (HESS)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact
- zero fiscal note
- zero with analysis
- same as previous fiscal note published \_\_\_\_\_
- same as previous zero fiscal note published \_\_\_\_\_

**SIGNING DO PASS:**

*Phil Koppen*  
*Alyce Stanley*  
*Paul E. Kelly*  
*John Ellis*  
*Bill Hays*  
*Steve Murrell*  
*David Donley*

**SIGNING OTHER RECOMMENDATIONS:**

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

*John Ellis*  
 Co Chairman's signature  
*Phil F. Koppen*

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

October 19, 1987

TO: REPRESENTATIVE NIILLO KOPONEN, CO-CHAIR HOUSE HESS  
COMMITTEE  
REPRESENTATIVE JOHNNY ELLIS, CO-CHAIR HOUSE HESS  
COMMITTEE

FROM: MAX F. GRUENBERG, JR. *max*

RE: INTRODUCING "AN ACT RELATING TO PHYSICALLY AND MENTALLY  
DISABLED PERSONS" AS A HESS COMMITTEE BILL

I would very much appreciate it if we could introduce the  
attached draft bill as a HESS Committee bill.

This bill clarifies certain portions of SB 1, which was signed  
into law by the Governor.

Section 1 of the bill requires the driver of a vehicle who  
causes property damage to a physically disabled person's  
property, such as a wheelchair, to pay for damages. There is  
no provision in SB 1, now Chapter 69, SLA 1987, to compensate  
a victim if his property is damaged or destroyed.

Section 2 clarifies AS 11.76.130(a) to require that a person  
must intentionally interfere with the rights of a disabled  
person to be guilty of a Class "B" misdemeanor. Thus, a  
person repairing his sidewalk, for example, would not be  
criminalized.

Both of these changes certainly reflect our legislative intent  
in HB 172 last year, now SB 1, passed this year.

Section 3 removes a superfluous requirement for determining  
eligibility for driver's licenses. The Division of Motor  
Vehicles already under (5) of this section, retains the  
ability to refuse a license or permit for a person with a  
present mental disability. Many people have received

counseling or, at one time were mentally ill. Very few were legally adjudged incompetent. Fewer still were formally restored to competency by the methods provided by law. The mental health community strongly supports the repeal of AS 28.15.031(a)(4). Subsection (5) gives the DMV sufficient authority to protect the public.

I would like to make a motion at our Friday, October 23 meeting that the HESS Committee sponsor the bill and have it pre-filed.

If any committee member objects or requests any amendment (deletion or addition), please contact me at my law office, 276-6844, and I'll be happy to assist.

Thank you very much.

cc: All HESS Committee members



Association for Retarded Citizens of Alaska, Inc.

2211-A Arca Drive, Anchorage, Alaska 99508 • (907) 277-6677

January 23, 1988

Representative Peter Goll  
513 Capitol Building  
P.O. Box 4  
Juneau, Alaska 99811

RE: House Bill 311  
For an act entitled, "An Act Relating to Protection of Adults with  
Disabilities who are Victims of Abuse, Neglect or Exploitation."

Dear Representative Goll:

I am writing this letter in behalf of the Board of Directors of the Alaska State Association of Retarded Citizens, who at its January 16, 1988 Board meeting unanimously supported the passing of House Bill 311.

The Alaska State Association for Retarded Citizens is comprised of families, consumers, and professionals all dedicated to speak out in behalf of the interests and rights of persons who are mentally retarded/developmental disabled. We feel that the bill will provide for the protection of those individuals who due to their disability are not able to speak out for themselves.

Again, our strong support for this bill is encouraged. If I can be of any further assistance, please do not hesitate to contact me at 277-6677.

Sincerely,

Mary Jane Starlings  
Executive Director

Margaret R. Lowe, President  
Board of Directors

MJS/sls  
cc: Fran Ulmer



January 23, 1988

Representative Peter Goll  
513 Capitol Building  
P.O. Box V  
Juneau, Alaska 99811

RE: House Bill 311  
For an act entitled, "An Act Relating to Protection of  
Adults with Disabilities who are Victims of Abuse, Neglect  
or Exploitation."

