

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10606 SENATE • JUDICIARY •

## Furnishing Alcohol to Minors

	1999	2000	2001	
Arrests - Misdemeanor	310	400	373	
Arrests - Felony	2	5	8	
Convictions - Misdemeanor	124	201	145	
Convictions - Felony	1	2	1	
Sex of Arrestees - Male	261	293	301	61%
Sex of Arrestees - Female	51	111	80	17%
Average Age at Arrest	25	29	26	27

**Source:**

DPS Criminal History files updated as of March 4, 2002.

**Offenses:**

DPS offense code 9931, AS 04.16.051, AS 04.16.052, AS 04.16.060

*Prepared by DPS March 5, 2002*

# Arrest made in collision

RONALD FRANK: Man is to face charges in providing alcohol to teens

By LUCAS WALL  
Anchorage Daily News

Police on Thursday arrested a 30-year-old Anchorage man they say provided alcohol Sunday night to a group of youths including those involved in a fatal head-on collision with Anchorage police officer Justin Wollam.

Ronald Frank will be charged with seven counts of contributing to the delinquency of a minor and one count of reckless endangerment. He was in the Sixth Avenue Correctional Center under \$8,000 bail Thursday night.

Detective Everett Robbins said Frank cooperated with police after his arrest and acknowledged buying the alcohol for minors at a liquor store sometime after 10 p.m. Sunday.

Frank was convicted of driving while intoxicated in August, according to state records.

Robert Esper, the driver of the 1985 Chevy Blazer that collided with Wollam's patrol car, had attended a party that night with several other youths and drank liquor and other alcoholic beverages provided by Frank, Robbins told reporters Thursday evening. The party took place at a residence somewhere still like Otis Parkway, Robbins said. He would not identify the owner of the home.

Six young people reportedly left the party with Esper, Robbins said. A police officer spotted Esper driving the Blazer on Monday night. Monday and suspected drunk driver. Speed

A-DW 13 July 2001

# CRASH: Man arrested

Continued from A-1. facing Frank is a Class A misdemeanor that carries a penalty of up to one year in prison. Robbins briefed reporters; Wollam's family, friends and co-workers gathered downtown at Evergreen Memorial Chapel for his visitation. Wollam's body was in a closed casket draped with an American flag, on which lay flowers and photos of Wollam in uniform and with his wife, Kristy, and 4-year-old daughter, Kristin. Police officers at attention flanked the coffin. A public memorial service for Wollam is scheduled for 2 p.m. today at Anchorage Baptist Temple, 6401 E. Northern Lights Blvd. Overflow parking will be at Baxter Elementary School, 2991 Baxter Road. Shuttle buses will begin running at 1 p.m. to ferry mourners to the temple. The service will be broadcast live on television channels 13 and 20 as well as radio station KATB, 89.3 FM.

Robbins said he can't yet answer many questions about details of Frank's actions for the party because detectives are still interviewing people who were involved. Gov. Tony Knowles has ordered all Alaska flags lowered to half-staff today in honor of Wollam. He is the seventh Alaskan police officer killed in the line of duty.

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Anchorage Daily News

## **Second man to be charged in fatal crash** **FOUR DEAD:31-year-old bought alcohol for party, police say.**

By Lucas Wall  
Anchorage Daily News

*(Published: July 25, 2001)*

Anchorage police Tuesday cited a second man for providing alcohol to teens at a July 8 party before the fatal car crash that killed an Anchorage police officer and three teenagers.

Michael Hunter, 31, will be charged with two counts of contributing to the delinquency of a minor and two counts of furnishing alcohol to a minor, according to police. He received a summons to appear in court Aug. 28.

Hunter's phone is disconnected, and he could not be reached.

Detective Everett Robbins said Hunter picked up two girls the evening of July 8 and brought them to the trailer owned by his wife, Leona, in the 7100 block of Lake Otis Parkway. Leona Hunter was working that night and hired the girls to come over and clean the trailer, Robbins said. Contrary to earlier reports, the girls were not baby-sitting that night. Robbins said they were scheduled to baby-sit for Leona Hunter the next day.

She left money for the girls at the trailer, which Robbins said they gave to Michael Hunter, asking him to buy them alcohol. Hunter went to a nearby Tesoro station, Robbins said, where he bought alcohol and brought it back to the trailer. The Hunters are separated, he said, and Michael Hunter returned to his trailer to sleep.

Police arrested Ronald Frank, 30, two weeks ago and charged him with five counts of furnishing alcohol to a minor and four counts of contributing to the delinquency of a minor. He remains at the Sixth Avenue Correctional Center in lieu of \$8,000 bail. Frank and Hunter are friends, Robbins said, and they attended a barbecue together the afternoon of July 8.

Robbins said Hunter has been cooperative and admitted to buying alcohol for the girls. Hunter wasn't jailed, he said, because he wasn't at the party at the trailer later that night.

"He wasn't promoting the party as Ronny had done," Robbins said. "He claims he wasn't aware of the party. He was thinking (the two girls) were just going to be home for the evening."

The party was attended by several other youths. After leaving the party with six others, 19-year-old Robert Esper drove erratically through the city for about half an hour before crashing head-on into a police car driven by officer Justin Wollam on the Glenn Highway. The crash killed the officer, Esper, and two other teens.

With Hunter's arrest, police are starting to wind down the criminal investigation into the crash.

"There are no other suspects we're looking at this time," Robbins said.

A separate internal investigation into how police handled the attempts to stop Esper continues.

