

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 86/2  
6315 SENATE JUDICIARY

719

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 52

Section 1 of this bill amends AS 12.80 to establish a right to an interpreter for a person who cannot readily understand or communicate the spoken english language who is charged with or convicted of a crime. The court would appoint a qualified interpreter to assist the person's defense throughout the criminal proceeding, and to assist the person in the completion of documents required by or related to the criminal proceedings, whenever the person represented to the court his or her inability to understand or communicate the spoken english language, absent a waiver provided by the person. The court would also appoint a qualified interpreter to assist a witness in a criminal proceeding when the witness does not understand and speak the english language. The bill provides that the cost of providing interpreters, under the section, shall be borne in accordance with the applicable court rule.

Court Administrative Rule 6(b) requires that the cost for interpreters shall be bore by the party requiring them. Consequently, the cost of interpreters needed by the defense for a defendant or witnesses, would be borne by the defense. Likewise, the cost of interpreters needed for witnesses called by the prosecution, would be borne by the prosecution. This has been a standard procedure since August 1, 1987 when Alaska Supreme Court Order 812 amended Administrative Rule 6(b), and when the court system transferred some of its interpreter funds to the Department of Law and the Public Defender Agency to accomplish this purpose. Consequently, this section should not have a fiscal impact on the Department of Law.

Section 2 of the bill amends AS 44.99 by adding a new section that establishes a right to an interpreter for a person who cannot readily understand or communicate the spoken english language, who is a party in a proceeding brought by or against a state agency and heard before an administrative body or official, including a proceeding under the Administrative Procedure Act. The bill further provides that the cost of interpreters for a party to the proceeding shall be borne by the state. When it is necessary to provide an interpreter to assist a witness in an administrative proceeding, the cost would be borne by the party offering the witness. Although the Department of Law often represents the staff of other state agencies in administrative proceedings, it rarely conducts proceedings of its own. Therefore, any costs for interpreters that would become the responsibility of the state, under this section, would be borne by those state agencies that conduct hearings. Consequently, this section will not have a fiscal impact on the Department of Law.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION : SB 52  
PUBLISH DATE : \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Labor  
 Title: "An act relating to the use  
of interpreters.....in official proceedings..." BRU: All  
 Sponsor: Duncan, Sturgulewski, & Kerttula Components: All  
 Requestor: Senate Judiciary

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		9.3	13.0	13.0	13.0	13.0
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	9.3	13.0	13.0	13.0	13.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND		9.3	13.0	13.0	13.0	13.0
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	9.3	13.0	13.0	13.0	13.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

We estimate interpreters would be needed in 12 hearings held by the Department of Labor in FY 90. Seven of those hearings would be for Workers' Compensation cases, which each require about 40 hours of time for preparation and hearing. The other five cases would be for various programs in the department, and would average two hours each. Therefore, at a cost of \$32.00/hour for certified interpreters, the total cost in FY 90 would be \$9.3. The number of Workers' Compensation cases requiring an interpreter is expected to rise to 10 per year after FY 90, once the law becomes well known to affected parties. An effective date of July 1, 1989 is assumed.

Prepared by: Jim Sampson, Commissioner Phone: 465-2700  
 Division: \_\_\_\_\_ Date: 3/7/89

Approved by Commissioner: Jim Sampson Date: 3/7/89  
 Agency: Department of Labor

Distribution (by preparer) :

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: The use of interpreters in  
criminal and official proceedings  
Sponsor: Senator Duncan  
Requestor: Senate Judiciary

Agency Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments and C.I.B.

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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)

No fiscal impact anticipated.

Prepared by: Francis C. Allan  
Division: Alaska State Troopers

Phone: 269-5691  
Date: 3/06/89

Approved by Commissioner: Arthur English  
Agency: Department of Public Safety

Date: 3/06/89

## FISCAL NOTE

**REQUEST:** \_\_\_\_\_

Revision Date: \_\_\_\_\_  
 Title: Use of Interpreters In Criminal  
... and In Official Proceedings  
 Sponsor: Duncan, Sturgulewski, & Kerttula  
 Requestor: Senate Judiciary

Agency Affected: Education  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared by: Mary Hakala Phone: 465-2800  
 Division: Commissioner's Office Date: 3/6/89  
 Approved by Commissioner: William G. Demmert Date: 3/6/89  
 Agency: Education

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

# FISCAL NOTE

**REQUEST:**

Revision Date	<u>4/20/89</u>	Agency Affected:	<u>Alaska Court System</u>
Title:	<u>An Act relating to the use of</u>	BRU:	<u>Trial Courts</u>
	<u>Interpreters in criminal proceedings</u>		
Sponsor:	<u>Duncan, Sturgulewaki &amp; Kerttula</u>	Components:	
Requestor:	<u>Judiciary</u>		

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds						
Other						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

Full-time						
Part-time						
Temporary						

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

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel  
 Division: Alaska Court System  
 Approved by: Arthur H. Snowden, II, Administrative Director  
 Agency: Alaska Court System

Phone: 264-8228  
 Date: 04/20/89  
 Date: 04/20/89

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

Kit Stewart  
4449 Taku Blvd.  
Juneau, AK 99801  
789-9411

Before the Senate Judiciary Committee 3-2-89,  
on the proposed Committee Substitute for SB52:

My name is Kit Stewart. I've a master's in Adult Education and coordinate the local literacy program. I recruit adult students and tutors, train the tutors in basic reading and English as a Second Language, and, I facilitate. That covers a multitude of sins. Last week I persuaded a state agency to be d the rules which require that the request for a supplemental appropriation for a stale-dated warrant be submitted in writing. One of our students went to the agency and called me when they asked her to write a letter. She is on welfare and not about to pay \$20.00 an hour for a translator to get a \$30.00 check reissued. I suggested the agency either accept a written request in Vietnamese, or write the letter for her and have her sign it. They opted for the latter. That incident doesn't exactly fit SB52 but it points out the pervasiveness of the literacy barrier and its financial impact on people who can least afford it.

The major problems are much worse, especially in the legal area. Our whole system of jurisprudence and civil rights is so totally alien to many foreigners that, even when their rights are translated to them, the words do not always mean what we expect. One ex-prisoner, after learning English, said, "I pleaded no-contest because I didn't know I was allowed to prove my innocence." In his country, guilt was presumed--protest too much and you could get killed--so the thing to do was go along quietly and bribe your way out later. Since his translator didn't know much more about our system than he did, no one ever realized what was happening and assumed he was guilty. This illustrates the need for qualified interpreters--who know more than how to buy groceries in English.

In a Ketchikan case, three South American nationals were jailed on drug charges. Only one spoke any English. He acted as the interpreter for all three. If they were equally guilty, that served their purpose; if not, he didn't do them any favors. Interpreters should be impartial.

Another case: A prison official had a prisoner sign a document waiving his right to apply for parole. The prisoner thought what he was signing was a guarantee saying when and where he would be paroled. Eventually, someone saw the paper and told him the truth. When he could again apply, they gave him a multi-page bureaucratic application form. Requests from prisoners must be in writing. He managed to ask for a translator and received the written answer, "That's up to your attorney." Without an interpreter, he thought that meant they were getting him an attorney, and waited anxiously. When the deadline arrived, and he hadn't, somehow, filled out the form, they called in his 18-

year old daughter to help him. I don't know how many of you have teenagers, but, if you do, would you rely on their ability with English as a first language to get you out of jail? Imagine if your child's English was a second language! If the government requires prisoners to complete and sign forms, they should be required to furnish qualified interpreters so the prisoners know what they are signing.

A third case: A limited-English Asian prisoner needed to talk to someone. Another inmate called the Bahai's, who called me, and I found a housewife who could talk to him. When I called the jail to see how to do it, I was told, "He's just conning you. He knows English. Every time I ask if he understands, he says, 'Yes.'" So, she wasn't allowed to visit.

That official's statement is an ignorant cliché, a joke among educators. "Yes," is one of the first words many students learn and they use it for everything.

In some Asian countries it is better to give an agreeable answer than to tell the truth. If the questioner wants truth, he is expected to rephrase the question to allow an affirmative answer. In another country, questions are always answered first with "Yes" meaning "I hear you," then with the actual yes or no answer.

The bureaucratic and legalistic habit of cutting people off after the first response can lead to grievous errors if an adequate interpreter is not there to prevent it by waiting for the complete answer.

One last example: When my own student got out of jail, he stayed with us a few days before going to live with relatives elsewhere. A couple of months beforehand, the jail had gone over all his general release do's and don'ts with him. After release, his probation officer and I carefully reviewed them again and explained his specific requirements. His responses showed he understood everything very well. So, we put him on the plane. Three months later Chuck and I went to visit him and discovered he had been under virtual house arrest in a tiny apartment the whole three months. Apparently, when they were explaining the rules at the jail, someone told him to, "Keep your nose clean," and the translator explained it meant, "No let police see face. No go outside house only one. Police look face, you go jail." He thought the post-release instructions were in addition, rather than instead of, the translator's poor interpretation. All of which shows that even the best intentioned people can screw up and not cancel out errors caused by unqualified interpreters.

Of course, legislation can't cure everything. But, if it does nothing more than make courts and officials question their actions, before they proceed without an interpreter or just haul anybody in off the street to translate, then, I believe, it will be a big step in the right direction. Thank you.

Chuck Stewart  
4449 Taku Blvd.  
Juneau, AK 99801  
789-9411

Before the Senate Judiciary Committee 3-2/89,  
on the proposed Committee Substitute for SB52

Madam Chairman--

My name is Chuck Stewart. I want to tell you a story that shows why we need this bill--and even more protection for people who can't communicate in English.

Picture this: A refugee is jailed on felony charges. His interpreter at the preliminary hearings and confidential attorney meetings is a female clerk at the Dept. of Public Safety. While in jail, his minister, who is also his immigration sponsor, comes to visit. In the words of the minister, the defendant sees him as the "savior" of his family. The jail allows a fellow prisoner to act as their interpreter. The fellow prisoner is in jail for the sexual assault of a child--the child of the Dept. of Public Safety clerk! (THERE'S ONE RELATIONSHIP.)

The minister tells the defendant that, if he would plead guilty, the minister would talk to the judge and the defendant would get out of jail in 1-2 years. If he pleads innocent, he would stay in jail 10 years and then be deported. The defendant doesn't know then, that his "savior" is also the accuser and a star prosecution witness. (THERE'S ANOTHER RELATIONSHIP.)

When the trial started, a different woman was hired to interpret. The Judge instructed her: "Ask [the defendant] if he objects to your being his translator and also the translator for the jury."

On the trial tape there is a female voice in a foreign language which someone recently translated as asking who the defendant's interpreter was last week. Then, the defendant's voice says the Public Safety clerk's name, and the interpreter tells the Judge: "He has no ob-objection." (THERE'S ANOTHER PROBLEM.)

During the first several hours of the trial, the Public Safety clerk is on the jury panel and allowed to mingle with them. She is not excused until it is decided that the clerk will replace the other translator when she leaves on vacation.

There is nothing on the tapes to indicate that the clerk was ever instructed not to talk about conversations between defendant and attorney, or that she or the other jurors were ever asked if they had talked about the defendant prior to the clerk's being excused.

The person was convicted of a felony and is out on parole today after serving four years of an eight year sentence.

The underlying cause of his being found guilty lies in two closely related areas. One--Cultural differences, and two--a complete lack of understanding of the English language. There isn't too much that can be done about the cultural differences as you certainly cannot legislate the understanding of different cultural backgrounds. However, in the case of not understanding English, this person could not hope to comprehend even his most basic rights under American law.

My wife has alluded to several instances of misunderstanding by both English and non English speaking persons involved with our criminal justice system. Allow me to give some instances taken directly from copies of court tapes.

1) The interpreter says the defendant has poor hearing, that he left his glasses in prison, and that he couldn't read the interpreter's writing. The Judge asks if he can hear if she talks loudly. She speaks to the defendant and says, "I don't know." The defense attorney says to the interpreter, "He doesn't speak English, he doesn't understand, he can't hear you. Tell him to tell me." NOWHERE IN THE TAPE DOES ANY INTERPRETER EVER TELL THE DEFENSE ATTORNEY IF OR WHEN THE DEFENDANT DOESN'T UNDERSTAND OR CAN'T HEAR.

2) The defense attorney got wires crossed and didn't interview a witness during recess. The attorney starts to talk to the interpreter and interview the witness when the Judge stops her and says "You can't use the translator for the jury, You will have to use the translator for the defendant." THE TRANSLATOR THAT IS USED IS NOT ONLY THE DEFENDANT'S CONFIDENTIAL INTERPRETER BUT ALSO IS USED TO INTERVIEW A PROSECUTION WITNESS HOSTILE TO HIM.