Dear Representative Goll:

I am writing this letter in behalf of the Board of Directors of the Association of Retarded Citizens of Anchorage, who at its January 14, 1988 Board meeting unanimously supported the passing of House Bill 311.

The Association for Retarded Citizens of Anchorage provides residential services for persons who are mental retarded/developmentally disabled. We feel that this bill will provide for the following:

1. The assurance that adults with mental retardation will live in a safe program providing quality training leading to the least restrictive and most normalized setting possible.
2. That professionals in residential, vocational, respite and other services provided to adults with mental retardation who have reasonable cause to believe that an individual has suffered harm as a result of abuse, neglect or exploitation shall be afforded the opportunity and protection to report the harm to the Department of Health and Social Services.
3. That advocates, families, friends, and consumers who have reasonable cause to believe that an individual has suffered harm as a result of abuse, neglect or exploitation within a program in the State of Alaska has the opportunity to report the harm to the Department of Health and Social Services.

Representative Goll  
JM: ARCA  
DATE: January 23, 1988  
PAGE: 2 of 2

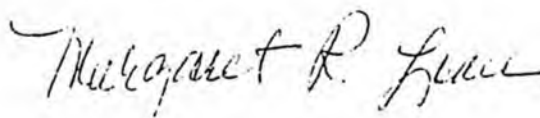
It is all of our responsibilities to advocate in behalf of the interests and rights of persons with mental retardation who may not have the ability to speak out in their own behalf because of their disabilities.

Again, our strongest support for this bill is encouraged. If I can be any further assistance, please do not hesitate to contact me at 277-6677.

Sincerely,



Mary Jane Starlings  
Executive Director



Margaret R. Lowe, President  
Board of Directors

MJS/sls  
cc: Fran Ulmer



**PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED**

325 E. Third, Suite 400  
Anchorage, AK 99501-2606  
(907) 274-3658 TTD

127 S. Franklin  
Juneau, AK 99801  
(907) 586-1627 TTD

250 Cushman, Suite 3H  
Fairbanks, AK 99701  
(907) 456-1070 TTD

February, 27, 1987

Mr. Peter Goll  
P.O. Box 581  
Haines, Alaska 99827

Dear Representative Goll:

We are glad to respond to your request for suggestions for a bill which would protect vulnerable adults from abuse. For your review, we have enclosed a draft document which includes the ingredients we believe necessary for an optimal approach for legislation to remedy this problem

Most importantly, the draft document we offer establishes a penalty for care givers that do not report the abuse and neglect of people with Developmental Disabilities. This provision alone would do a great deal to rectify the current situation. As your bill moves through the legislature we hope the provision for a penalty can be maintained and passed into law.

We appreciate your concern about this serious situation and you can count on our support for your bill. Your interest and sponsorship for this measure will undoubtedly determine its success.

Again, we are pleased to assist you. Do not hesitate to call if we can provide more information.

Sincerely,

David F. Maltman  
Executive Director

DFM:glf  
Enc.

To: Representative Peter Goll

From: Protection & Advocacy for the Developmentally Disabled

Re: Abuse and Neglect of Vulnerable Adults

## THE VULNERABLE ADULTS ACT

### SECTION 1. LEGISLATIVE FINDINGS AND PURPOSE

The legislature declares the public policy of this state is to protect vulnerable adults who are physically or mentally disabled, to prevent them from suffering abuse, neglect, or exploitation at the hands of others including those responsible for their care, whether such care is in the home, in community settings, or in residential institutions. It is the purpose of this act to encourage the expeditious reporting and investigation of suspected abuse, neglect, or exploitation of disabled adults and facilitate the provision of protective services in appropriate circumstances, while protecting the civil and constitutional rights of disabled adults. Implicit in this chapter is the philosophy that whenever possible, family life should be strengthened and each adult should live in safe, sanitary conditions and live his own life without interruption from state government. Only when this principle should become impossible should legal proceedings be initiated in order to care for and protect such adults.