Reporter Lucas Wall can be reached at [lw@adn.com](mailto:lw@adn.com) or 907 257-4321.

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# Esper was drinking, toxicology confirms

■ .091: Reading short of legal limit, but driving warranted charges, police say.

By LUCAS WALL  
Anchorage Daily News

Toxicology results released by police Wednesday show the 19-year-old man who crashed head-on into an Anchorage police officer last month had a blood-alcohol content of .091.

Police initially suspected Robert Esper was driving while intoxicated when an offi-

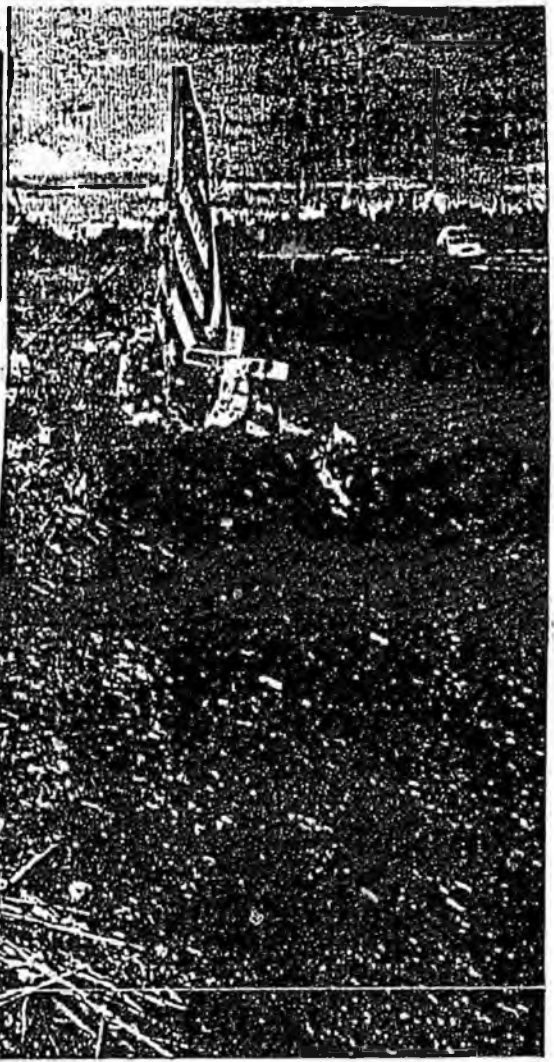
cer attempted to stop him about 3:20 a.m. July 9 near the 7200 block of Lake Otis Parkway. Esper and nine other teens had attended a get-together at a nearby trailer that night where alcohol was present.

"Based on his initial driving behavior and his erratic driving, the officer suspected he was a drunken driver," said Detective Everett Robbins. "This confirms her initial observations."



Robert Esper was the driver of the Chevrolet Blazer that killed officer Justin Wollam and three teens, including himself July 9.

See Back Page, ESPER



ERIK HILL / Anchorage Daily News



Flowers, stuffed animals, birthday balloons, religious tokens and other items adorn the Glenn Highway memorials to crash victims Makayla Lewis, Robert Esper, Heidi Weilbacher and officer Justin Wollam on Tuesday.

## ESPER: Teenager had .091 blood-alcohol level

Continued from A-1

Esper fled from police for more than half an hour before ending up running into officer Justin Wollam on the wrong side of the Glenn Highway. Wollam, Esper and two passengers in Esper's Chevrolet Blazer, Makayla Lewis and Heidi Weilbacher, died.

Police reported Weilbacher, 14, had a blood-alcohol content of .088. No alcohol was found in Lewis' blood, and none of the teenagers tested positive for drug use.

Robbins said if police had stopped Esper that night, he could have been charged with DWI even though he was slightly below the presumptive legal limit of .10. Drivers are considered impaired if their BAC is higher than .04, Everett said, and if they are driving in a dangerous manner they can still be considered intoxicated even if they haven't reached .10. People's alcohol tolerance levels are different,

*I'm sorry for all the losses. I wish it could have been handled better. Totally so there wouldn't have been any losses.*

Teenager's father, Robert Esper.

he said, and that affects how they drive after drinking. The Legislature, under threat of losing federal funds, this year lowered the state's presumptive legal limit for DWI to .08. Esper would have been considered legally drunk under the new standard, which takes effect Sept. 1.

All those legalisms aside, Everett said, "minors shouldn't

have any alcohol at all."

Ronald Frank and Michael Hunter have been charged with providing the alcohol to the minors and contributing to their delinquency that night. The district attorney's office is still reviewing the case against the two men and further charges are possible, Robbins said.

Esper's father, Robert, said he didn't have much to say about Wednesday's release.

"I'm sorry for all the losses," he said. "I wish it could have been handled better totally so there wouldn't have been any losses."

Police have been criticized by some, including 15-year-old Ashley Shetters and her mother, for their handling of the attempt to stop Esper that night. Shetters was one of three teens who got out of Esper's Chevrolet Blazer in a trailer park before the crash.

Robbins said the account of events Shetters gave in an interview with the Daily News

last week is a little different than the statement she gave police after the crash. Her account is more exaggerated than what she originally told police, Robbins said, and conflicts with what 15-year-old Savannah Fielding told police. Fielding is the only person who survived the crash.

"Her story does not give exactly with what Shetters is saying," Robbins said. "There's conflicting information, and I'm going to leave it at that. What am I going to say? She's entitled to her own opinion. There's more than just one person's statement here, and you have to weigh it all out."