3) The defense attorney questions the interpreter on experience and understanding: In U.S.A. four years, just graduated Sitka High School, age 19. Never in court but has helped people in California with translations.

ATTORNEY: "You, have to translate every word."

INTERPRETER: "But, uh, translate every word is pretty hard. See, if you want the meaning, is easy. If you want the word by word, is pretty hard."

ATTORNEY: "Okay. I don't know Vietnamese, so you have to do it as accurately as possible."

INTERPRETER: "Yes, I try do that."

Here are some examples of that interpreter's translations:

---INTERPRETER: "Uh, the, the man say that, 'If you think, your father say it's right.' So, that's what the father he say, 'Oh yeah,' and, go."

---ATTORNEY: "Could you tell me in English, what you just told her?"

INTERPRETER: "I told, I told her that, has she heard, uh, is uh, tape say real, uh, just like, uh, uh, uh, he--her husband, he drunk an' talk, uh, say something like that?"

---THE PROSECUTING ATTORNEY referring to the interpreter says, "I must say, I'm rather unhappy we didn't get a better translator."

---The defense attorney has a witness who doesn't speak English and, since the State has objected to using [the defendant's interpreter] for the jury, says, "I'm willing to have [and here she names the person who is known to be hostile to the defense]."

JUDGE: "Ladies and gentlemen, the next witness may need an interpreter. [This individual] who has interpreted before is going to interpret for him."

SOMEONE asks, "Do we need to swear [this person] in?"

ANSWER: "He's still under oath."

WE COULD FIND NO RECORD THAT THIS PERSON WAS EVER SWORN IN AS AN INTERPRETER.

Incidentally, his interpretations were taken by the Judge over those of the officially appointed court interpreter.

I am not here today to plead this person's innocence. Guilty or innocent, the problems he encountered regarding State responsibility for qualified interpreters would be the same.

I sincerely hope that the above examples, taken from an actual case will serve to encourage the passing of the bill presently under consideration by this committee. Thank you.

Original sponsors: Duncan, Sturgulewski,  
Kerttula, and Binkley

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 52 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the use of interpreters in crimi-  
7 nal proceedings."

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

9 \* Section 1. AS 12.80 is amended by adding a new section to read:

10 Sec. 12.80.060. RIGHT TO AN INTERPRETER. (a) A person who  
11 cannot readily understand or communicate the spoken English language  
12 who is charged with or convicted of a crime has a right to the servi-  
13 ces of a qualified interpreter to assist

14 (1) in the person's defense throughout proceedings under  
15 this title; and

16 (2) in the completion of documents required by or related  
17 to proceedings under this title.

18 (b) When a person who is charged with or convicted of a crime  
19 represents to a court an inability to understand or communicate the  
20 spoken English language, or to read and understand documents that the  
21 person is required to sign, in the absence of a waiver provided by the  
22 person, the court shall appoint a qualified interpreter to assist the  
23 person throughout the proceedings.

24 (c) When a witness other than the defendant in a proceeding  
25 under this title does not understand and speak the English language,  
26 the court shall appoint a qualified interpreter to interpret for the  
27 witness while the witness is testifying.

28 (d) The person accused of a crime may waive the right granted  
29 under (a) of this section only if

- 1 (1) the court obtains a written waiver from the person;  
2 (2) counsel, if any, consents; and  
3 (3) the court determines that the waiver has been made  
4 knowingly, voluntarily, and intelligently.

5 (e) The cost of providing the interpreter shall be borne accord-  
6 ing to applicable court rule.

7 (f) A qualified interpreter may not, without the written consent  
8 of the parties to the communication, be examined about

9 (1) any communication the interpreter interprets under  
10 circumstances in which the communication is privileged; or

11 (2) any information the interpreter obtains while inter-  
12 preting pertaining to any proceeding then pending.  
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6-0112E  
Chenoweth  
2/9/89

Original sponsors: Duncan, Sturgulewski,  
Kerttula, and Binkley

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 52 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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20 represents to a court an inability to understand or communicate the  
21 spoken English language, or to read and understand documents that the  
22 person is required to sign, in the absence of a waiver provided by the  
23 person, the court shall appoint a qualified interpreter to assist the  
24 person throughout the proceedings.

25 (c) When a witness other than the defendant in a proceeding  
26 under this title does not understand and speak the English language,  
27 the court shall appoint a qualified interpreter to interpret for the  
28 witness. *while the witness is testifying.*

29 (d) The person accused of a crime may waive the right granted

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9 of the parties to the communication, be examined about

10 (1) any communication the interpreter interprets under

11 circumstances in which the communication is privileged; or

12 (2) any information the interpreter obtains while inter-

13 preting pertaining to any proceeding then pending.

14 \* Sec. 2. AS 44.99 is amended by adding a new section to read:

15 Sec. 44.99.020. RIGHT TO AN INTERPRETER. (a) A person who is a

16 party ~~or witness~~ in an official proceeding and who cannot readily

17 understand or communicate the spoken English language has a right to

18 the services of a qualified interpreter to assist the person through-

19 out an official proceeding and to complete documents required by or

20 related to that proceeding. ~~\_\_\_\_\_~~

21 (b) When a person who is a party in an official proceeding

22 represents to the presiding officer at an official proceeding an

23 inability to understand or communicate the spoken English language, or

24 to read and understand a document that the person is required to sign,

25 in the absence of a waiver provided by the person, the presiding

26 officer at the official proceeding shall appoint a qualified inter-

27 preter to assist the person throughout that proceeding.

28 (c) When a person who is a witness but not a party in an offi-

\_\_\_\_\_ the English language, the

1 presiding officer at that proceeding shall appoint a qualified inter-  
2 preter to interpret for the witness. <sup>who would witness is testifying</sup> ~~If the proceeding is not under~~  
3 ~~oath, the presiding officer shall allow a qualified interpreter to~~  
4 ~~interpret for the witness.~~ ?

5 (d) The presiding officer at an official proceeding may inquire  
6 into the qualifications of a person who is to serve as an interpreter  
7 and make a preliminary determination that the interpreter is able, in  
8 the proceeding, to interpret accurately all communication to and from  
9 the person or witness who requires the interpreter's services. The  
10 determination must be based on the interpreter's

11 (1) education, certification, and experience in interpret-  
12 ing in similar proceedings;

13 (2) understanding of the basic vocabulary of the languages  
14 for which interpretation is required;

15 (3) understanding of the proceeding in which the inter-  
16 preter is to participate; and

17 (4) impartiality.

18 (e) In the preliminary determination under (d) of this section,  
19 a party or the party's representative may question the interpreter  
20 about the interpreter's qualifications and impartiality.

21 (f) A person may not serve as an interpreter under this section  
22 if the person

23 (1) is an employee of an agency that is a party in the  
24 proceeding; or

25 (2) would serve both by appointment under (b) of this sec-  
26 tion and as an interpreter sworn or allowed to serve under (c) of this  
27 section.

28 (g) If the official proceeding is conducted under oath, a qual-  
29 ified interpreter appointed under this section shall before

Original sponsors: Duncan, Sturgulewski,  
Kerttula, and Binkley

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 52 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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25 (c) When a witness other than the defendant in a proceeding  
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28 witness while the witness is testifying.

29 (d) The person accused of a crime may waive the right granted

1 under (a) of this section only if

2 (1) the court obtains a written waiver from the person;

3 (2) counsel, if any, consents; and

4 (3) the court determines that the waiver has been made  
5 knowingly, voluntarily, and intelligently.

6 (e) The cost of providing the interpreter shall be borne accord-  
7 ing to applicable court rule.

8 (f) A qualified interpreter may not, without the written consent  
9 of the parties to the communication, be examined about

10 (1) any communication the interpreter interprets under  
11 circumstances in which the communication is privileged; or

12 (2) any information the interpreter obtains while inter-  
13 preting pertaining to any proceeding then pending.

14 \* Sec. 2. AS 44.99 is amended by adding a new section to read:

15 Sec. 44.99.020. RIGHT TO AN INTERPRETER. (a) A person who is a  
16 party in an official proceeding and who cannot readily understand or  
17 communicate the spoken English language has a right to the services of  
18 a qualified interpreter to assist the person throughout an official  
19 proceeding and to complete documents required by or related to that  
20 proceeding.

21 (b) When a person who is a party in an official proceeding  
22 represents to the presiding officer at an official proceeding an  
23 inability to understand or communicate the spoken English language, or  
24 to read and understand a document that the person is required to sign,  
25 in the absence of a waiver provided by the person, the presiding  
26 officer at the official proceeding shall appoint a qualified inter-  
27 preter to assist the person throughout that proceeding.

28 (c) When a person who is a witness but not a party in an offi-  
29 cial proceeding does not understand or speak the English language, the

1 presiding officer at that proceeding shall appoint a qualified inter-  
2 preter to interpret for the witness while the witness is testifying.

3 (d) The presiding officer at an official proceeding may inquire  
4 into the qualifications of a person who is to serve as an interpreter  
5 and make a preliminary determination that the interpreter is able, in  
6 the proceeding, to interpret accurately all communication to and from  
7 the person or witness who requires the interpreter's services. The  
8 determination must be based on the interpreter's

9 (1) education, certification, and experience in interpret-  
10 ing in similar proceedings;

11 (2) understanding of the basic vocabulary of the languages  
12 for which interpretation is required;

13 (3) understanding of the proceeding in which the inter-  
14 preter is to participate; and

15 (4) impartiality.

16 (e) In the preliminary determination under (d) of this section,  
17 a party or the party's representative may question the interpreter  
18 about the interpreter's qualifications and impartiality.

19 (f) A person may not serve as an interpreter under this section  
20 if the person

21 (1) is an employee of an agency that is a party in the  
22 proceeding; or

23 (2) would serve both by appointment under (b) of this sec-  
24 tion and as an interpreter sworn or allowed to serve under (c) of this  
25 section.

26 (g) If the official proceeding is conducted under oath, a qual-  
27 ified interpreter appointed under this section shall, before commenc-  
28 ing upon the duties of an interpreter, take an oath that a true inter-  
29 pretation will be made to the person being examined of all the

1 official proceedings in a language that the person understands, and  
2 that the interpreter will repeat the statements of the person being  
3 examined to the persons conducting and participating in the proceeding  
4 in the English language, to the best of the interpreter's skill and  
5 judgment.

6 (h) A person may waive the right given in (a) of this section  
7 only if

8 (1) the person executes a written waiver;

9 (2) counsel, if any, consents; and

10 (3) the presiding officer at the official proceeding deter-  
11 mines that the waiver has been made knowingly, voluntarily, and intel-  
12 ligently.

13 (i) Except for a person who serves as a volunteer interpreter,  
14 an interpreter appointed or allowed to serve under this section shall  
15 be adequately compensated for the services that the interpreter per-  
16 forms and shall be reimbursed for standby time and actual travel-  
17 related expenses. If the interpreter is appointed under (b) of this  
18 section, the cost of providing the interpreter shall be borne by the  
19 state. If the interpreter is appointed or allowed to serve under (c)  
20 of this section, the cost of providing the interpreter shall be borne  
21 by the party offering the witness.

22 (j) In this section

23 (1) "official proceeding" means a proceeding brought by or  
24 against a state agency and heard before an administrative body or  
25 official, including a proceeding under the Administrative Procedure  
26 Act (AS 44.62);

27 (2) "qualified interpreter" means a person not disqualified  
28 by (f) of this section, who is not otherwise disqualified because of  
29 lack of impartiality, and who is readily able to interpret spoken and

1 translate written English to and for a party or witness in an official  
2 proceeding and to interpret or translate statements by the party or  
3 witness into English;

4 (3) "state agency" means a state administrative body,  
5 board, commission, committee, subcommittee, authority, council, agen-  
6 cy, or other organization, including subordinate units of these  
7 groups, supported in whole or in part by state money or authorized to  
8 spend state money.  
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**S B**

**54**

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

M E M O R A N D U M

January 13, 1989

SUBJECT: Removal of Court Rule references  
(SSSB 54)

TO: Senator Rick Uehling

FROM: Terri Lauterbach *TL*  
Legislative Counsel

Enclosed is a new version of SB 54, a bill relating to the child support provisions of the Family Support Act.

This new version does not include a reference to court rules in the bill title; nor does this version include section 11 of the original bill, a section stating that the bill affects a court rule.