### SECTION 2. REPORTS OF HARM, ABUSE, NEGLECT, OR EXPLOITATION OF VULNERABLE

ADULTS. (a) All persons coming in contact with a disabled adult, when they have reasonable cause to believe that the disabled person has suffered harm shall immediately report the harm to the Department of Health and Social Services. Persons required to report include, but are not limited to:

- ( 1 ) a physician or other health care provider;
- ( 2 ) a mental health professional as defined in AS 47.30.915(11)
- ( 3 ) a pharmacist;

( 4) an administrator of a residential or health care facility or nursing home;

( 5) a caretaker of the disabled person;

( 6) a guardian or conservator;

( 7) a police officer;

( 8) a village public safety officer;

( 9) a village health aide;

(10) a social worker;

(11) a member of the clergy;

(12) a staff employee of any program or project serving disabled persons;

(13) a licensed foster care provider;

(14) a paid employee of domestic violence and sexual assault programs, and crisis intervention and prevention programs as defined in AS 18.66.900;

(15) an employee of a homemaker program or home health aide program;

(16) an emergency medical technician or paramedic in the mobile intensive care program.

(b) A report of harm made under this section may include the name and address of the person reporting the harm and shall include:

(1) the name and address of the disabled person;

(2) information relating to the nature and extent of the harm;

(3) other information that the person reporting the harm believes might be helpful in an investigation of the case or in providing protection for the disabled person.

(c) A person who fails to report as required by this section is guilty of a class B misdemeanor.

(d) If immediate action is necessary to protect the disabled person from

imminent harm, the person shall make the report of harm to a police officer or a village public safety officer. The police officer or village public safety officer shall take immediate action to protect the disabled person and shall, at the earliest opportunity, notify the department.

(e) A person who, in good faith makes a report of economic or physical harm to a disabled person under this chapter, or who participates in judicial proceedings related to the submission of reports under this chapter, is immune from any civil or criminal liability that might otherwise be incurred or imposed.

SECTION 3. RETALIATORY ACTION BY EMPLOYER PROHIBITED. No employer or supervisor may discharge, demote, transfer, reduce pay, benefits or work privileges, prepare a negative work performance evaluation or take any other action detrimental to any employee who files a report in accordance with the provisions for this act, by reason of such report. Any person making a report under this act shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes such detrimental changes in the employment status of the reporting party by reason of his making such report. There shall be a rebuttable presumption that any such detrimental change in the employment status of the reporter, if made within 90 days of the filing of a report under this act, is retaliatory.

SECTION 4. ACTION ON REPORTS. (a) Upon receiving a report of harm, the department shall within 24 hours initiate or cause to be initiated an investigation to determine the economic or physical condition of the disabled person named in the report and whether action or services are needed for the protection of the disabled person. The department or investigator shall

personally interview the disabled person during the investigation unless the disabled person is unconscious or otherwise physically or mentally impaired to such an extent as to be unable to respond to questions.

(b) The department or investigator shall prepare a written report of the investigation, including findings, recommendations, and a determination of whether and what kind of protective services are to be offered to the disabled person. Upon request, the person who reported harm to the disabled person shall be notified of the status of the investigation. The department shall provide to the Department of Law a copy of each report of an investigation of harm to a disabled person if the report of harm is confirmed to be true, for possible criminal prosecution. This section does not limit the authority of the Department of Law or the court to act to protect an adult under this act.

(c) The department shall immediately terminate an investigation under this section upon the request of a disabled person who is the subject of a report of harm. However, if the department has reasonable cause to believe that the disabled person is incapacitated, the department may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the disabled person for the purpose of obtaining consent to continue the investigation.

SECTION 5. PROTECTIVE SERVICES. (a) The department shall provide available protective services to a harmed disabled person if and to the extent to which the disabled person consents. If the department has reasonable cause to believe that the disabled person lacks the capacity to consent to receiving protective services, it may petition the superior court under AS 13.26 for appointment of a guardian or temporary guardian for the disabled person for the purpose of obtaining consent.