Robbins would not discuss what Fielding told police about the events leading up to the collision. Fielding's family has declined to speak publicly about that night.

Reporter Lucas Wall can be reached at lwall@adn.com or 257-4321.



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Mothers Against Drunk Driving • Juneau Chapter  
211 Fourth St. Suite 102 • Juneau, AK 99801

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January 22, 2002

HOUSE BILL NO. 330 "An Act relating to providing alcoholic beverages to a person under 21 years of age." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: \* Section 1. AS 04.16.051(d) is amended to read: (d) A person acting with criminal negligence who violates this section is guilty of a class C felony if (1) [,] within the five years preceding the violation, the person has been previously convicted under (A) [(1)] this section; or (B) [(2)] a law or ordinance of this or another jurisdiction with elements substantially similar to this section; or (2) the person under 21 years of age who receives the alcoholic beverage injures or causes the death of another person and the injury or death occurs while the person under 21 years of age was under the influence of an alcoholic beverage received in violation of this section.

Mothers Against Drunk Driving (MADD) supports House Bill Number 330. MADD supports laws, which save lives from injuries or death due to drunk driving.

House Bill 330 will make the sale of alcohol to minors a felony, thereby increasing fines and jail time.

House Bill 330, by becoming law, will send a message out to Alaskans that our children are valuable and if harmed, severe consequence will occur. House Bill 330 supports and joins Alaskans in their attempt to change the current accepted norm of underage drinking.

Sincerely,

Cindy Cashen  
Volunteer

**Subject:** [Fwd: HB 329 and 330]  
**Date:** Mon, 21 Jan 2002 10:40:27 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

For our files.

Janet

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**Subject:** HB 329 and 330  
**Date:** Sun, 20 Jan 2002 16:29:45 -0800  
**From:** "David W. Rochford" <rochfor@concentric.net>  
**To:** <Representative\_Norman\_Rokeberg@Legis.state.ak.us>  
**CC:** "MADD Anchorage Chapter" <madd@corecom.net>

Dear Representative Rokeberg  
I am writing in support of HB 329 and 330.  
I am a police officer with the Anchorage Police Department and have 30 years of police experience (20 years with APD).

HB329

I agree that chemical testing should be required for all persons arrested as the bill describes. It would also be helpful if this requirement extended to all drivers involved in a collision which involved death or an injury which required medical treatment. Also, there should be a requirement that treating physicians inform law enforcement if a person being treated has alcohol or drugs in their system, and what the reported level or concentration is. This requirement would only apply if the person being treated was the driver of a motor vehicle, or is the suspect in a crime. Many people are injured while driving while intoxicated and are never prosecuted. The reason is that police officers are often not in a position to make a determination as to the suspect's state of sobriety by virtue of the fact that the person is receiving emergency treatment or is in surgery and can not be observed by the officer until it is too late. I have personally seen suspects fake unconsciousness to avoid detection of alcohol impairment by me.

Additionally, the wording "controlled substance" should be replaced with "any drug" or better yet, "any substance that impairs...". The problem with "controlled substance" is that it requires that the substance appear on the state's list of controlled substances. There are many substances that impair driving which are not on this list. Toluene, paint thinner, and gasoline fumes are primary examples. No matter how complete a list is, someone will get intoxicated on something that was overlooked on the list and escape prosecution. The other problem with using the "controlled substance" wording is that it requires that a specific drug be identified and named. This is not always possible. We may be able to prove to a jury that the driver is impaired by an unknown substance, or a substance we suspect, but we can not convict with out a blood test which is positive for a controlled substance. Even then, there may be a problem proving that the controlled substance detected in the blood was the drug or substance causing the impairment. This wording seriously needs to be changed.

The law was recently changed to allow law enforcement to obtain a search warrant for a person's blood in a DWI case if we can articulate drug involvement. This law has been a great help and I have already obtained search warrants and obtained valuable evidence using this law. However, a law like California enacted would be even more helpful. California extended the implied consent law to include a blood and/or urine testing if the arresting officer suspects drug use, and articulates the suspicion in his

police report. This would save valuable time lost while applying for a search warrant. Some drugs clear from the blood stream quickly and the time spent getting a warrant could make the difference between getting a positive blood test and a negative one. Also, such a law should include blood AND urine, since we cannot know ahead of time if the drugs will be found in the blood or urine or both blood and urine.

Also, I should put in a pitch for the Drug Recognition Program which I spoke of at the DWI training you attended at the APD training center. The laws pertaining to driving under the influence of drugs are useless without having officers trained to enforce these laws. This program still has not been established here in Alaska.

I also support HB 330

The tragic death of my friend and co worker, Justin Wollam, is testimony enough of the need for this law. If an adult knew he might be charged with a felony, he might reconsider providing alcohol to minors.

Respectfully,  
Dave Rochford  
Anchorage P.D.