These provisions of the original version of SB 54 have been eliminated as being unnecessary. They are unnecessary because the court rule affected by this bill is an interpretive rule, not a rule of practice or procedure. The constitution and the Uniform Rules both require the special 2/3 vote and the Uniform Rules require special bill titles only with respect to bill provisions that amend "rules of practice and procedure." See sec. 15, art. IV, Constitution of the State of Alaska, and Rule 39(e), Uniform Rules of the Alaska State Legislature. Since Civil Rule 90.3 is not a rule of practice or procedure, no special 2/3 vote is required and no special bill drafting technicalities must be observed.

I hope this information is helpful to you. If I can be of further assistance, please let me know.

Enclosure

TL:gc  
WKG5/090

6-0233E ✓  
Lauterbach  
1/13/89

1 IN THE SENATE

BY UEHLING

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 54

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support; and providing for  
7 an effective date."

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

9 \* Section 1. AS 23.05 is amended by adding a new section to read:

10 Sec. 23.05.125. COOPERATION WITH FEDERAL GOVERNMENT. On request  
11 of an agency of the federal government that administers a program  
12 designed to locate absent parents for the purpose of enforcing their  
13 child support obligations, the department shall provide, with respect  
14 to a named individual specified by the requesting agency, the follow-  
15 ing information if it is in the department's records:

16 (1) the individual's most recent address;

17 (2) the individual's wages for the period specified in the  
18 agency's request; and

19 (3) the address of the individual's most recent employer.

20 \* Sec. 2. AS 23.20.110 is amended by adding a new subsection to read:

21 (k) On request of an agency of the federal government that  
22 administers a program designed to locate absent parents for the pur-  
23 pose of enforcing their child support obligations, the department  
24 shall provide, with respect to a named individual specified by the  
25 requesting agency, the information listed in (c)(1) - (4) of this  
26 section and

27 (1) the wage rate of the individual, if employed; and

28 (2) the address of the individual's most recent employer.

29 \* Sec. 3. AS 25.24.140(a) is amended to read:

1 (a) During the pendency of the action, the court may provide by  
2 order

3 (1) that one spouse pay an amount of money as may be neces-  
4 sary to enable the other spouse to prosecute or defend the action;

5 (2) for the care, custody, and maintenance of the minor  
6 children of the marriage during the pendency of the action; an award  
7 of temporary child support under this paragraph must comply with  
8 AS 25.24.320;

9 (3) for the freedom of one spouse from the control of the  
10 other spouse during the pendency of the action;

11 \* Sec. 4. AS 25.24.160(a) is amended to read:

12 (a) In a judgment in an action for divorce or action declaring a  
13 marriage void or at any time after judgment, the court may provide

14 (1) for the payment by either or both parties of an amount  
15 of money or goods, in gross or installments that may include cost-  
16 of-living adjustments, as may be just and proper for the parties to  
17 contribute toward the nurture and education of their children, and the  
18 court may order the parties to arrange with their employers for an  
19 automatic payroll deduction each month or each pay period, if the  
20 period is other than monthly, of the amount of the installment; if the  
21 employer agrees, the installment shall be forwarded by the employer to  
22 the clerk of the superior court which entered the judgment or to the  
23 court trustee, and the amount of the installment is exempt from exe-  
24 cution; an award of child support under this paragraph must comply  
25 with AS 25.24.320;

26 (2) for the recovery by one party from the other of an  
27 amount of money for maintenance, in gross or in installments, as may  
28 be just and necessary without regard to which of the parties is in  
29 fault;

1 (3) for the delivery to either party of that party's per-  
2 sonal property in the possession or control of the other party at the  
3 time of giving the judgment;

4 (4) for the division between the parties of their property,  
5 whether joint or separate, acquired only during coverture, in the  
6 manner as may be just, and without regard to which of the parties is  
7 in fault; however, the court, in making the division, may invade the  
8 property of either spouse acquired before marriage when the balancing  
9 of the equities between the parties requires it; and to accomplish  
10 this end the judgment may require that one or both of the parties  
11 assign, deliver, or convey any of their real or personal property to  
12 the other party;

13 (5) for a [TO] change in [THE] name of one of the parties.

14 \* Sec. 5. AS 25.24.230(a) is amended to read:

15 (a) If the petition is brought by one or both spouses under  
16 AS 25.24.200(a), the court may grant the spouses a final decree of  
17 dissolution and shall provide the other relief as provided in this  
18 section if the court, upon consideration of the information contained  
19 in the petition and the testimony of the spouse or spouses at the  
20 hearing, finds that

21 (1) the spouses understand fully the nature and conse-  
22 quences of their action;

23 (2) the agreements between the spouses concerning child  
24 custody, child support, visitation, spousal support and tax conse-  
25 quences, if any, division of property, and allocation of obligations  
26 are not grossly unfair, unjust, or inequitable and are in the best  
27 interests of the children of the marriage, if any; the court may not  
28 approve the agreement between the spouses pertaining to child support  
29 if the agreement does not specify an amount of child support that

1 would be awarded by a court under AS 25.24.320 unless the court makes  
2 a written finding that the application of AS 25.24.320 would be unjust  
3 or inappropriate in that particular case, as determined under the  
4 criteria established by rules required under AS 25.24.320; and

5 (3) the conditions in AS 25.24.200(a) have been met.

6 \* Sec. 6. AS 25.24 is amended by adding a new section to read:

7 Sec. 25.24.320. GUIDELINES FOR CHILD SUPPORT AWARDS. (a) The  
8 supreme court shall adopt rules to be used by courts to determine the  
9 amount of child support that should be awarded under AS 25.24.140,  
10 25.24.160, 25.24.230, and AS 47.23.060. The supreme court shall  
11 review the rules at least once every four years to ensure that their  
12 application results in the determination of appropriate child support  
13 award amounts.

14 (b) The child support enforcement agency and a hearing officer  
15 who determines an award of child support under AS 47.23 shall follow  
16 the guidelines established for court awards of child support under (a)  
17 of this section.

18 (c) There is a rebuttable presumption in a judicial or adminis-  
19 trative proceeding for the award of child support that the amount of  
20 the award that would result from the application of the guidelines in  
21 the rules adopted under (a) of this section is the correct amount of  
22 child support to be awarded. A court, hearing officer, or agency that  
23 awards an amount of child support that is different from that which  
24 would result from the application of the guidelines shall make a  
25 written finding that the application of the guidelines would be unjust  
26 or inappropriate in that particular case, as determined under criteria  
27 which the supreme court shall establish in the rules.

28 \* Sec. 7. AS 47.23.020(a) is amended to read:

29 (a) The agency shall

1 (1) seek enforcement of child support orders of the super-  
2 ior courts of the state in other jurisdictions and shall obtain,  
3 enforce, and administer the orders in this state;

4 (2) adopt regulations to carry out the purposes of this  
5 chapter, including regulations that establish

6 (A) schedules for determining the amount an obligor is  
7 liable to contribute toward the support of an obligee under this  
8 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social  
9 Security Act); the schedules adopted under this paragraph may not  
10 conflict with the guidelines adopted by the supreme court under  
11 AS 25.24.320;

12 (B) procedures for hearings conducted under AS 47.23.-  
13 170; and

14 (C) subject to AS 47.23.025 and to federal law, a  
15 uniform rate of interest on arrearages of support that shall be  
16 charged the obligor upon notice if child support payments are 10  
17 or more days overdue or if payment is made by a check backed by  
18 insufficient funds; however, an obligor may not be charged inter-  
19 est on late payment of a child support obligation, other than a  
20 payment on arrearages, if the obligor is

21 (i) employed and income is being withheld from  
22 the obligor's wages under an income withholding order;

23 (ii) receiving unemployment compensation and child  
24 support obligations are being withheld from the obligor's  
25 unemployment payments under AS 23.20.401; or

26 (iii) receiving compensation for disabilities under  
27 AS 23.30 and child support obligations are being withheld  
28 from the obligor's compensation payments;

29 (3) administer and enforce the Uniform Reciprocal

1 Enforcement of Support Act (AS 25.25);

2 (4) establish, enforce, and administer child support obli-  
3 gations administratively under this chapter;

4 (5) administer the state plan required under 42 U.S.C.  
5 651 - 665 (Title IV-D, Social Security Act) as amended;

6 (6) disburse support payments collected by the agency to  
7 the obligee, together with interest charged under (2)(C) of this  
8 subsection;

9 (7) establish and enforce administratively under this  
10 chapter, or through the superior courts of the state, child support  
11 orders from other jurisdictions pertaining to obligors within the  
12 state;

13 (8) enforce and administer spousal support orders if a  
14 spousal support obligation has been established with respect to the  
15 spouse and if the support obligation established with respect to  
16 child of that spouse is also being administered; and

17 (9) obtain a medical support order as part of a child  
18 support order if health care coverage is available to the obligor at a  
19 reasonable cost.

20 \* Sec. 8. AS 47.23 is amended by adding a new section to read:

21 Sec. 47.23.047. REVIEW OF CHILD SUPPORT OBLIGATIONS. (a) The  
22 agency shall develop a plan for review of all child support awards  
23 enforced by the agency. The plan must provide that

24 (1) by October 13, 1990, the agency shall, at the request  
25 of either parent subject to a child support order or duty of support,  
26 and may on its own initiative, review a child support order or duty of  
27 support being enforced by the agency and adjust the duty of support,  
28 or seek adjustment of the order under AS 25.24.170, in accordance with  
29 the guidelines established under AS 25.24.320;

1 (2) by October 13, 1993, the agency shall review a child  
2 support order or duty of support being enforced by the agency not  
3 later than 36 months after the establishment of the order or duty of  
4 support or the most recent review, and shall adjust the duty of sup-  
5 port, or seek adjustment of the order under AS 25.24.170, in accor-  
6 dance with the guidelines established under AS 25.24.320 unless

7 (A) in the case of an order with respect to an indi-  
8 vidual whose rights are transferred to the state by subrogation  
9 under AS 47.23.130, the agency determines, under applicable  
10 federal regulations, that review would not be in the best inter-  
11 ests of the child and neither parent has requested review; and

12 (B) in the case of an order or duty of support being  
13 enforced under this chapter that is not described in (A) of this  
14 paragraph, neither parent has requested review.

15 (b) The agency shall notify each parent subject to a child sup-  
16 port order or duty of support that is being enforced under this chap-  
17 ter of

18 (1) a review of the order or duty of support at least 30  
19 days before the beginning of the review process;

20 (2) the right of each parent to request review of an order  
21 or duty of support under (a) of this section; and

22 (3) a proposed adjustment, or determination that there  
23 should be no change, in the child support award amount, after which  
24 the parent shall have at least 30 days to initiate proceedings to  
25 challenge the adjustment or determination under AS 47.23.210.

26 \* Sec. 9. AS 47.23.060 is amended by adding a new subsection to read:

27 (e) An award of child support under this section must comply  
28 with AS 25.24.320.

29 \* Sec. 10. AS 47.23.210(a) is amended to read:

1 (a) Judicial review by the superior court of an agency decision  
2 establishing, [OR] modifying, refusing to modify, or refusing to seek  
3 modification of a duty of support or amounts of support due may be  
4 obtained by filing a notice of appeal in accordance with the applica-  
5 ble rules of court governing appeals in civil matters. A notice of  
6 appeal shall be filed within 30 days of the decision.

7 \* Sec. 11. The supreme court shall adopt the rules required by AS 25.-  
8 24.320, added by sec. 6 of this Act, in a timely manner so that the rules  
9 take effect on October 13, 1989.

10 \* Sec. 12. Except for sections 1 - 2, and 11 of this Act, this Act  
11 takes effect October 13, 1989.

12 \* Sec. 13. Sections 1 - 2 of this Act take effect January 1, 1990.

13 \* Sec. 14. Section 11 of this Act takes effect immediately under AS 01.-  
14 10.070(c).

THE FOLLOWING DOCUMENT HAS  
NOT BEEN FILMED BUT IS  
AVAILABLE IN THE ORIGINAL  
FILE

H.R. 1720

THE FAMILY SUPPORT ACT OF 1988

SENATOR RICK UEHLING  
Capitol Room 516  
465-4821

**S B**

**66**

STATE OF ALASKA  
THE LEGISLATURE

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

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

SB 66

Senate C&RA

2/2/89

6 For an Act entitled: "A bill relating to liability regarding protective  
7 custody of intoxicated or incapacitated persons."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA;

9 \* Section 1. AS 47.37.170(g) is repealed and reenacted to read:

10 (g) A person may not bring a (civil) action for damages regarding  
11 the decision whether or not to take an intoxicated or incapacitated  
12 person into, or to release a person from, protective custody under  
13 this section, or for injuries incurred in protective custody. Howev-  
14 er, this subsection does not preclude liability for civil damages  
15 caused by gross negligence or reckless or intentional misconduct.