(b) If a disabled person who has consented to receiving protective services is prevented by a caretaker or any other person from receiving the services, the department may assist the disabled person to petition the superior court for an injunction restraining the caretaker from interfering with the provision of protective services to the disabled person.

SECTION 6. REVIEW AND REFERRAL. The department shall, not later than 90 days after initiating the provision of protective services to a disabled person, initiate a review of the case to determine whether continuation or modification of protective services that are being provided is warranted. The department shall reevaluate the case every 90 days thereafter until the case is closed.

SECTION 7. ACCESS TO REPORTS (a) Investigation reports and reports of harm filed under this chapter are confidential and are not subject to public inspection and copying under AS 09.25.110 - 09.25.125. However, in accordance with this chapter and regulations adopted under this chapter, investigation reports may be used by appropriate governmental agencies inside and outside the state, in connection with investigations or judicial proceedings involving harm to a disabled person.

(b) Unless an investigation of a report conducted pursuant to this act determines that there is some credible evidence of the alleged abuse or neglect, all information identifying the subject of the report shall be expunged from the file and from the records of any office or agency of the department designated to investigate suspected abuse or neglect of disabled adults, within 90 days of the date of report.

(c) Within thirty days time subsequent to the completion of the

investigation, a subject of a report may request the department to amend, seal or expunge the record of the report. If the department refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing to determine whether the record of the report in the file should be amended or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this act. The burden of proof in such hearing shall be on the department. In such hearing, the fact that there was a verified report of abuse or neglect shall be presumptive evidence that the report was substantiated. The department may make any appropriate order respecting the amendment or expungement of the record to make it accurate or consistent with the requirements of this act. Written notice of any expungement or amendment of any record made pursuant to the provisions of this act, shall be served upon each subject of such record.

(d) The department shall disclose a report of harm if the disabled person who is the subject of the report consents in writing. The department shall, upon request, disclose the number of verified reports of harm that occurred at a facility, program or home which cares for disabled persons.

(e) A public or private agency which has received an application for a certificate or license to receive, board or keep a disabled adult pursuant to applicable provisions of state law, shall inquire of the department and the department shall inform such agency, whether the applicant has been or is currently the subject of a verified report on file with the department pursuant to this act.

(f) A public or private agency or facility receiving, boarding, or keeping disabled adults shall inquire of the department and the department shall inform such agency or facility, whether any person who is actively being

considered for employment with adult care responsibilities has been or is currently the subject of a verified report on file with the department pursuant to this act.

(g) Any person who has applied for a certificate or license to receive, board or keep a disabled adult or who has applied to a public or private agency to be an employee with adult care responsibilities shall be notified by such agency at the time of application that the agency will inquire of the department whether such person has been or is the subject of a verified report of abuse or neglect. The agency shall notify the applicant of the department's response.

SECTION 8. QUARTERLY REPORT. The Department shall submit to Protection and Advocacy Systems of Alaska (AS 47.80.020) each quarter a statistical report of the Department's activities related to the protection of disabled persons in the state. The report may not disclose the identity of victims or perpetrators of the harm.

SECTION 9. AUTHORITY OF THE DEPARTMENT. In performing its duties under this chapter, the department shall, subject to the disabled person's consent, initiate actions necessary to assure the health, safety and welfare of a disabled person, including the transfer of the disabled person from a nursing home, residential care or health care facility.

SECTION 10. TRAINING. (a) A person employed by the state who is required under this chapter to report abuse, neglect, or exploitation of disabled persons shall receive training on the recognition and reporting of abuse and exploitation of disabled adults.

(b) Each department of the state that employs persons required to report abuse, neglect, or exploitation of disabled shall provide:

(1) initial training required by this section to each new employee during the employee's first six months of employment, and to any existing employee who has not received equivalent training; and

(2) appropriate in-service training required by this section as determined by the department.