**HB**

**332**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: CSHB 332(JUD)  
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act extending the termination date of the BRU Council on Domestic Violence & S/A  
Council on Domestic Violence & S/A.... Component Council on Domestic Violence & S/A  
 Sponsor Representative Bunde  
 Requester House Judiciary Committee Component No. 521

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	519.5	519.5	519.5	519.5	519.5	519.5
Travel	61.5	61.5	61.5	61.5	61.5	61.5
Contractual	1,250.1	1,250.1	1,250.1	1,250.1	1,250.1	1,250.1
Supplies	12.3	12.3	12.3	12.3	12.3	12.3
Equipment	6.2	6.2	6.2	6.2	6.2	6.2
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	7,875.6	7,875.6	7,875.6	7,875.6	7,875.6	7,875.6
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>

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

1002 Federal Receipts	3,488.6	3,488.6	3,488.6	3,488.6	3,488.6	3,488.6
1003 GF Match						
1004 GF	567.2	567.2	567.2	567.2	567.2	567.2
1007 Inter-Agency Receipts	1,664.6	1,664.6	1,664.6	1,664.6	1,664.6	1,664.6
1050 Permanent Fund Dividend Fund	4,004.8	4,004.8	4,004.8	4,004.8	4,004.8	4,004.8
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>	<b>9,725.2</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time	8					
Part-time						
Temporary						

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

Should the legislation extending the Council not pass, functions of the Batterer's Intervention Program (BIP) would need to be transferred to the Department of Corrections. Additionally, the functions of the Victims for Justice pass-thru grant would need to be transferred to another agency.

Prepared by: Susan Scudder, Executive Director Phone (907) 465-4356  
 Division: Council on Domestic Violence and Sexual Assault Date/Time 2/4/02 11:53 AM  
 Approved by: Commissioner Glenn Godfrey Date 2/4/2002  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: C SHB 332(JUD)  
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act extending the termination date of the BRU Batterers Intervention Program  
Council on Domestic Violence & S/A.... Component Batterers Intervention Program  
 Sponsor Representative Bunde  
 Requester House Judiciary Committee Component No. 2241

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	320.0	320.0	320.0	320.0	320.0	320.0
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	120.0	120.0	120.0	120.0	120.0	120.0
1007 Inter-Agency Receipts						
1050 Permanent Fund Dividend Fund	200.0	200.0	200.0	200.0	200.0	200.0
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>	<b>320.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time					
Part-time					
Temporary					

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

Should the legislation extending the Council not pass, functions of the Batterer's Intervention Program (BIP) would need to be transferred to the Department of Corrections.

Prepared by: Susan Scudder, Executive Director Phone (907) 465-4333  
 Division Council on Domestic Violence and Sexual Assault Date/Time 2/4/02 11:31 AM  
 Approved by: Commissioner Glenn Godfrey Date 2/4/2002  
 Agency Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: CSHB 332(JUD)  
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act extending the termination date of the BRU Victims for Justice  
Council on Domestic Violence & S/A... Component Victims for Justice  
 Sponsor Representative Bunde  
 Requester House Judiciary Committee Component No. 2216

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	246.0	246.0	246.0	246.0	246.0	246.0
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	246.0	246.0	246.0	246.0	246.0	246.0
1007 Inter-Agency Receipts						
1050 Permanent Fund Dividend Fund						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>	<b>246.0</b>

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This component and BRU were established by the legislature as a separate pass-thru award. Should the legislation extending the Council not pass, this grant would need to be transferred to another agency.

Prepared by: Susan Scudder, Executive Director Phone (907) 465-4356  
 Division Council on Domestic Violence and Sexual Assault Date/Time 2/4/02 11:28 AM  
 Approved by: Commissioner Glenn Godfrey Date 2/4/2002  
 Agency Department of Public Safety

# Alaska State Legislature

DURING SESSION  
STATE CAPITOL, ROOM 501  
JUNEAU, AK 99801-1182  
(907) 465-4843 (800) 892-4843  
FAX: (907) 465-3871



DURING INTERIM  
716 W. FOURTH AVE.  
ANCHORAGE, AK 99501-2133  
(907) 269-0181  
FAX: (907) 269-0184

WEB SITE  
<http://www.akrepublicans.org/Bunde.htm>

## REPRESENTATIVE CON BUNDE District 18

E-MAIL  
[Representative\\_Con\\_Bunde@legis.state.ak.us](mailto:Representative_Con_Bunde@legis.state.ak.us)

CHAIR: HOUSE SPECIAL COMMITTEE ON EDUCATION  
VICE-CHAIR: HOUSE FINANCE COMMITTEE

## MEMORANDUM

DATE: April 9, 2002

TO: Senator Robin Taylor  
Chairman, Senate Judiciary Committee

FROM: Representative Con Bunde  
Vice-Chair, House Finance Committee

RE: CSHB 332 (FIN)

A handwritten signature in black ink that reads "Con Bunde".

This memo is a request for a Senate Judiciary Committee hearing for HB 332 which extends the sunset on the Council on Domestic Violence and Sexual Assault. A copy of the bill and the supporting documents are included with this memo. If you need any further information or have any questions, please call Patti at ext. 6824.

Thank you for your consideration of this legislation.

**REQUEST FOR  
HEARING**



DURING SESSION  
STATE CAPITOL, ROOM 501  
JUNEAU, AK 99801-1182  
(907) 465-4843 (800) 892-4843  
FAX: (907) 465-3871

DURING INTERIM  
716 W. FOURTH AVE.  
ANCHORAGE, AK 99501-2133  
(907) 269-0181  
FAX: (907) 269-0184

WEB SITE  
<http://www.akrepublicans.org/Bunde.htm>

REPRESENTATIVE CON BUNDE  
District 18

E-MAIL  
Representative\_Con\_Bunde@legis.state.ak.us

CHAIR: HOUSE SPECIAL COMMITTEE ON EDUCATION  
VICE-CHAIR: HOUSE FINANCE COMMITTEE

SPONSOR STATEMENT  
HB 332

**"An Act extending the termination date of the Council on Domestic Violence and Sexual Assault; and providing for an effective date."**

The Council on Domestic Violence and Sexual assault is the state policymaking board charged with planning and coordinating services for victims of domestic violence or sexual assault. House Bill 332 extends the sunset of The Council on Domestic Violence and Sexual Assault until June 30, 2006.