16 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).  
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(1) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(2) inpatient treatment;

(3) intermediate treatment; and

(4) outpatient and follow-up treatment.

(c) The office shall insure that adequate and appropriate treatment is provided to alcoholics and intoxicated persons admitted under AS 47.37.160 — 47.37.190 within the limits of available state and federal funds.

(d) The office shall maintain, supervise and control all facilities operated by it subject to the regulations of the department. The administrator of each facility shall make an annual report of its activities to the coordinator in the form and manner the coordinator specifies.

(e) If possible, the office shall coordinate the activities of the program with all appropriate public and private resources.

(f) The coordinator shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

(g) The office may contract for the use of any facility as an approved public treatment facility if the coordinator, subject to the regulations of the department, considers this an effective and economical course to follow. Contracting under this subsection is governed by AS 36.30 (State Procurement Code). (§ 1 ch 207 SLA 1972; am § 5 ch 150 SLA 1980; am § 62 ch 106 SLA 1986)

Effect of amendments. — The 1986 amendment, effective January 1, 1988, added the last sentence in subsection (g).

**Sec. 47.37.170. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (a) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help or a person who appears to be intoxicated in or upon a licensed premise where intoxicating liquors are sold or consumed who refuses to leave upon being requested to leave by the owner, an employee or a peace officer may be taken into protective custody and assisted by a peace officer or a member of the emergency service patrol to the person's home, an approved public treatment facility, an approved private treatment facility, or another appropriate health facility. If all of the preceding facilities, including the person's home, are determined to be unavailable, a person taken into protective custody and assisted under this subsection may be taken to a state or municipal detention facility in the area.

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to

an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

(c) A person who voluntarily appears or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. After the examination, the person may be admitted as a patient or referred to another health facility. The approved public treatment facility which refers the person shall arrange for transportation.

(d) A person who, after medical examination, is found to be incapacitated by alcohol at the time of admission or to have become incapacitated at any time after admission, may not be detained at a facility after the person is no longer incapacitated by alcohol. A person may not be detained at a facility if the person remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless the person is committed under AS 47.37.180. A person may consent to remain in the facility as long as the physician in charge considers it appropriate.

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

(f) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be promptly notified. If an adult patient who is not incapacitated requests that there be no notification of next of kin, his request shall be granted.

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(h) If the physician in charge of the approved public treatment facility determines it is for the patient's benefit, an attempt shall be made to encourage the patient to submit to further diagnosis and appropriate voluntary treatment.

(i) A person taken to a detention facility under (a) or (b) of this section may be detained only (1) until a treatment facility or emergency medical service is made available, or (2) until the person is no longer intoxicated or incapacitated by alcohol, or (3) for a maximum period of 12 hours, whichever occurs first. A detaining officer or a detention facility official may release a person who is detained under (a) or (b) of this section at any time to the custody of a responsible adult. A peace officer or a member of the emergency service patrol, in

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detaining a person under (a) or (b) of this section and in taking the person to a treatment facility, an emergency medical service or a detention facility, is taking the person into protective custody and the officer or patrol member shall make reasonable efforts to provide for and protect the health and safety of the detainee. In taking a person into protective custody under (a) and (b) of this section, a detaining officer, a member of the emergency service patrol or a detention facility official may take reasonable steps for self-protection, including a full protective search of the person of a detainee. Protective custody under (a) and (b) of this section does not constitute an arrest and no entry or other record may be made to indicate that the person detained has been arrested or charged with a crime, except that a confidential record may be made which is necessary for the administrative purposes of the facility to which the person has been taken or which is necessary for statistical purposes where the person's name may not be disclosed.

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270(9) applies to other portions of this chapter. (§ 1 ch 207 SLA 1972; am §§ 1-4 ch 101 SLA 1976)

Editor's notes. — This section is set out above to correct a minor error in subsection (j) in the main pamphlet.

Sec. 47.37.270. Definitions. In this chapter

(1) "alcoholic" means a person who habitually lacks self-control in using alcoholic beverages, or uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered, or the person's social or economic function is substantially disrupted;

(2) "approved private treatment facility" or "private facility" means a private agency meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(3) "approved public treatment facility" or "public facility" means a treatment agency operating under the direction and control of the office or providing treatment under AS 47.37.010 — 47.37.270 through a contract with the office under AS 47.37.130(g) or through a grant awarded under AS 47.30.475, and meeting the standards prescribed in AS 47.37.140(a) and approved under AS 47.37.140(c);

(4) "board" means the Review Board on Alcoholism established under AS 47.37.060;

(5) "commissioner" means the commissioner of health and social services;

RECEIVED

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 66  
PUBLISH DATE: OFFICE OF SENATOR RICK HALFORD

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: "An Act relating to immunity for treatment of intoxicated persons..."  
Sponsor: Senator Halford  
Requestor: Senator Halford

Agency Affected: Public Safety  
BRU: Law Enforcement  
Component: AST, FWP, CAP, VPSO, FP

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
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)

SB 66 would prevent lawsuits against the State, Department, and its officers, employees, and agents for discretionary decisions regarding incapacitated (intoxicated) persons. Passage of this bill may eliminate future liability, and would have no fiscal impact on the Department's present budget.

Prepared by: Captain C. Roger McCoy, Special Assistant  
Division: Office of the Commissioner

Phone: 465-4322  
Date: 1/23/89

Approved by Commissioner: Arthur English  
Agency: Department of Public Safety

Date: 1-23-89

# ALASKA STATE LEGISLATURE

Anchorage Office:  
3111 C St., Suite 530  
Anchorage, AK 99503  
907-561-7616



While in Juneau:  
P.O. Box V  
Juneau, AK 99811  
907-465-4958

Senator Rick Halford

## MEMORANDUM

To: Senator Jan Faiks, Chairman  
Judiciary Committee

From: Senator Rick Halford

*Rick Halford*

Date: February 11, 1989

---

Legislation originally adopted in 1972 as a part of the Uniform Alcoholism and Intoxication Treatment Act, specifically exempted peace officers and emergency service personnel from criminal and civil liability for acting in the course of their official duty regarding the treatment of intoxicated individuals. The Act was an attempt to insure that alcoholics and intoxicated individuals would not be prosecuted for their consumption of alcohol, but instead would be afforded a continuum of treatment in order to lead normal lives as productive members of society. It was not intended that peace officers or members of the emergency service patrol acting in the course of their official duty be held criminally or civilly liable for their actions, nor was it intended that municipalities be held criminally or civilly liable for the actions of their emergency service personnel.

Senate Bill 66 is an effort to take care of a problem that took place when Alaska's Supreme Court ruled that the Municipality of Anchorage had an "affirmative duty" to take individuals incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility.

The bill returns the duty to aid individuals incapacitated by alcohol to the status of a "public duty" and removes the ability of incapacitated individuals to sue for an alleged failure to perform that duty.

The bill applies only to causes of action that accrue on or after the effective date of the Act and carries an immediate effective date.

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1.26.89  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE \_\_\_\_\_

1/9/89

Mr. President:

C&RA Committee considered SB 66

immunity for treatment of intoxicated persons; efd.

and recommended:

replace with CS \_\_\_\_\_  same title

attached amendment(s) and  new title

\_\_\_\_\_ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

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

*True 1.0002 - No Rec*  
*Att. Samueli - Do Not Pass*  
*Pat Samueli - No Rec*

*Ad Adams - Do Pass*  
\_\_\_\_\_  
Chairman signature and recommendation


Committee backup attached

# Alaska MUNICIPAL League

TELEPHONE  
(907) 586-1325  
FAX 463-5480

217 SECOND STREET, SUITE 200  
JUNEAU, ALASKA 99801

TO: Senator Al Adams, Chair  
Members of Senate Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: January 24, 1989

SUBJECT: SB 66 - Immunity for Treatment of Intoxicated Persons

The Alaska Municipal League supports SB 66. For the second year, relief from the implied liability created by the Supreme Court ruling in Busby v Municipality of Anchorage is a priority of the AML and the 123 municipalities the AML represents directly. The AML believes the Court misinterpreted the intent of the Legislature in AS 47.37.170(g) and the resulting implications of liability have created an unnecessary and unintentional burden on our law enforcement officials and our correctional facilities. SB 66, as introduced, provides legislative clarification for the courts and removes the threat of liability which is a deterrent to the protection of all our citizens.

I have attached a copy of the AML position on Busby which was contained in the AML's Municipal Platform which outlines the AML's legislative priorities for 1989 and which was provided to all legislators. SB 66 accomplishes the desired intent of the AML position on the Court's misinterpretation of AS 47.37. I have also attached copies of relevant AML resolutions passed by the AML membership at their annual conference in November.

Governor Cowper introduced HB 406 last year which would have provided immunity under AS 47.37 but unfortunately the bill did not get out of the House. Some believe that the immunity granted under AS 47.37.170(g) should be "qualified" by adding a legal test of "maliciousness". This is inappropriate and unnecessary. No problem or complaint existed before Busby. Our law enforcement officials are professionals and understand and carry out their duties under AS 47.37. Creating a civil liability for carrying out this duty may have the opposite effect of deterring the effective enforcement of AS 47.37.

The AML supports SB 66, appreciates the efforts of the sponsor to correct the problem it is causing in our communities, and urges the Committee to pass the bill out as introduced.

Attachments

cc: Senator Halford

## Removal of Municipal Liability Imposed by Busby Decision

The Alaska Municipal League urges the Legislature to pass legislation reversing the implied liability of municipalities caused by the Busby decision regarding taking incapacitated persons into protective custody.

### BACKGROUND

The decision of the Alaska Supreme Court in Busby v. Municipality of Anchorage, which interpreted the intent of the Alaska Legislature in enacting AS 47.37.170(b), judicially created a duty to take incapacitated persons into custody that the Legislature did not intend to impose upon local communities.

The purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in local communities. However, to change that ability of local communities to help those in need into an affirmative duty to do so imposes on local communities obligations they are neither equipped nor fairly required to meet. The League supports a wide variety of measures to deal with the complicated issues of alcohol/drug abuse in Alaska. Nonetheless, the creation by the courts of a governmental obligation to take incapacitated persons into custody that took place without the discussion and study of the impacts of that obligation that would occur during the normal legislative process was not a good or fair way to address the problem.

The effect of this court decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facility. The result has been great expense to the municipality or the State and an increased workload for peace officers, which comes at the expense of other duties, including investigation of violations of alcohol control laws.

Therefore, the League supports amending AS 47.37.170(b) by the addition of a simple declaration as follows:

"This section shall not impose any affirmative duty upon municipalities or their agents to take persons incapacitated by alcohol into protective custody."

This is the narrowest possible legislative response to the Supreme Court's misinterpretation of legislative intent in the Busby case. Other programs and measures are needed to deal with the complex and difficult issues

**Resolution of the Alaska Municipal League**

**Resolution No. 89-7**

**A RESOLUTION URGING THE REVERSAL OF THE IMPLIED  
LIABILITY OF MUNICIPALITIES REGARDING  
TAKING INCAPACITATED PERSONS INTO PROTECTIVE CUSTODY**

WHEREAS, the purpose of AS 47.37.170(b) is to provide for a compassionate local response to one aspect of the alcohol/drug crisis in Alaska communities to help those in need, and

WHEREAS, the Alaska Supreme Court decision in Busby v. Municipality of Anchorage incorrectly interpreted the legislative intent behind AS 47.37.170(b) and judicially created an affirmative duty to take incapacitated persons into custody that was never intended to be imposed upon local communities, and

WHEREAS, the effect of this decision has been that municipalities with police powers are now forced to pick up all persons who appear to be incapacitated and put them in a treatment facility, where possible, or in state or municipal correctional facilities, and

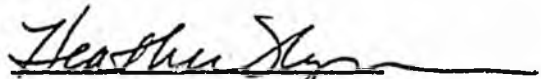
WHEREAS, this obligation has resulted in a great deal of expense to municipalities or the State and an increased workload for peace officers, leaving them with inadequate time for other police duties, including investigation of violations of alcohol control laws, and

WHEREAS, this decision to burden local governments with an obligation that they are neither equipped nor fairly required to meet was arrived at judicially, without any communication with or consideration for the communities involved and the impact such an obligation would have;


NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the 16th Alaska Legislature to enact legislation which clarifies the municipalities' Good Samaritan role in assisting incapacitated individuals by adding to AS 47.37.170(b) the simple declaration:

"This section shall not impose any affirmative duty upon local governments or their agents to take persons incapacitated by alcohol into protective custody."