(c) Each department that must comply with (b) of this section shall develop a training curriculum that acquaints its employees with:

(1) laws relating to abuse, neglect, and exploitation of disabled adults;

(2) techniques for recognition and detection of abuse, neglect, and exploitation of disabled adults;

(3) agencies and organizations within the state that offer aid or shelter to victims of abuse, neglect or exploitation; and

(4) procedures for required notification of suspected abuse, neglect, or exploitation.

(d) Each department that must comply with (b) of this section shall file a current copy of its training curriculum and materials with the Council on Domestic Violence and Sexual Assault. A department may seek the technical assistance of the Council or the Department of Health and Social Services in the development of its training program.

SECTION 11. EVIDENCE NOT PRIVILEGED. No evidence regarding the abuse or neglect of the disabled adult shall be excluded in any proceeding arising out of the alleged abuse or neglect on the grounds of lack of competency under any portion of the Rules of Evidence.

SECTION 12. DEFINITIONS. (a) "abandonment" means desertion of a disabled person by a caretaker.

(b) "abuse" means: (1) intentional use of physical force, (2) non-accidental injury as a result of acts or omissions, mental anguish, or unreasonable confinement, (3) infliction of mental anguish, (4) unreasonable confinement, (5) nontherapeutic conduct which produces or could be expected to produce severe additional pain or injury and is not accidental, or (6) any repeated conduct which produces or could reasonably be expected to produce severe/additional mental or emotional distress.

(c) "caretaker" means: a person who is responsible for the care of a disabled person as a result of a family relationship, or who has assumed responsibility for the care of a disabled person voluntarily, by contract, or by court order;

(d) "department" means: the Department of Health and Social Services;

(e) "developmental disability" means a severe, chronic disability of a person which (1) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) is manifested before the person attains age twenty-two;

(3) is likely to continue indefinitely;

(4) results in substantial functional limitations in three or more of the following areas of major life activity: (a) self-care, (b) receptive and expressive language, (c) learning, (d) mobility, (e) self-direction, (f) capacity for independent living, and (g) economic sufficiency and

(5) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of life-long or extended duration and are individually planned and coordinated.

(f) "disabled adult" means: a person 18 years of age or older who

manifests a degree of impairment by reason of limited mental or physical function as a result of

- (1) a developmental disability,
- (2) accident,
- (3) illness
- (4) or any other cause.

(g) "exploitation" means: the illegal or improper use of a disabled adult or his resources for another person's profit or advantage;

(h) "harm" means abuse, neglect, or exploitation as defined in A,B,C;

(i) "neglect" means: the failure by the caretaker of a disabled person to provide services necessary to maintain the physical and mental health of the disabled person, including abandonment;

(j) "protective services" means services intended to prevent or alleviate harm resulting from abuse, neglect, or exploitation;

(k) "verified report" means a report made pursuant to this act if an investigation determines that some credible evidence of the alleged abuse, neglect, or exploitation exists.

AG/RG:bk

IN THE DISTRICT COURT FOR THE STATE OF ALASKA JUN 1 1985  
THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 ARTIE R. COLLINS, )  
 DOB: 1-22-60 )  
 Defendant. )

I N F O R M A T I O N

HARASSMENT AS 11.61.120(a)(5)  
ASSAULT IN THE FOURTH DEGREE  
AS 11.41.230(a)(1)

Case No. 3VA-S85-118 CR.

THE DISTRICT ATTORNEY CHARGES THE FOLLOWING TWENTY-TWO  
MISDEMEANOR COUNTS:

- COUNT 1 HARASSMENT
- COUNT 2 ASSAULT IN THE FOURTH DEGREE  
(Victim - Raymond Greise)
  
- COUNT 3 HARASSMENT
- COUNT 4 ASSAULT IN THE FOURTH DEGREE  
(Victim - Dale Carey)
  
- COUNT 5 HARASSMENT
- COUNT 6 ASSAULT IN THE FOURTH DEGREE  
(Victim - Roger Robinson)
  
- COUNT 7 HARASSMENT
- COUNT 8 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Sheratine)
  