The Council on Domestic Violence and Sexual Assault provides services for families of victims and for perpetrators of these crimes by providing crisis intervention and prevention programs throughout Alaska. State, federal and private funds are used to pay for the programs provided by the Council.

Last fiscal year alone, more than 7,000 Alaska women and children sought immediate safety in shelters throughout the state, totaling more than 50,000 shelter nights. There were also more than 2,000 victims of sexual assault who sought services through the state. The first priority of all programs is the immediate safety and crisis intervention for the victim. Other services provided include: information on and referral to needed services such as housing or public assistance, medical advocacy, legal advocacy, safety checks, clothing and food, transportation, and personal and group support.

The Council continues to work with victim advocates, law enforcement, prosecution, corrections, and batterers intervention program staff, among others, to increase safety for victims, increase reporting by victims, train all those involved in the community response to the victims of domestic violence and sexual assault, and to hold perpetrators accountable for their violence. Through these cooperative efforts, the Council on Domestic Violence and Sexual Assault plays a crucial role in helping to break the cycle of violence that tears Alaskan families and communities apart.

## Sec. 122. DPS - Council on Domestic Violence and Sexual Assault

The mission of the Council on Domestic Violence and Sexual Assault is to reduce the causes and incidence and to alleviate the effects of domestic violence and sexual assault.

### Measure 1: The percentage of continuing clients

Total number of victims of domestic violence: 7,271 Total number of repeat victims of domestic violence: 3,563 Percentage: 49%
Total number of victims of sexual assault: 2,146 Total number of repeat victims of sexual assault: 500 Percentage: 23.3%

These numbers represent one full fiscal year of data (FY01). These numbers are gathered by the Council's database that was implemented on July 1, 2000. When we report to the legislature for FY03 we will be able to report two full years of data. The data represents clients served by Council funded programs.

The national average number of times a victim of domestic violence needs to be in a shelter prior to having enough resources, safety and confidence to permanently remove the victim from the violence is 12 visits.

It is the hope of the Council that victims of domestic violence and sexual assault return to programs for continuing services as long as they are in need of help. In these cases, of course, we will see repeat percentages increase.

### Measure 2: The percentage of the council's budget spent on prevention

Council's budget, by fiscal year, allocated specifically for prevention efforts:

FY2002 - 38%
FY2001 - 45%
FY2000 - 42%

The budget amount represented here is calculated by the specific projects identified each year for system change and improvement, media outreach, prevention campaigns, outreach to rural areas, and specific one-time projects that have been identified and funded by federal grants. This amount does fluctuate based on the special project funds available on a federal level each year.

### Measure 3: The cost of shelter per night

In FY01, the estimated cost of a shelter night was \$69.83 per night.
In FY00, the estimated cost of a shelter night was \$68.00 per night.

The difference between the cost of FY00 and FY01 was adjusted by using the increase in the CPI of 2.7%.

This estimate is determined by taking the costs of all direct services staff, rent, insurance, utilities and food costs and dividing this amount by the number of clients served. This is a simplistic and less than accurate method of determining costs as each shelter utilizes state funds in a different way. Based on the resources available on a local level, each program uses the state funds to balance the full costs each year. In most areas, the communities usually donate the shelters.

**Measure 4: The amount spent for and the percentage reduction in domestic violence and sexual assault compared to the amount spent for that purpose last year**

Estimated prevention funds scheduled to be spent in:	
FY02	\$3,769.0
Estimated prevention funds in:	
FY01	\$4,411.0
FY00	\$3,919.0

Percentage change in domestic violence and sexual assault cases from FY99-00 and from FY00-01.

DPS Sexual Assault cases:		
FY00	+12.8%	FY01 -27%
DPS Domestic Violence cases:		
FY00	+39.9%	FY01 +10%
Combined DPS domestic violence and sexual assault cases:		
FY00	+30.8%	FY01 +5%

The amount of prevention funds include all federal funds that are provided to law enforcement, prosecution, courts, corrections and victims service programs to work towards ending domestic violence and sexual assault.

Only offenses reported the Department of Public Safety are included in the offense counts as there is no statewide database recording the information for this measure. It should be noted that the National Crime Victimization Study has revealed that only 10-16% of domestic violence and sexual assault offenses are reported to the police, thus it can be assumed that the actual occurrence of these crimes is much greater than that reflected in reports to the police. Also, prevention efforts and public education raise awareness of these offenses and increase the reporting rate. Changes in the number of these offenses reported to the police need to be analyzed with care to account for these factors.

**Measure 5: The incidence of reported domestic violence and sexual assault cases**

DPS reports domestic violence cases for:	FY00 2904	FY01 3208	+10%
DPS reports sexual assault cases for:	FY00 387	FY01 284	-27%
DPS reports sexual abuse of a minor for:	FY00 611	FY01 543	-11%

For this measure the data was drawn from cases addressed by the Alaska State Troopers. DPS only figures are used for this measure because there is no statewide database recording police reports of domestic violence or sexual assault of a minor. In 1998, DPS conducted a comparison of the rates of these crimes reported to DPS and reports to representative agencies in both urban and rural Alaska which showed that the annual change in DPS reports was comparable with reports to other agencies. Thus the readily available DPS figures are a reliable indicator of trends throughout the state.

**Measure 6: The number of homicides from domestic violence and sexual assault**

These numbers are based on calendar year not fiscal year.