Adopted this 18th day of November 1988 in Fairbanks, Alaska.

  
Heather Flynn, President

ATTEST:

  
Scott A. Burgess, Executive Director

**Resolution of the Alaska Municipal League**

**Resolution No. 89-8**

**A RESOLUTION SEEKING ALTERATIONS OF STATE STATUTES  
TO ALLOW MORE LOCAL AUTONOMY IN DEALING WITH  
THE PUBLIC INEBRIATE PROBLEM**

WHEREAS, Alaska Statute 47.37.170(b) requires that a person appearing to be incapacitated by alcohol in a public place be taken into protective custody by a peace officer, and

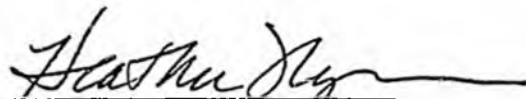
WHEREAS, little latitude is available to local governments under this statute to deal with the problem, and

WHEREAS, AS 47 places local jurisdictions in undue risk of litigation, and


WHEREAS, compliance with AS 47 jeopardizes municipal financial ability to provide health and related social services to persons experiencing alcohol related problems;

NOW, THEREFORE, BE IT RESOLVED that the Alaska Municipal League urges the Legislature to alter AS 47.37.170 to permit greater local autonomy in dealing with public inebriates.

Adopted this 18th day of November 1988 in Fairbanks, Alaska.

  
Heather Flynn, President

ATTEST:

  
Scott A. Burgess, Executive Director

**Resolution of the Alaska Municipal League**

**Resolution No. 89-9**

**A RESOLUTION URGING THE LEGISLATURE TO PROVIDE FUNDING  
TO MUNICIPALITIES TO OFFSET THE COST OF COMPLYING  
WITH THE PROVISIONS OF AS 47.37**

WHEREAS, alcohol abuse is purported to be the number-one health problem in the State of Alaska, and

WHEREAS, the Alaska Supreme Court has held that municipalities have an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility, if one is available, and

WHEREAS, if a treatment facility is not available, the municipality must detain incapacitated persons in a state or municipal detention facility, and

WHEREAS, failure to provide protective custody to persons incapacitated by alcohol may result in liability for damages to the intoxicated person when injury results, and

WHEREAS, this increased responsibility and liability have been imposed on municipalities at a time when there are decreasing state revenues to fund municipal jail contracts, and

WHEREAS, treatment facilities and detention facilities have no real means to enforce the collection of fees from those who are taken into protective custody, and

WHEREAS, those taken into protective custody often do not have the resources to pay for medical treatment or detention, and

WHEREAS, local governments have been forced to assume the financial burden of providing medical examination, treatment, and protective custody detention as required by AS 47.37, and

WHEREAS, once an incapacitated person is taken into protective custody, the treatment facility or detention facility assumes further liability for the safety and welfare of that person while detained, and

WHEREAS, many standard municipal insurance policies specifically exclude "custodial care" from coverage, and

WHEREAS, a special alcohol tax would seem to make sense in that it would place the cost of the problem on the source of the problem, and

WHEREAS, AS 4.21.010 specifically prohibits municipalities from imposing such a tax, and

WHEREAS, barring this avenue for funding a State-mandated responsibility and liability, municipalities must look to the State for relief from the burden imposed on municipalities by AS 47.37 and the State Supreme Court;

NOW, THEREFORE, BE IT RESOLVED by the Alaska Municipal League that:

1. The Alaska State Legislature is hereby urged to provide direct funding to municipalities to offset the cost of complying with the provisions of AS 47.37; and
2. The Alaska State Legislature is further urged to amend AS 4.21.010 to allow local governments to impose a special tax on alcohol to fund mandated programs and procedures to deal with alcohol abuse within local communities and to fund substance abuse education.

INDEMNIFICATION FOR GOVERNMENT EMPLOYEES

We have made indemnification for Public Employees our number one priority. It has been given our highest priority because we see no other single issue that has greater potential impact for both law enforcement and other government workers as well.

It has long been accepted that government must be held responsible for what it does. When the government takes, or fails to take action, courts have held that the government is liable for its actions, and injured parties have, through law suits or claims, received compensation for the wrongs done to them. Generally, when a law suit is filed, it is filed against the government and the suit names employees of the government as parties to the action. Traditionally, employees have not been held personally liable for actions they have taken at the behest of their employer, unless those employees were clearly working outside the scope of their authority.

Recent court rulings have led to the current trend that holds public employees personally responsible for actions that they have taken in their jobs. This trend now places public employees in a position where their own personal assets and savings are at risk whenever law suits are filed, even though that employee was working within the scope of their employment without any intent of causing harm.

This places all public employees at risk from the highest level policy makers to the lowest level of workers where those policies are carried out. The social workers, the road maintenance supervisor, the police officer, the medic, the fireman, and the department manager, are all vulnerable. We in law enforcement believe this is an undue burden upon public employees and it carries great potential for the workings of government to become bogged down, because employees fear that decisions they make in good faith may result in the loss of their personal assets.

When employees are doing the work of the government within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to law suits. Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgements they make can result in the loss of their homes, cars and savings or other assets.

## REMOVAL OF MUNICIPAL LIABILITY IMPOSED BY BUSBY DECISION

The Busby decision arose from a case in Anchorage involving an inebriate who was contacted, but not taken into custody, by a police officer and who was later struck by a motor vehicle. Busby sued the municipality for not having taken him into custody. The case reached the Supreme Court, which found in Busby's favor.

The Court interpreted the intent of the legislature in enacting the Uniform Alcoholism and Intoxication Treatment Act, AS 47.37.170 (b), to create a duty for municipalities to take incapacitated persons into custody. The purpose of the statute is for municipalities to help those in need. The Court apparently interpreted this as a responsibility which imposes upon municipalities substantial obligations, including placing such persons in a treatment facility or in a state or local correctional facility.

Some communities, especially those in outlying areas with very small police departments or remote state trooper posts have no treatment or correctional facilities. They only have a holding facility, or local jail, with no professional person to provide suitable treatment.

We encourage and support legislation which would remove the liability from municipalities and their officers for acting in good faith and making a decision not to take an inebriated person into custody. With this kind of liability attached, the impact upon the municipalities and the ability for officers to make good common sense decisions about a person's liberty is great.

## SUMMARY

We anticipate there will be many issues during the session that the Coalition will support. We have listed the four as our priorities keeping in mind there are those we have supported in the past and will undoubtedly become bills again. On those we have made our viewpoint well known and will continue to lobby in their favor.

We will strongly support the recriminalization of marijuana, conspiracy, a mandatory seat belt law, and any laws proposed which would further the protection of our children.

The following is a list of the Board of Directors for the organizations which make up the Coalition. If you have any questions or there is any way we can assist in the passage of this legislation please call.

### AACP

Mike Daugherty  
Homer  
President  
235-8113

Duane Udland  
Anchorage  
Vice President  
786-8552

John McKibben  
Palmer  
Secretary  
745-4811

George Novaky  
Anchorage  
Treasurer  
786-8958

Dan Anslinger  
Ketchikan  
Board Member  
225-6631

Glen Godfrey  
Anchorage  
Board Member  
269-5511

Richard Cummings  
Fairbanks  
Board Member  
452-1527

### APOA

Shirley Warner  
Anchorage  
President  
786-8851

Dale Florian  
Fairbanks  
Vice President  
474-7721

Steve Kalwara  
Juneau  
Board Member  
586-5211

John Shover  
Fairbanks  
Board Member  
452-2114

Greg Russell  
Soldotna  
Board Member  
262-4455

Greg Hansen  
Anchorage  
Board Member  
786-8787

Terry Quarton  
Wasilla  
Board Member  
276-3550

### FBINAA

Kevin O'Leary  
Anchorage  
President  
786-8590

Rick Ross  
Kenai  
Vice President  
South Central Region  
283-7879

John Shover  
Fairbanks  
Vice President  
Northern Region  
452-2114

Dan Anslinger  
Ketchikan  
Vice President  
Southeast Region  
225-6631

Turk Mayfield  
Willow  
Secretary/Treasurer  
495-6413



1791 - 1991

CITY OF KENAI  
"Oil Capital of Alaska"

210 FIDALGO KENAI, ALASKA 99611  
TELEPHONE 283-7535  
FAX 907-223-3014

January 23, 1989

Sent via Telecopier

Senator Rick Halford  
Alaska State Legislation  
Pouch V  
Juneau, Alaska 99811

RECEIVED

JAN 28 1989

OFFICE OF  
SENATOR RICK HALFORD

Re: Senate Bill 66

Your efforts for corrective legislation relative to the oppressive financial burden the *Busby* decision will have on municipalities and *Busby's* detrimental psychological effect on our cadre of dedicated police officers is most appreciated.

As a City Attorney, who is also a former Public Defender and criminal defense attorney, as well as a member of AML's Legislative Committee, I have attempted to study this legislation objectively and have concluded that corrective legislation such as SB 66 is not only appropriate, but much needed.

To suggest that the decision whether or not to take an incapacitated person into custody is one to which civil liability should attached, is both ludicrous and demeaning to the police officer involved, as well as a slap in the face of every professional police department in the State of Alaska. Furthermore, such civil liability could well result in redlining of certain areas insofar as police activity is concerned so that the problem is not encountered, the liability alleviated, and resultant deaths and injuries, as a result of custodial arrests not taking place, multiplied. It can be anticipated that in the present economic climate such "unavailability" of police officers would be couched ostensibly in terms of "fiscal restraints," when in fact, the real reason would be fear of liability with its resultant financial burden for the governmental agency involved.

Senator Rick Halford  
January 23, 1989  
Page 2

Aside from the decision of whether or not to act, there seems to be concern on the part of some, that in taking affirmative action, it may be taken in a grossly negligent or malicious manner. Inclusion of a remedy for gross misconduct or malicious misconduct, is intuitive without piggybacking specific language allowing a cause of action in legislation correcting the *Busby* decision's burden relevant to custodial arrests. In other words, to give a specific statutory cause of action is to, in actuality, give nothing and to take nothing away insofar as the rights of an aggrieved party are concerned. However, it seems to be in the minds of some, a problem of sufficient magnitude to require inclusion of such language into a statute so as to perhaps warn all police officers and remind them of a liability that already exists. If such language is perceived by police agencies as creating or elevating a right of action, it is assumed that the response would be defensive in nature, which may result in an attempt to have less contact with the very subjects they are presently attempting to assist.

It seems we have come full circle. There was a time when public intoxication was a crime subject to arrest. Then it was found to be a disease, making it a status crime for which one could not be arrested. Now, police officers must take people into protective custody due to disease or risk civil suit.

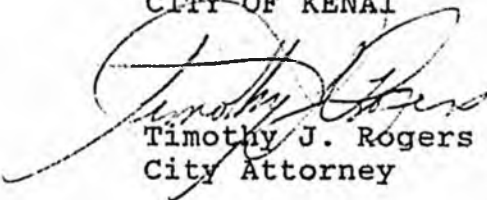
For a variety of reasons, professionals are being put at odds with the very people they want to serve. We read that malpractice actions are driving doctors from practice and increasing medical costs. Lawyers now practice defensively and view their clients as adversaries. Let's not drive another wedge between a group whose duty it is to serve and those in need of their assistance.

Please find enclosed fax materials received from the Alaska Peace Officers Association in support of corrective legislation such as SB 66 which we hope you will find informative.

Senator Rick Halford  
January 23, 1989  
Page 3

Again, we thank you for your assistance in the forming of SB 66 as a reasonable and rational solution to a serious and expensive problem for all concerned.

CITY OF KENAI



Timothy J. Rogers  
City Attorney

TJR/clf

cc: Senator Mike Szymanski  
Senator Al Adams  
Senator Paul E. Fischer  
Representative C.E. Swackhammer  
Representative Mike Navarre  
Scott Burgess, AML  
Mike Daugherty, AACP  
Duane Udland, AACP  
John McKibben, AACP  
George Novaky, AACP  
Glen Godfrey, AACP  
Richard Cummings, AACP

Shirley Warner, APOA  
Dale Florian, APOA  
Steve Kalwara, APOA  
John Shover, APOA, FBINAA  
Greg Russell, APOA  
Greg Hansen, APOA  
Terry Quarton, APOA  
Kevin O'Leary, FBINAA  
Rick Ross, FBINAA  
Turk Mayfield, FBINAA  
Dan Anslinger, AACP,  
FBINAA



ADOPTED AUGUST 1972

# CITY of WRANGELL, ALASKA

INCORPORATED JUNE 15, 1903

BOX 531, 99929 (907) 874-2381  
FAX: (907) 874-3952

FAXED - 465-3700

January 24, 1989

Senator Al Adams  
Alaska State Legislature  
Capital, Room 423  
Juneau, Alaska 99811

Attn: Members of the Senate CORA Committee

Dear Senator Adams:

Being unable to attend the teleconference today concerning SB 66, I wish to take this opportunity to add my support to SB 66. The implied liability created by the Busby v. Municipality of Anchorage Supreme Court decision has put unnecessary strain on both large and small communities alike.