- COUNT 9 HARASSMENT
- COUNT 10 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Sheratine)
  
- COUNT 11 HARASSMENT
- COUNT 12 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Sheratine)

COUNT 13 HARASSMENT  
COUNT 14 ASSAULT IN THE FOURTH DEGREE  
(Victim - Richard Ross)

COUNT 15 HARASSMENT  
COUNT 16 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Kameroff)

COUNT 17 HARASSMENT  
COUNT 18 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Kameroff)

COUNT 19 HARASSMENT  
COUNT 20 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Kameroff)

COUNT 21 HARASSMENT  
COUNT 22 ASSAULT IN THE FOURTH DEGREE  
(Victim - John Kameroff)

COUNTS 1 AND 2

That on or about October 8, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause Raymond Greise:

Count 1: offensive physical contact by hitting him in the head with a basketball.

Count 2 physical injury by hitting him in the head with a basketball.

Count 1 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 2 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 3 AND 4

That on or about October 8, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause Dale Carey:

Count 3: offensive physical contact by hitting him in the chest with a basketball.

Count 4: physical injury by hitting him in the chest with a basketball.

Count 3 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 4 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 5 AND 6

That on or about September to December, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause Roger Robinson:

Count 5: offensive physical contact by kicking him in the back of the legs knocking him to the ground.

Count 6: physical injury by kicking him in the back of the legs knocking him to the ground.

Count 5 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 6 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 7 AND 8

That on or about September to December, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Sheratine:

Count 7: offensive physical contact by kicking him in the back of the legs knocking him to the ground.

Count 8 : physical injury by kicking him in the back of the legs knocking him to the ground.

Count 7 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 8 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 9 AND 10

That on or about September to December, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Sheratine:

Count 9: offensive physical contact by tackling him to the floor.

Count 10: physical injury by tackling him to the floor.

Count 9 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 10 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 11 AND 12.

That on or about January to June, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause Richard Ross:

Count 11: offensive physical contact by kicking him in the buttocks.

Count 12: physical injury by kicking him in the buttocks.

Count 11 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

Count 12 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

COUNTS 13 AND 14

That on or about September to December, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause Richard Ross:

Count 13: offensive physical contact by kicking him in the chest, knocking him across the room.

Count 14: physical injury by kicking him in the chest, knocking Ross across the room.

Count 13 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 14 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 15 AND 16

That on or about the 18th day of September, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Kameroff:

Count 15: offensive physical contact by striking him in the chest with his fist, causing food to be lodged in his throat.

Count 16: physical injury by striking him in the chest with his fist, causing food to be lodged in his throat.

Count 15 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 16 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 17 AND 18

That on or about September, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Kameroff:

Count 17: offensive physical contact by kicking him in the stomach.

Count 18: physical injury by kicking him in the stomach.

Count 17 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 18 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 19 AND 20

That on or about the 1st day of October, 1984, at Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Kameroff:

Count 19: offensive physical contact by kicking him in the chest.

Count 20 : physical injury by kicking him in the chest.

Count 19 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 20 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

COUNTS 21 AND 22

That on or about the 7th day of October, 1984, at or near Valdez, in the Third Judicial District, State of Alaska, Artie R. Collins did unlawfully cause John Kameroff:

Count 21: offensive physical contact by kicking him in the stomach, knocking him into a sink.

Count 22: physical injury by kicking him in the stomach, knocking him into a sink.

Count 21 is a Class B Misdemeanor offense being contrary to and in violation of AS 11.41.230(a)(1) and against the peace and dignity of the State of Alaska.

Count 22 is a Class A Misdemeanor offense being contrary to and in violation of AS 11.61.120(a)(5) and against the peace and dignity of the State of Alaska.

DATED this 6<sup>th</sup> day of June, 1985.

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DWAYNE W. MCCONNELL  
DISTRICT ATTORNEY

BY: Eugene B. Cyrus  
Eugene B. Cyrus  
Assistant District Attorney

JUL 1 1985

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT VALDEZ

STATE OF ALASKA, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
ARTIE R. COLLINS, )  
DOB: 1-22-60 )  
Defendant. )

Case No. 3VA-S85-118 CR.