CY2000 DV Related Homicides 5;	Percent change from previous year	- 23.5%
CY1999 DV Related Homicides 22;	Percent change from previous year	+ 6.6%
CY1998 DV Related Homicides 14		

The number of homicides resulting from these crimes is not consistently identified as such. Identifying homicides as being related to sexual assault is not consistently reported within the state's law enforcement agencies. The same can be true for domestic violence as there may have been domestic violence identified in the investigation but the crime is classified as a homicide with no reference to the domestic violence.



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SUMMARY OF: A Special Report on the Department of Public Safety, Council on Domestic Violence and Sexual Assault, Sunset Review, October 31, 2001.

### PURPOSE OF THE REPORT

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Council on Domestic Violence and Sexual Assault (council) to determine whether it was operating in the best interest of the public and if it should be statutorily continued in operation. As required by AS 44.66.060(a), the committee of reference shall consider this report during the legislative oversight process to determine whether the council should be reestablished. Currently, under AS 44.66.010(a)(11) the council will terminate on June 30, 2002, and will have one year from that date to conclude its operation.

### REPORT CONCLUSIONS

Under AS 18.66, the Council on Domestic Violence and Sexual Assault is authorized to provide for the State's planning and coordination of the full range of services to victims, their families, and perpetrators of domestic violence and sexual assault. Combating domestic violence and sexual assault is identified as an ongoing priority at both the state and national level.

Aside from the operational concerns addressed in this report, the council is serving a public need and is operating in the public's interest. Currently, AS 44.66.010(a)(11) requires that the council be terminated on June 30, 2002. We recommend the legislature extend the council's termination date to June 30, 2006.

### FINDINGS AND RECOMMENDATIONS

#### Recommendation No. 1

The legislature should amend the Council on Domestic Violence and Sexual Assault's statutes related to appointment of council members.

The Network on Domestic Violence and Sexual Assault (Network) both recommends public members to serve on the council and receives grant funds from the council for a legal advocacy project. An apparent conflict of interest exists when a council member reviews, evaluates, approves, and monitors a grant to the same non-profit corporation which was responsible for recommending that individual to the council membership.

#### Recommendation No. 2

The council should define and communicate clear and distinctive roles for the council members and staff in dealing with the Network. The council should adhere to these roles in their federal grant oversight of the Network.

Review of the council's grant information identified some impropriety with the Network for FY 01, specifically relating to modification by the Network of the final grant agreement; unsupported requests for reimbursement; and exclusion from on-site monitoring.

### Recommendation No. 3

The legislature should amend AS 18.66.050 referring to the council hiring staff, and the council should address personnel issues and promote strong leadership by the executive director.

Alaska Statute 18.66.050(1) states that "[t]he council shall hire an executive director and necessary staff." This statute adds confusion to the council's lines of authority. In order for the executive director to have authority over the staff, it is critical for staff to have only one leader. Administrative weaknesses were identified throughout the course of our fieldwork. These weaknesses primarily relate to lines of authority and lack of definitive duties, policies, and procedures.

### Recommendation No. 4

The council should address statutory responsibilities that relate to consultation with the Department of Health and Social Services (AS 18.66.050 (12)) and other entities and organizations (AS 18.66.050 (14)).

Both of these statutes discuss the council working with other agencies and public employers to develop standards, procedures, and continuing education courses.

### Recommendation No. 5

Council members and the executive director should consult with the Department of Education and Early Development, school district representatives, and grantees who have worked toward curriculum development to create a comprehensive standardized curriculum to be used within the schools across the state.

The council's approach to domestic violence and sexual assault education within the school districts is inconsistent and inadequate. There is a need for a more coordinated effort towards education in school districts throughout the state.



\* Requires Acrobat Reader 

October 31, 2001

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF PUBLIC SAFETY  
COUNCIL ON DOMESTIC VIOLENCE  
AND SEXUAL ASSAULT

October 31, 2001

12-20014-02

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 44.66.010(a)(11), the Council on Domestic Violence and Sexual Assault is scheduled to termination June 30, 2002. The council would have one year from that date to conclude operations.

In our opinion, the termination date for the Council on Domestic Violence and Sexual Assault should be extended. The council serves a public need and is operating in the public's interest. We recommend that the legislature extend the council's termination date to June 30, 2006.

The audit was conducted in accordance with generally accepted government auditing standards. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA  
Legislative Auditor

## TABLE OF CONTENTS

	<u>Page</u>
Objectives, Scope, and Methodology .....	1
Organization and Function.....	3
Report Conclusions.....	5
Findings and Recommendations .....	7
Analysis of Public Need .....	15
Appendix A: Council on Domestic Violence and Sexual Assault Grants Awarded FY 99 through FY 02 .....	19
Agency Response:	
Department of Public Safety .....	23
Legislative Audit's Additional Comments .....	27

## OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Council on Domestic Violence and Sexual Assault (council) to determine whether it was operating in the best interest of the public and if it should be statutorily continued in operation. As required by AS 44.66.050(a), the committee of reference shall consider this report during the legislative oversight process to determine whether the council should be reestablished. Currently, under AS 44.66.010(a)(11) the council will terminate on June 30, 2002, and will have one year from that date to conclude its operation.

### Objectives

There are two central, interrelated objectives of our report. They are:

1. To determine if the termination date of the council should be extended.
2. To determine if the council is operating in the public's interest. The assessment of the operations, and performance of the council, was based upon AS 44.66.050(c). This statute sets out criteria that are to be used in determining a demonstrated public need for the council.