I urge your committee take quick and positive action on SB 66 so that this ill needed responsibility can be alleviated and the additional strain taken off our police departments and correction facilities.

Thank you and your committee for allowing my input on this matter.

Sincerely,

Robert S. Campbell  
Council - City of Wrangell  
AML Legislative Committee



# City and Borough of Sitka

304 LAKE STREET. SITKA, ALASKA. 99835

January 24, 1989

## PUBLIC OPINION MESSAGE

The City and Borough of Sitka wishes to express its support for Senate Bill 66. This bill wisely returns the duty to aid intoxicated persons to the status of a "public duty" removing the ability of individuals to sue for an alleged failure to perform that duty. It allows public officials, normally police officers, to reasonably weigh an individual's right to freedom from restraint against that same individual's personal safety without the added distraction of concern for liability resulting from a decision which someone else might later decide was wrong.

# Municipality of Anchorage



OFFICE OF THE MAYOR

P.O. BOX 196650  
ANCHORAGE, ALASKA 99519-6650  
(907) 343-4431

TOM FINK,  
MAYOR

January 27, 1989

Representative Sam Cotten  
P.O. Box 296  
Eagle River 99577

Subject: Senate Bill 66/House Bill 116 - "Busby" Relief

Dear Representative Cotten:

I would like to take this opportunity to urge your support of Senate Bill 66 and House Bill 116 which offers local government's much needed relief from the "Busby" decision. I am sure you are aware of how the "Busby" decision has handicapped the day-to-day operations of our police and emergency services personnel, as well as the increased liability it imposes on state and local public safety agencies.

Sincerely,

Tom Fink  
Mayor

Bruce Talbot holds a hat that triggered an attack by a great horned owl Monday night at Kincaid Park.

## Skier loses shirt — and more — to raptor

By JOHN TETPON  
Daily News reporter

A great horned owl took Bruce Talbot's hat and gloves Monday night. Talbot was wearing them at the time. Then the 4-pound raptor took Talbot's coat, vest and turtle-neck, leaving the 155-pound skier naked from the waist up in freezing temperatures on Kincaid Park's Lighted Loop.

A group of skiers helped Talbot

escape with his pants, boots and skis. The owl was unhurt.

According to Talbot, he was skiing along the trail when bad things began to happen.

"I was going down a long hill and I felt this thing hit me on the back of the head. I thought it was another skier playing a joke. As I looked behind, I saw these rather large wings," he said.

Talbot said he was wearing a gray

pile hat that might have appeared to be a rabbit to the owl.

"It got off and flew up in a tree and as I was going down the trail a little further, I felt this tightening around my head and felt his talons tightening around my scalp. I reached up and grabbed the legs of the bird and found that I was holding a full-grown great horned owl.

Please see Back Page, OWL

## rises in Kotzebue

By DAVID HULEN  
Daily News reporter

Less than two months after voters in Kotzebue decided to continue the community's prohibition against liquor sales, a new debate over booze is emerging there and people in other Bush villages are watching to see what happens.

At issue is a proposal by Kotzebue city officials to establish Alaska's first liquor "delivery center" — a place

where virtually all alcohol coming into the region would have to pass before being picked up by residents who ordered it. Such centers are allowed under legislation passed last year.

Kotzebue is one of a half-dozen communities in Alaska that have banned the sale — but not possession — of beer, wine and liquor. People can still order by mail or

Please see Back Page, BOOZE

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FOR HOME DELIVERY  
CALL 257-4400

For snow-day delivery of missed paper please call before 10 a.m.

## WEATHER



Clear and cold today with winds to 15 mph and a high

near 5. Low minus 15 to minus 25. High Friday may reach 5 below zero.

High Wednesday	13
Low Wednesday morning	1
9 p.m. temperature	3
Humidity	45%
Normal high Jan. 25	21
Normal low Jan. 25	7
Record high Jan. 25 (1901)	47
Record low Jan. 25 (1847)	-34

STATE, NATIONAL  
WEATHER FORECASTS  
PAGE A-2

## Police seek relief when dealing with drunks

### Bill that protects law officers from liability in drunks' accidents finds state backing

By DAVID POSTMAN  
Daily News reporter

JUNEAU — Alaska cities are asking the legislature to protect police from liability if a drunk they decide not to pick up is later injured or killed.

And some law enforcement officials are saying that if they are not given protection, they might start ignoring the drunks, resulting in more deaths but no liability to the police.

While a similar bill died in the House last year, the version introduced by Senate Majority Leader Rick Halford, R-Chugiak, and Senate President Tim Kelly, R-Anchorage, appears to have strong support. House Speaker Sam Cotten and Gov. Steve Cowper

also support protecting public employees.

The bill was introduced at the request of the Anchorage Chamber of Commerce's Crime Commission and the Alaska Municipal League, which were concerned about a Supreme Court ruling against Anchorage.

The suit had been filed by a man stopped by the police after he appeared to be drunk. But the officer decided the man wasn't drunk enough to take into protective custody and let him continue walking through downtown. He later was hit by a car. He sued, claiming state law required the city to pick him up and put him in custody.

The new trial ordered by the state

Supreme Court has not been held.

"Now we're not talking about people who make malicious decisions," said Anchorage Police Chief Kevin O'Leary. "But we're talking about somebody who makes a good faith decision and someone else comes along and says they did the wrong thing. It has a tremendous chilling effect on your public employees."

Said Alaska Municipal League President Heather Flynn, "The net result is municipalities are spending an inordinate amount of their resources bousing inebriates and they have the fear of liability if they don't."

Please see Back Page, DRUNKS

## Soviets' budget woes worse than reported

### Top adviser puts deficit at \$165 billion

By BILL KELLER  
The New York Times

MOSCOW — A leading official economic adviser said Wednesday night that the real Soviet budget deficit is the equivalent of \$165 billion, nearly three times the official estimate, and called the colossal deficit the most important economic

problem facing the country, saying that spending and shifting many government projects to private financing.

In a generally bleak assessment of the country's economic condition, Abalkin also predicted it would be another six years before the economic changes known as perestroika — restructuring



## Ancient tomb tuned into the stars

### Astrophysicists confirm accuracy of prehistoric architects

By PHILIP J. HILTS  
The Washington Post

When the sun rises on the day of the winter solstice, according to a centuries-old Irish legend, its first rays shoot through a carefully positioned slit in the roof of a prehistoric underground tomb and pierce the dark of a 60-foot passage to illuminate designs carved into the rock under a dome at the far end.

The tomb, at Newgrange about 30 miles from Dublin, was not fully excavated until

a thousand years before Stonehenge was completed, said Tom Bay, author of a report on the tomb in today's edition of the British journal Nature.

The winter solstice is the day on which the sun appears to rise from its southernmost point on the horizon during the year. The sun's rising point moves southward each fall and winter, making the days grow shorter. Then, on or about Dec. 21, the sun stops and begins to move northward toward spring. The day, sometimes called Midwin-

away from it with the hat and glove and all five of us started down the trail. About 40 feet down the trail, I felt the not-so-unfamiliar talons imbedded in my back and I fell face first in the snowbank and started calling for the others for help."

Mize said he turned to see Talbot and, "Lo and behold, the owl had attached himself to Bruce's back."

Because the owl had firmly grabbed onto the jacket, the five skiers decided that they would have no other choice but to remove the jacket, leave it with the owl "and escape with our lives."

"We took the jacket off, and all this time the owl is hanging on, and in the process of removing the jacket, we found that its talons were in my vest, which we also had to remove," Talbot said.

"Only to find that its talons were in my turtle-neck and because it was 5 below outside, we decided to tear a part of the turtle-neck off, but couldn't. I said, 'Oh, heck with it, let him have the turtle-neck, too.'"

"So, I'm down to nothing up to my waist, it's cold and it's two miles to the Kincaid recreation center and the owl has now found an even larger prey and he's gaily tearing at my wardrobe."

"I was able to put together some extra gloves and was able to get extra clothing from the other skiers and skied back to the center."

ing the poles over our heads." When they got there, the owl was gone and they found Talbot's clothing with "a lot of little holes in them."

"This is definitely something to write home about," Talbot said of the attack. Talbot said he escaped with superficial scalp wounds and talon marks on his back.

"I certainly won't wear that hat again," he said.

According to Jeff Hughes of the Alaska Department of Fish and Game, great horned owls regularly attack people. Researchers and biologists, he said, have been seriously wounded by talon punctures while banding the birds.

"They have very powerful feet," said Hughes.

The owl at Kincaid Park is probably setting up territory for nesting, he said. Great horned owls, which are protected by state and federal law, lay their eggs in February and March, Hughes said. U.S. Fish and Wildlife Special Agent Jim Sheridan said killing a great horned owl carries a maximum fine of \$5,000 and a maximum jail term of six months.

Hughes said had Talbot killed the bird in the struggle, the penalty probably would have been left up to the protection officer involved and a judge. "There would have been some extenuating circumstances," said Hughes.

approach is the same," Abalkin said of the troubled economic program. "But the tactics, the order of priorities and the timetables must be changed to meet the demands of reality."

The major shift is the decision to postpone some of the more controversial aspects of perestroika, especially price deregulation, until the budget deficit can be

last October that the Soviet budget deficit for 1989 would be about 35 billion rubles, the equivalent of \$58 billion at the official rate.

Although Western economists applauded him for admitting the long-denied existence of a deficit, they said he had understated it by failing to include money the government borrowed from state banks to cover its ex-

agreed Wednesday night. "That is, strictly, scientifically speaking, our deficit is 100 billion rubles."

That total \$165 billion at the official exchange rate — would put the real deficit at 11 percent of the Soviet gross national product, compared with an American budget deficit that is about 4 percent of its gross national product.

## DRUNKS: Law officers seek relief

Continued from Page A-1

There is no evident opposition to the bill. But Flynn, an Anchorage assemblywoman, says it's out there somewhere.

"There has been some conversation in quarters that it becomes a way for municipalities to shirk their responsibilities to the poor or the minorities," Flynn said. "That is not the intent of the bill at all, but I think we

ought to bring those arguments right on the table and talk about them."

Flynn said it is not a social issue at all, merely a matter of finances. But she said there is also an "ugly underbelly" to the issue as well — that police officers may begin to ignore drunks if they are not given protection from lawsuits.

In a letter to Halford, Kenai City Attorney Timothy Rogers said that may be

what happens, freeing officer of liability but increasing the chances the drunks may be injured or killed.

"It can be anticipated that in the present economic climate such 'unavailability' of police officers would be couched ostensibly in terms of 'fiscal restraints,' when in fact, the real reason would be fear of liability with its resultant financial burden for the governmental agency involved," Rogers said.

## BOOZE: Kotzebue residents debate plans to monitor and tax incoming liquor

Continued from Page A-1

air freight, but residents say the amount of alcohol consumed has dropped markedly since Kotzebue went "damp" a year ago, and so have related problems such as crime and accidents.

People behind the proposal say a regional liquor-distribution point would allow the city to know who is ordering alcohol from Anchorage and Fairbanks stores — and how much they're ordering. It could also give the city a way to tax liquor.

Supporters argue that it will be an effective way to stop bootleggers, who legally can have liquor delivered to Kotzebue and then illegally sell it to local residents and people in outlying dry villages.

"We still got a bootleg-

ging problem even though there's these new laws," said Kotzebue Mayor Willie Goodwin Jr. "I figured this was a way to get at that."

But many questions have been raised about the plan during a series of meetings over the past month, and many residents are apparently leery of it. The city sent out a survey to all the registered voters in town earlier this month, and those who responded were almost evenly split: 186 for it and 152 against.

Although residents have been reluctant to criticize the plan at public hearings and in interviews, many of the anonymous questionnaires blasted the proposal as expensive, an invasion of privacy and as a sneaky way to make a "damp" village dry.

"I know how to pick up

my own booze at the airport," said one resident. Another said, "Although I don't order very many alcoholic beverages, there are certain individuals in this community that I would rather not know that I order."