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

AFFIDAVIT

The undersigned, being first duly sworn upon oath,  
deposes and states that:

1. I am a police officer for the Valdez Police  
Department and have investigated both major and minor  
crimes, including assault. On December 21, 1984, I was  
assigned to conduct an investigation concerning allegations  
of assaults at the Harborview Developmental Center located  
in Valdez, Alaska.

COUNTS 1, 1A

2. On December 28, 1984, I conducted a taped  
interview with Susan Ness, an employee of Harborview  
Developmental Center. Ness stated that on approximately  
October 8, 1984, she observed Collins strike resident  
Raymond Griese in the head with a basketball. Ness stated  
that Griese was seated on the floor cross-legged at which  
time Collins looked around as if to see if anyone was  
watching him, turned back towards Griese and threw the ball  
with such force that Griese was knocked over backwards.  
Ness further stated that it appeared to her that Collins  
intended to cause Griese pain and discomfort in the manner  
which he threw the ball. She also felt that the ball was  
thrown in such a fashion that the impact was painful to  
Griese and that Griese could have been injured as a result  
of being struck with the ball.

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COUNTS 3, 2A

3. Susan Ness further stated that on approximately October 8, 1984, she observed Collins strike resident Dale Carey in the chest with a basketball. Ness stated that Carey was struck with such force by the ball that it knocked the wind out of him and Carey had to gasp for his breath. As a result of being struck with the ball Carey was knocked off balance. Ness stated that Carey was struck with such force that there was possibly reddening of the skin or even bruising. She felt that the blow to Carey's chest was painful.

5 6  
COUNTS 5, 3A

4. On February 6, 1985, I conducted a taped interview with Larry Preer, a former employee of Harborview Developmental Center. Preer stated that he had observed Collins kick Roger Robinson between September 20, 1984 and December 15, 1984. Preer stated that Collins kicked Robinson in the lower legs causing him to fall. Preer stated also that Robinson was kicked in such a manner that the blow as well as the fall would have been painful.

7 8  
COUNTS 7, 4A

5. Preer further stated that Collins kicked John Sheratine between September 20, 1984 and December 1, 1984. Preer stated that Collins had kicked Sheratine in the lower legs causing him to fall. Preer stated that Sheratine was kicked in such a manner that the blow, as well as the fall, would be painful.

9 10  
COUNTS 9, 5A

6. Larry Preer also observed Collins knock John Sheratine off his feet. Sheratine had been walking and Collins tackled him. Sheratine fell forward to the floor. Preer stated Sheratine fell in such a fashion that the fall would have been painful and that Sheratine could have been injured as a result of the fall. Mr. Preer stated that he observed this on several occasions between September 20, 1984 and December 15, 1984.

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COUNTS 6, 6A

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2 7. On January 18, 1985, I conducted a taped  
3 interview with Cindy Schecter, an employee of Harborview  
4 Developmental Center. Schecter stated that from January,  
5 1984, through the spring of 1984 she observed Artie Collins  
6 kick Richard Ross numerous times. Schecter stated that  
7 during the incidents where she observed Collins kick Ross,  
8 Collins was forcing Ross to stand up. Collins would kick  
9 Ross in the buttocks to make him stand up. Schecter also  
10 stated during the interview that kicking Ross was approved  
11 by Harborview administration. Schecter stated that in her  
12 opinion Ross was kicked in such a manner that it would have  
13 been painful.

13 14  
COUNTS 7, 7A

14  
15 8. Larry Preer further stated that he had been  
16 employed as an intern from September 20, 1984 and December  
17 15, 1984. Preer stated that Collins had come from the  
18 showering area and had gone to Ross' bedroom. For unknown  
19 reasons, Collins kicked Ross in the chest. Preer stated  
20 that Collins struck Ross with such force that Ross was  
21 knocked across the room striking the wall on the far side of  
22 the room. Preer stated that Ross was kicked with such force  
23 that the blow itself was painful and that Ross could have  
24 been seriously injured.