### Scope and Methodology

Our audit reviewed the operation and activities of the Council on Domestic Violence and Sexual Assault for the period of FY 99 through the date of our report.

During the course of our examination, we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Budget documents, session laws, and other legislative information related to the council's operations.
- The executive director's reading files.
- Minutes of council meetings.
- Grantee on-site monitoring performance and fiscal reviews prepared by council staff.
- Statistical reports submitted by grantees.
- Financial reports from the State Accounting System.
- Other documents related to the council's operations and mission, as necessary.

In addition, we interviewed:

- Various council members and staff.
- Council grantees, school districts, judges, state troopers, police officers, and other individuals with whom council staff and council members consult and coordinate.
- Individuals from other state agencies.
- Council staff.

## ORGANIZATION AND FUNCTION

The Council on Domestic Violence and Sexual Assault (council) was established in the Department of Public Safety in 1981 by Alaska Statute 18.66. This statute gives the council the authority " ... to provide for planning and coordination of services to victims of domestic violence or sexual assault or to their families and to perpetrators of domestic violence and sexual assault and to provide for crisis intervention and prevention programs."

The council consists of seven members, four of whom are the commissioners, or their designees, of the Departments of Public Safety, Health and Social Services, Education and Early Development, and Law. The balance of the council is comprised of persons from the public appointed at the governor's discretion.

By statute, before making appointments, the governor receives recommendations from and consults with the Alaska

Network on Domestic Violence and Sexual Assault (a non-profit, private organization).<sup>1</sup>

The council is staffed by an executive director, an administrative manager, three project coordinators, a statistical technician, an administrative assistant and an administrative clerk. The council is authorized to receive and disperse both state and federal funds. Traditionally a large part of the council's responsibilities involve administering grants made to local community organizations for domestic violence, sexual assault, and crisis intervention and prevention programs. Grant administration includes providing technical assistance and monitoring the activities of the various grantees and contractors.

The community programs funded by the council provide a variety of services to the public. Most importantly, their efforts are directed toward providing victims a safe environment either through housing at a community shelter, or the use of a network of designated "safe homes". Additionally, the programs are involved in educating and counseling the victim about domestic violence and sexual assault issues and providing batterers' intervention services.

The council's coordination role and responsibilities with other state and local agencies is extensive. In FY 02 the council approved funding to 21 community-based victim services programs, seven community-based batterers' intervention programs, and three prison-based batterers' programs. (See Appendix A.)

### Council Members

As of September 20, 2001

Barbara Thompson, DEED, Chair  
Cindy Cooper, DOLaw, Vice Chair  
Mary Scheetz-Freymiller, Public Member  
Diane Disanto, DHSS  
Del Smith, Public Safety  
Tammy Young, Public Member  
Shirley Dean, Public Member

\*terms expired August 1, 2001 however no replacement to date

<sup>1</sup> The Alaska Network on Domestic Violence and Sexual Assault is comprised of 20 programs, many of which are council funded programs. The network does annual training for members, acts as a legislative lobbying group, and sits as a non-voting member on council committees.

Many of the grants issued by the council are supported by federal funds. Federal funds are received by the council from sources such as:

- Family Violence Prevention and Services Grants (CFDA 93.671)  
US Department of Health and Human Services

The Family Violence Prevention Services Act provides federal funding to all states. This funding is used for domestic violence programs throughout Alaska. The programs receiving grants provide assistance to victims of domestic violence and their children. These programs operate shelter facilities which are staffed around the clock and provide a full spectrum of services, including basic food and immediate shelter, crisis intervention, counseling, and medical/legal/personal advocacy.

- Crime Victims Assistance (CFDA 16.575)  
US Department of Justice

This grant authorizes financial compensation for victims of crime and financial support for state and local agencies that provide services to crime victims. This fund is a U.S. Treasury account generated entirely by the fines and penalties levied against criminals convicted of federal crimes. The majority of this funding is awarded directly to programs that provide services to victims of domestic violence, sexual assault and other violent crimes. In addition to funding programs, a portion of this grant is used to fund a Victim Services Coordinator position with the Department of Corrections.

- Violence Against Women Act (CFDA 16.588)  
US Department of Justice

The grant services combine a series of federal sanctions and initiatives as well as national, state, and local resources to improve the response to crimes against women. These funds are delineated to four specific areas: prosecution, law enforcement, victim services, and discretionary. In April 1995, Governor Knowles designated the council as the lead agency for the coordination and management of the Violence Against Women Act funds for the State of Alaska.

To accomplish this mission, the statewide Violence Against Women Planning and Implementation Committee was created. The membership of the Planning and Implementation Committee includes representatives from the court system; Department of Corrections; Maternal, Child and Family Health, Department of Health and Social Services; Department of Law; Department of Public Safety; Alaska Network on Domestic Violence and Sexual Assault; Alaska Judicial Council; and Violence Against Indian Women grantee. The council is responsible for funding distribution and subrecipient monitoring of these projects.

## REPORT CONCLUSIONS

Under AS 18.66, the Council on Domestic Violence and Sexual Assault (council) is authorized to provide for the State's planning and coordination of the full range of services to victims, their families, and perpetrators of domestic violence and sexual assault. Combating domestic violence and sexual assault is identified as an ongoing priority at both the state and national level.

Aside from the operational concerns addressed in this report, the council is serving a public need and is operating in the public's interest. Currently, AS 44.66.010(a)(11) requires that the council be terminated on June 30, 2002. We recommend the legislature extend the council's termination date to June 30, 2006.