And even city council members have raised questions of whether such an operation would be worth the cost of running it and whether bootlegging is a serious enough problem to warrant such a fuss.

Officials in two other large damp villages, meanwhile — Bethel and Barrow — have asked for copies of Kotzebue's ordinance and say they're thinking about similar plans.

Under the new alcohol laws passed last year, all liquor that's shipped to "damp" villages like Kotzebue must be in boxes with

bright-colored labels saying what's inside.

There are limits on how much alcohol any person in a damp village can possess, but the laws are nearly meaningless in many places, state troopers have said, because there's no easy way to keep track of how much people receive.

Like a customs house, the proposed Kotzebue center would give the government a way to monitor what's coming to the village, and who it's coming to. Because Kotzebue is the only place in the region where jetliners from Anchorage and Fairbanks land, it also would give authorities more control over liquor headed for smaller villages in north-west Alaska.

Goodwin and City Manager Mike Scott said they envision a small building at the

airport where all drinking alcohol would be delivered from planes. They've proposed that the city enact a 6 percent local liquor tax or handling fee to cover the cost of running the operation.

To pick up liquor, a local resident would have to pay the tax, and there'd also be a record of how much each customer had purchased. The law makes it illegal for a person to possess more than 12 liters of liquor, 45 liters of beer or 24 liters of wine in damp areas.

People with luggage stepping off planes would be required to "declare" booze if they were carrying more than 2 liters of beer or wine and 1 liter of hard liquor, under the proposed law.

But details about how the center would work remain sketchy. No one knows, for example, who would have

access to information about who's ordered liquor and how heavily state troopers or local police would be involved in the center. City officials say it would cost roughly \$50,000 a year to run it, but aren't yet sure if a liquor tax could collect that much.

And even though the legislature passed a law allowing cities to open such centers, the law is vague, officials say, and Kotzebue's city council has talked about waiting until the state Alcoholic Beverage Control Board writes more specific rules before opening a Kotzebue center.

"It's a whole new area and we don't want to do this, then face a big, fat lawsuit," said Scott. "We want to be sure of what we're doing." Another hearing is scheduled for Feb. 2.

**ALASKA ACTION TRUST**

540 L Street, Suite 102  
ANCHORAGE, ALASKA 99501  
(907) 258-4040

*Chert's copy*

February 10, 1989

Senator Rick Halford  
Senate Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99511

Dear Senator Halford,

I recently attended, via the teleconference network, a hearing held in the Senate Community and Regional Affairs committee concerning Senate Bill 66, Immunity for Treatment of Intoxicated Persons. As I listened to the testimony, I realized that there is a great deal of misunderstanding surrounding this issue. I thought I would attempt to clarify some of the points.

First, in the case which the Alaska Municipal League cites as the reason for the necessity of such a bill, a man lost a leg as the result of alleged negligence by a police officer on duty for the city of Anchorage. What has happened thus far in that case is that the Supreme Court ruled that the city had what is referred to as an actionable duty to protect an intoxicated person once a member of the police force was aware that there was an intoxicated person wandering around the busy streets of Anchorage. Having established that the officer had a duty to protect this person, the court sent it back to a lower court to determine the question of negligence on the part of the officer. That question has not yet come to trial.

Secondly, nothing in that ruling says that municipalities must now expend all of their police time searching the streets for drunk people. They don't have to crawl behind every dumpster or patrol the alleys seeking intoxicated people. What they do have to do is take someone into protective custody once they have become aware of an intoxicated person.

One of the points made at the hearing was that the public taxpayer should not have to pick up costs associated with people getting drunk and injured. There are many other examples of public dollars being spent on medical care for people who make conscious choices to do something unhealthy. Many people continue to smoke cigarettes despite health warnings. Should we cut off all Medicare and Medicaid benefits to those who then suffer from emphysema or other related respiratory problems?

Senate Bill 66  
Alaska Action Trust  
Page Two

At this hearing, an administrator at the Petersburg Hospital also testified asking for immunity for health care providers who deal with intoxicated persons. He was concerned that they would be sued for holding someone against their will who was brought to the hospital for care and who was combatant. While it is true that someone may try to sue on such grounds, to assume such a case could be won shows a lack of faith in our jury system. There is probably not a court in the state that would award damages under such circumstances.

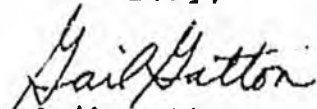
The end result of this bill is to take away a person's right to seek compensation through the judicial system for negligent behavior on the part of those who have been given the public trust. Indeed this bill is an invasion of judicial responsibilities by the legislature.

Senate Bill 66 is another piece of the assault upon our jury system that has been taking place the last few years. The concept of a trial by jury is one of the cornerstones of our democratic society, yet we continue to chip away at it by granting immunity to everyone who does not want to be held liable for anything.

Granted that dealing with inebriated people may not be the most gratifying duty a police officer has, but they nonetheless made a decision to serve the public and took on certain responsibilities with that decision, just as municipalities take on certain responsibilities when they accept the powers of police. It strikes me, however, that there may be better ways to deal with treatment of intoxicated people other than taking away their rights to seek compensation for negligence through our jury system.

If you need any additional information on this issue, please do not hesitate to contact me at 258-4040. Thank you for your consideration of these points.

Sincerely,



Gail Gatton  
Executive Director

Suggested by: Council

RESOLUTION NO. 89-16

A RESOLUTION OF THE COUNCIL OF THE CITY OF KENAI, ALASKA, REQUESTING THE 16TH ALASKA STATE LEGISLATURE GRANT RELIEF TO MUNICIPALITIES AND LOCAL GOVERNMENTS FROM THE IMPLIED LIABILITY UNDER ALASKA STATUTE 47.37 AS A RESULT OF THE SUPREME COURT'S RULING IN THE BUSBY CASE.

WHEREAS, the Supreme Court ruled in August, 1987 in Busby vs. Municipality of Anchorage that law enforcement officials have a duty to pick up individuals incapacitated by alcohol and drugs and put them in protective custody, and

WHEREAS, this ruling has created an implied liability for municipalities and the State, and the result has been that the police may be picking up all individuals suspected of drinking and putting them in sleep-off facilities, detoxification centers or jails to avoid a lawsuit, and

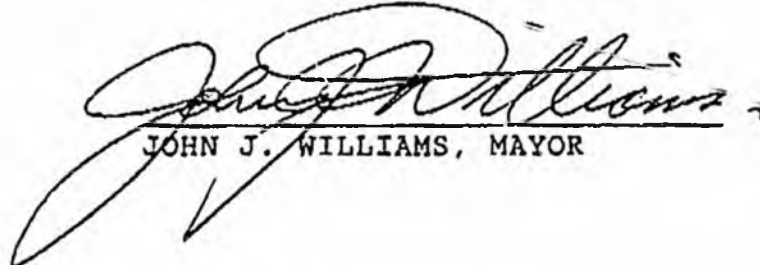
WHEREAS, this puts additional constraints upon municipalities and local governments budgets and manpower without any compensation from the State of Alaska for providing this type of care to irresponsible citizens, and

WHEREAS, most local governments are neither equipped or skilled in dealing with drug users, addicts, alcoholics or drunks and necessitates a further complication in forcing local governments to seek professional medical opinions without providing compensation to the professional health providers or having facilities in which to house these individuals, and

WHEREAS, at some point in time, government is going to have to make individuals start being responsible for themselves as opposed to the courts forcing government to be responsible to everybody and everything.

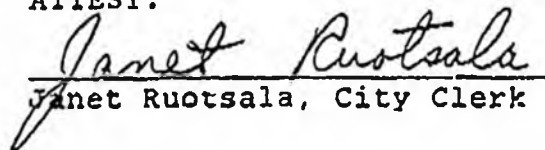
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA that the City of Kenai urges the 16th Alaska State Legislature to enact legislation that would give relief to municipalities under the Busby ruling that appears to create liability for municipalities which have been created beyond the control of municipalities.

PASSED BY THE COUNCIL OF THE CITY OF KENAI, ALASKA, this 15th day of February, 1989.



JOHN J. WILLIAMS, MAYOR

ATTEST:



Janet Ruotsala, City Clerk

Sjoberg

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

THE SUPREME COURT OF THE STATE OF ALASKA

THOMAS BUSBY,	)	
	)	
Appellant,	)	File No. S-1580
	)	
v.	)	<u>O P I N I O N</u>
	)	
MUNICIPALITY OF ANCHORAGE,	)	
MUNICIPALITY OF ANCHORAGE	)	
POLICE DEPARTMENT, and	)	
OFFICER MARY LOU FOSTER,	)	
jointly and severally,	)	
	)	
Appellees.	)	[No. 3214 - August 21, 1987]

NOTICE TO COUNSEL: This opinion will be re-  
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 Clerk of the Appellate Courts

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Milton M. Souther, Judge.

Appearances: Michael W. Flanigan, William Soule, Clark, Walther & Flanigan, Anchorage, for Appellants. James M. Bendell, James M. Bendell & Associates, Anchorage, for Appellees.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton and Moore, Justices.

BURKE, Justice.

This is an appeal from a summary judgment in favor of the Municipality of Anchorage (Municipality)<sup>1</sup> in which we

1. Because it does not appear that Officer  
(Footnote Continued)

municipality an actionable duty to take persons incapacitated by alcohol in a public place into protective custody. We determine that it does and thus reverse the judgment of the trial court and remand for further proceedings.

I

On May 1, 1980, Thomas Busby was walking about two feet into the traffic lane on East Fifth Avenue in Anchorage.<sup>3</sup> Officer Foster was on patrol and spotted Busby, stopped him, moved him off to the side of the road, talked with him and determined that Busby was intoxicated. Officer Foster then ran a warrant check on Busby but did not place him into protective custody. Apparently finding no

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(Footnote Continued)

. . . .

(j) For purposes of (b) of this section, "incapacitated by alcohol" means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgment or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety. The definition in AS 47.37.270(8) applies to other portions of this chapter.

3. Because this appeal comes to us on summary judgment, our obligation is to draw all inferences of fact in favor of appellant Busby and against appellee Municipality. See, e.g., Alaska Rent-a-Car v. Ford Motor Co., 526 P.2d 1136, 1139 (Alaska 1974).

# **CORRECTION**

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Appellant,  
v.  
MUNICIPALITY OF ANCHORAGE,  
MUNICIPALITY OF ANCHORAGE  
POLICE DEPARTMENT, and  
OFFICER MARY LOU FOSTER,  
jointly and severally,  
Appellees.

File No. S-1580  
O P I N I O N

[No. 3214 - August 21, 1987]

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to make of relevant persons other than your  
counsel in this case of the outcome.  
Clerk of the Appellate Courts

Appeal from the Superior Court of the State  
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Appearances: Michael W. Flanigan, William  
Soule, Clark, Walther & Flanigan, Anchorage,  
for Appellants. James M. Bendell, James M.  
Bendell & Associates, Anchorage, for  
Appellees.

Before: Rabinowitz, Chief Justice, Burke,  
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BURKE, Justice.

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of the Municipality of Anchorage (Municipality)<sup>1</sup> in which we

1. Because it does not appear that Officer  
(Footnote Continued)

are asked to determine whether AS 47.37.170<sup>2</sup> imposes upon a

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(Footnote Continued)

Foster has been sued in her individual capacity but only as a municipal police officer, the discussion which follows applies equally to all named appellees.

2. AS 47.37.170 provides in part:

(b) A person who appears to be incapacitated by alcohol in a public place shall be taken into protective custody by a peace officer or a member of the emergency service patrol and immediately brought to an approved public treatment facility, an approved private treatment facility, or another appropriate health facility or service for emergency medical treatment. If no treatment facility or emergency medical service is available, a person who appears to be incapacitated by alcohol in a public place shall be taken to a state or municipal detention facility in the area, if that appears necessary for the protection of the person's health or safety.

. . . .

(e) A person who is not admitted to an approved public treatment facility, is not referred to another health facility, and has no funds, may be taken to the person's home, if any. If the person has no home, the approved public treatment facility shall assist the person in obtaining shelter.

. . . .

(g) Peace officers or members of the emergency service patrol who comply with this section are acting in the course of their official duty and are not criminally or civilly liable for it.

(Footnote Continued)

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outstanding warrants, Officer Foster then reentered her vehicle and proceeded on her way. Shortly after Officer Foster left, Busby was struck by a car and suffered injuries as a result.