15 16  
COUNTS 8, 8A

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26 9. On December 22, 1984, I conducted a taped  
27 interview with Keith Goldenberger, an employee of Harborview  
28 Developmental Center. Goldenberger observed Artie Collins  
29 strike John Kameroff in the chest on approximately September  
30 18, 1984. Kameroff had left his residence hall and gone to  
31 one of the other residence halls. While Kameroff was away  
32 from Puffin Hall he stole a sandwich and returned with it.  
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1 He was still eating the sandwich when he was to be taken to  
2 the toilet. Once inside the toileting area, Kameroff was  
3 still chewing on part of the sandwich. At this time Collins  
4 became upset with Kameroff for stealing the sandwich and  
5 struck Kameroff in the chest with his fist. Goldenberger  
6 stated that as a result of the blow to the chest Kameroff  
7 began choking, fell to the floor and began turning purple.  
8 Collins then walked away from the immediate area. Golden-  
9 berger stated that once he realized Mr. Kameroff was choking  
10 he called for Collins to return and give him assistance.  
11 Kameroff was patted on the back several times in an attempt  
12 to dislodge the stuck food. This did not dislodge the food  
13 and a Heimlich maneuver was performed. This successfully  
14 dislodged the food stuck in Kameroff's airway. Goldenberger  
15 stated that Kameroff was struck by Collins with such force  
16 that it was painful to Kameroff and that other serious  
17 complications could have resulted from the food not being  
18 dislodged.

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COUNTS <sup>17 13</sup>  
9, 9A

10. On February 1, 1985, I conducted a taped  
interview with Lori Dials, an employee of Harborview  
Developmental Center. During approximately September of  
1984, she observed Collins kick resident John Kameroff. To  
the best of her recollection it was during dinner time.  
John Kameroff was attempting to get to the table to eat,  
however, it was not his turn. At this time Collins led  
Kameroff away from the table but Kameroff returned. Collins  
then kicked Kameroff in the stomach. Kameroff then left,  
however, he later returned. Again Kameroff was kicked by  
Collins. At this time Kameroff was kicked in such a manner  
that he was slammed backwards and came into contact with the  
wall. Dials stated that in her opinion both of the blows  
were painful to Kameroff and would have been painful for

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anyone else being kicked in such a fashion. Dials further stated that as a result of these kicks there was a possibility for internal injuries of Kameroff.

<sup>19</sup> <sup>20</sup>  
COUNTS 10, 18A

11. Wolfenden further stated that on approximately October 1, 1984, he observed Collins kick resident John Kameroff in the chest. Wolfenden stated he had just entered the hall to speak with another staff member, as he opened the door he observed Collins do a "spinning back kick to the chest of Kameroff". As a result of the blow, Kameroff was forced backwards several steps. Wolfenden stated that Kameroff was kicked with such force that it was painful to Kameroff and also would be painful for anyone else kicked in such a fashion. Wolfenden also stated that there was the possibility for serious injuries as a result of such a kick. Further, Wolfenden stated that Kameroff became upset and began hitting himself in the stomach and screaming as a result of the kick.

<sup>21</sup> <sup>22</sup>  
COUNTS 11, 11A

12. Dials further stated that on approximately October 7, 1984 she again observed John Kameroff being kicked by Collins. Dials stated at this time Collins and Kameroff were in the bathroom area. Dials stated that she came through the door and observed Collins kicking Kameroff in the area of the stomach. After the impact of the blow Kameroff was forced backwards and struck his back or buttocks into a sink. Dials felt that this was an abusive situation in nature. In her opinion it was painful for Kameroff and there was no reason that Kameroff should be kicked.

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DATED this 10 day of June, 1985, at  
Valdez, Alaska.

I Ray Glass  
Affiant

SUBSCRIBED and SWORN to before me this 10th  
day of June, 1985.

James Christy  
Notary Public for Alaska  
My commission expires: 5/14/87

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