In his suit against the Municipality, Busby alleged that the Municipality was negligent and/or reckless in failing to take him into protective custody and that the Municipality's omission was the direct and proximate cause of his injuries. After hearing was held on Busby's and the Municipality's cross-motions for summary judgment, the trial court determined that the Municipality owed Busby no affirmative duty to take him into protective custody and that, therefore, the Municipality could not have been negligent in failing to do so. Accordingly, the trial court granted summary judgment in favor of the Municipality. This appeal followed.

## II

In the recent case of City of Kotzebue v. McLean, 702 P.2d 1309 (Alaska 1985), we unequivocally reaffirmed our rejection of the so-called "public duty doctrine" as an unnecessary and unjustified expansion of the state's statutorily limited immunity. Id. at 1311-12; see also Adams v. State, 555 P.2d 235, 241-43 (Alaska 1976). In place of that doctrine, we indicated that the liability of a municipality for the negligent acts and omissions of its

representatives will be governed by traditional tort principles. As we stated in McLean:

In practice, the public duty doctrine is an injunction against imposing liability on a government without first deciding what the government's duty is. While the public duty doctrine does protect the state from becoming the insurer of all private activity and from undue interference with its ability to govern, we believe that these concerns are better addressed by the tort concept of duty, which limits the class of people which may seek to hold the state responsible for negligent action, and by AS 09.50.250.

702 P.2d at 1313 (citation and footnote omitted). Thus, our determination here must be made with recourse to the principles embodied by the tort concept of duty.

As we have noted, "'[d]uty' is not sacrosanct in itself but [is] only an expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection." Id. (quoting W. Prosser, Handbook of the Law of Torts § 53, at 325 (4th ed. 1971)). Thus stated, the process of finding that a defendant owes a duty to a plaintiff is one which involves a fine balancing of conflicting policies; it is in essence an attempt to determine whether it would be fair and equitable to require an individual to act, or to refrain from acting, in a specified manner so as to avoid undue risk of harm to third persons. See generally W. Keeton, D. Dobbs, R. Keeton, and G. Owen, The Law of Torts § 53, at

356-58 (5th ed. 1984) (hereinafter Prosser). Recognizing the difficulty of this task, we have delineated a number of factors which should be considered to provide greater predictability in the decision-making process. These factors include the foreseeability of harm to the plaintiff; the degree of certainty that the plaintiff suffered injury; the closeness of the connection between the defendant's conduct and the injury suffered; the moral blame attached to the defendant's conduct; the policy of preventing future harm; the extent of the burden to the defendant and consequences to the community in imposing a duty to exercise care with resulting liability for breach; and the availability, cost, and prevalence of insurance for the risk involved. McLean, 702 P.2d at 1314 (quoting D.S.W. v. Fairbanks North Star Borough School District, 628 P.2d 554, 555 (Alaska 1981)).

These independent considerations, however, may sometimes be superseded by the legislature. For example, where the legislature has considered and resolved conflicting policies by clearly enunciating a duty in a statute, the relevant statute should be considered and, in a proper case, adopted as the appropriate standard of care. See Metcalf v. Wilbur, Inc., 645 P.2d 163, 167-68 (Alaska 1982); Bachner v. Rich, 554 P.2d 430, 440-42 (Alaska 1976); Breitkreutz v. Baker, 514 P.2d 17, 20-21 (Alaska 1973);

Ferrell v. Baxter, 484 P.2d 250, 263-65 (Alaska 1971); see generally Prosser, supra p. 6, § 36, at 220-29; Restatement (Second) of Torts § 285 (1965) (hereinafter Restatement). A statute enunciates the appropriate duty when it is found that (1) the plaintiff is within the class protected by the statute, (2) the harm/injury which occurred was of the type which the statute was intended to protect against, (3) the statute prescribes specific conduct rather than merely a general or abstract duty of care, (4) the defendant was a party charged with observing the statute, (5) the defendant can be fairly charged with being aware of the applicability of the statute, and (6) the statute is not so outdated or arbitrary as to make inequitable the statute's adoption as the standard of care. E.g., State Mechanical v. Liquid Air, 665 P.2d 15, 18-19 (Alaska 1983); Grothe v. Olafson, 659 P.2d 602, 607 (Alaska 1983); see also Restatement § 286.<sup>4</sup>

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4. Section 286 of the Restatement (Second) of Torts (1965) provides:

The court may adopt as the standard of conduct of a reasonable man the requirements of a legislative enactment or an administrative regulation whose purpose is found to be exclusively or in part

(a) to protect a class of persons which includes the one whose interest is invaded, and

(Footnote Continued)

Busby argues that AS 47.37.170(b) articulates the appropriate duty in this case. We agree. As the statute explicitly states, and as the trial court itself noted, AS 47.37.170(b)<sup>5</sup> is intended to benefit and protect the health and well being of persons who are incapacitated by alcohol and imposes a mandatory duty upon law enforcement personnel to place such persons into protective custody. Cf. Peter v. State, 531 P.2d 1263, 1268 (Alaska 1975) (quoting House Concurrent Resolution No. 36 (1969) on treatment of problem drinkers and alcoholics); AS 47.37.010.<sup>6</sup> In addition,

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(Footnote Continued)

(b) to protect the particular interest which is invaded, and

(c) to protect that interest against the kind of harm which has resulted, and

(d) to protect that interest against the particular hazard from which the harm results.

5. See supra note 2.

6. AS 47.37.010 provides:

It is the policy of the state that alcoholics and intoxicated persons should not be criminally prosecuted for their consumption of alcoholic beverages and that they should be afforded a continuum of treatment so they may lead normal lives as productive members of society.

accepting as true Busby's assertions<sup>7</sup> that he was a person incapacitated by alcohol in a public place, he was clearly a member of the protected class and his accident was of the type against which the statute was designed to protect. Finally, it cannot be doubted that the statute prescribes specific conduct rather than merely states some general or abstract duty of care; Officer Foster was within that class of persons charged with observing the statute; as a municipal police officer, she can fairly be charged with awareness that the statute applied; and the statute can hardly be considered so outdated or arbitrary as to make inequitable its application as the appropriate standard of care.

The Municipality cites a number of cases which, it argues, mandate a different conclusion. Only two, however, require discussion. In Stout v. City of Porterville, 196 Cal. Rptr. 301 (Cal. App. 1983), a California court refused to find that California Penal Code § 647(ff) set out an appropriate legislative standard of care in circumstances similar to those at issue here. Id. at 306-08. The statute in Stout, however, provided that an intoxicated person could only be taken to a voluntarily maintained public treatment

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7. See supra note 3.

facility. Id. The California court was therefore concerned that imposing a mandatory duty would cause counties participating in the voluntary treatment program to withdraw their support and thus cause the treatment program to collapse. Id. We have no similar concern in the present action.<sup>8</sup> In addition, Penal Code § 647, unlike AS 47.37.170(b), was not intended to minimize the dangers faced by the inebriate, but simply to end the "revolving door" policy of jail and street, street and jail. Id. We thus decline to adopt Stout's analysis.

Marshall v. Ellison, 477 N.E.2d 830 (Ill. App. 1985), also involves an analogous factual situation and statute.<sup>9</sup> Nevertheless, this case is also unpersuasive for at least two reasons. First, the court in Marshall apparently refused to find that the relevant statute imposed upon the state any mandatory duty on the basis of the state's sovereign immunity. Id. at 835. Relying upon Rodriguez v. City of Cape Coral, 451 So. 2d 513 (Fla. App. 1984), affirmed 468 So. 2d 963 (Fla. 1985), the Marshall court stated:

Like the Florida statute [in Rodriguez],  
section 15(b) requires an officer to

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8. See AS 47.37.170(b), (c), supra note 2.

9. See Ill. Ann. Stat. ch. 111½, ¶ 6315(b) (Smith-Hurd Supp. 1986).

exercise his professional judgment in determining whether an individual appears to be incapacitated. We do not believe the public interest would be served by allowing a jury of laymen with the benefit of 20/20 hindsight to second-guess a policeman's decision.

477 N.E.2d at 835. Second, we find the Marshall court's statutory analysis questionable. Despite the unambiguous mandatory language in the Illinois statute and without citation to legislative history or any other authority, the court simply concluded that the legislature did not intend to create a cause of action under the statute for failure to take a person into protective custody. Id. Whatever the merits of the Marshall court's conclusion with respect to interpretation of the Illinois statute, we decline to apply its reasoning here.

We conclude then that AS 47.37.170(b) articulates an appropriate standard of care and thus hold that the Municipality has an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility.<sup>10</sup>

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10. Our decision today is expressly limited to a discussion of duty. Because the trial court's judgment was based solely upon this issue, we need not, and do not, consider any question regarding alleged breach and express no opinion as to the factual merits of Busby's claim.

(Footnote Continued)

IV

Busby's cross-motion and appeal seeking summary judgment in his favor are without merit. For the reasons discussed above, we REVERSE the judgment of the trial court and REMAND for further proceedings consistent with this opinion.

ORDER

Pursuant to Appellate Rules 509(e) and (f) (i), attorney fees of \$ 750.00 are awarded to Appellant and the Appellant shall serve and file with this court an itemized and itemized cost bill by 8-31-87. Escrowed by direction of Justice Dunbar.  
Dated: 8-18-87 Deputy: C. Hudson

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(Footnote Continued)

Similarly, we express no opinion regarding any claims of municipal immunity under AS 09.65.070.

Original sponsors: Halford, Kelly,  
Faiks, and Jones

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 66 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to immunity for treatment of intoxi-  
7 cated or incapacitated persons; and providing for an  
8 effective date."

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

10 \* Section 1. AS 47.37.170(g) is repealed and reenacted to read:

11 (g) A person may not bring an action for damages (1) based on a  
12 decision under this section to take or not to take an intoxicated or  
13 incapacitated person into protective custody, or to release a person  
14 from protective custody, or (2) resulting from injuries incurred while  
15 in protective custody under this section. This subsection does not  
16 apply to an action for damages caused by gross negligence, or reckless  
17 or intentional misconduct.

18 \* Sec. 2. This Act applies to causes of action that accrue on or after  
19 the effective date of this Act.

20 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

**S B**

**68**

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

January 25, 1989

The Honorable Jan Faiks, Chair  
Senate Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

Dear Senator Faiks:

Subject: SB 68, An Act relating to theft of timber products.

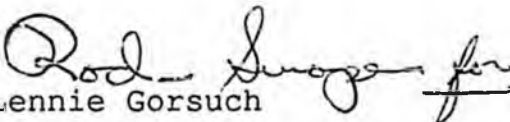
Position: The Department of Natural Resources supports SB 68 with changes as proposed by the sponsors.

Background: SB 68 attempts to address a problem faced by the Division of Forestry and many commercial firewood dealers in the Matanuska-Susitna valley and the Fairbanks area. This problem involves the unauthorized harvest of timber from state lands. The existing statutes provide inadequate authority to deal with this problem. At present, the Division of Forestry must prove that the firewood seller unlawfully obtained timber from state land, which is difficult to do once timber has been removed from the harvest site. This bill will require a harvest permit before any firewood is harvested and make it easier to determine a trespasser from a legitimate operator.

Recommendation: The department supports the concept of the bill as originally written but believes the changes as drafted by the sponsors make for a more effective way to address the problem.

We look forward to working with the Committee and staff through the progress of this legislation.

Sincerely,

  
Lennie Gorsuch  
Commissioner

cc: Committee Members  
Bill Sponsors  
Bob Evans  
Denby Lloyd  
Bob Dick

## FISCAL NOTE

**REQUEST:**

Revision Date: 1-23-89  
Title: An Act relating to Timber Trespass and Commercial Harvest of Firewood  
Sponsor: Coghill and Kerttula  
Requestor: Senate Judiciary

Agency Affected: Natural Resources  
BRU: Forest Management  
Components: Forest Management

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

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

See attached

Prepared by: George K. Hollett Phone: 465-2491  
Division: Forestry Date: 1-24-89

Approved by Commissioner: [Signature] Date: 1/25/89  
Agency: Natural Resources

Distribution (by preparer):

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

ANALYSIS SSSB 68

Assumptions - SSSB 68 attempts to address a serious problem faced by the Division of Forestry and many commercial firewood dealers in Northern Alaska. This problem involves the unauthorized harvest of timber from state lands. The existing statutes provide inadequate authority to deal with this problem whereas this bill will allow division personnel to check anyone harvesting firewood for a permit.

The zero fiscal note is predicated on the assumption that the Division of Forestry personnel will continue to work on the trespass problem on an as needed basis and the Attorney General's office will continue with its limited help. If much increased enforcement is seen as a passage of the bill, then additional help within the Division of Forestry and/or State Troopers and the Attorney General's office will be needed.