The Alaska Network on Domestic Violence and Sexual Assault (Network), a nonprofit organization, and the council often work jointly or contractually on statewide projects to strengthen the state's response to violence against women. This joint effort has had a positive impact. However, we recommend that the council reconsider the nature of its working relationship with Network.

The council needs to establish clear and distinctive roles for the council members and staff, and the Network. These roles must be consistent with the governor's directive for the council's programmatic and administrative oversight of federal funding. As a recipient of council funds, it is inappropriate for the Network to have a legally mandated role in recommending the public members of the council to the governor for selection. (See Recommendations Nos. 1 and 2.)

Statutory changes implemented July 1, 1996, significantly increased the scope of the council's responsibilities. Between FY 98 and FY 01, the council's budgeted staff increased from four to eight positions. However, the council has been unable to or ineffective in addressing some of their statutory responsibilities, in part due to administrative shortcomings. (See Recommendations Nos. 3, 4 and 5.)

Other council weaknesses addressed in recent legislative audits and not readdressed in this audit include the following:

1. Department of Public Safety, Council on Domestic Violence and Sexual Assault, Batterer Intervention Programs February 9, 2001 (Audit Control Number 12-4606-01).

The Batterer Intervention Programs audit contained five recommendations relating to the council. These recommendations primarily addressed the following concerns:

- Due to a lack of data, none of the specific operational questions concerning batterers and the effectiveness of batterer intervention programs could be fully answered.

- Due to the absence of written procedures, council staff was not able to perform their job duties consistently and successfully. Specifically, the council does not have policies and procedures in reviewing, evaluating, and monitoring batterer intervention programs.
- Batterers are not adequately monitored, either not attending, or not completing batterer intervention programs, and programmatic noncompliance issues are not being fully addressed.

2. Statewide Single Audit for Fiscal Year Ended June 30, 2000 – July 16, 2001 (Audit Control Number 02-40001-01).

The statewide single audit contained five recommendations to the executive director of the council. These recommendations primarily addressed the need to improve the monitoring and management of federal funds being provided to subrecipient grantees.

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The legislature should amend the Council on Domestic Violence and Sexual Assault's statutes related to appointment of council members.

The Network on Domestic Violence and Sexual Assault (Network) both recommends public members to serve on the council and receives grant funds from the council. The council consists of four state officials and three public members appointed by the governor. Alaska Statute 18.66.020(a)(1) relating to the appointment of public members states:

*The council consists of three persons appointed by the governor after consultation with the Network on Domestic Violence and Sexual Assault, a nonprofit corporation; The Network on Domestic Violence and Sexual Assault shall submit a list to the governor of persons recommended for appointment.*

In addition, AS 18.66.020(b) states, in part:

*...A vacancy on the council shall be filled for the unexpired term by appointment by the governor after consultation with the Network on Domestic Violence.*

The council annually grants funds to the Network for a legal advocacy project. Grant monies are provided by federal funds associated with the Violence Against Women Act (VAWA). The council awarded VAWA funding to the Network as shown in Exhibit 1 (right) for FY 00 through FY 02.

An apparent conflict of interest exists when a council member reviews, evaluates, approves, and monitors a grant to the same non-profit corporation which was responsible for recommending that individual to the council membership.

The apparent conflict of interest continues because the council member would likely benefit from on-going support from the Network when being considered for reappointment to the council. This situation may result in inappropriate decisions by the council, as the Network will be interested in the sustainability of their agency.

Exhibit 1 Violence Against Women Act Grants to the Network on Domestic Violence and Sexual Assault	
<u>Grant</u>	<u>Amount</u>
<u>FY 00:</u>	
00-VAWA-01	\$ 109,142
00-VAWA-02	<u>233,143</u>
Total FY 00:	<u>\$ 342,285</u>
<u>FY 01:</u>	
01-VAWA-01	\$ 73,842
01-VAWA-02	<u>235,874</u>
Total FY 01:	<u>\$ 309,716</u>
<u>FY 02:</u>	
02-VAWA-01	\$ <u>356,626</u>

The appearance of a personal conflict of interest on the part of the council's public members may arise from a combination of elements.

- The Network has a specific legally mandated role in the selection and retention of public members to the council.
- The Network is a subgrantee of the council and therefore competes with other programs for council funding.

Potentially biased questions in the Network's "*Interview Questions for Council on Domestic Violence and Sexual Abuse Public Member Applicants*" read as: "What do you see as the role of the council public member in relation to the Network?" Examples of specialized treatment for the Network are discussed in Recommendation 2.

It is entirely appropriate for the governor to consult with any interested parties when making appointments to the council. However, it is the statutory mandate for the governor to consult with the Network, over the appointment of public members, when the Network itself is a subgrantee of the council that raises an appearance of a conflict of interest.

Therefore, we recommend the legislature amend the AS 18.66.020 to 1) eliminate the mandate for the Network to recommend individuals to the governor for appointment to the council, and 2) eliminate the requirement for the governor to consult with the Network on the appointment or reappointment of the council's public members.

#### Recommendation No. 2

The council should define and communicate clear and distinctive roles for the council members and staff in dealing with the Network. The council should adhere to these roles in their federal grant oversight of the Network.

As stated in Recommendation No. 1, the council annually grants monies to the Network for a legal advocacy project using federal VAWA funds. Review of council grant information identified some impropriety as follows:

1. For FY 01, the Network modified the final grant contract prohibiting the council from reviewing all records (limiting the council's review to financial records only). Such modification is in violation of the federal Common Rule for Uniform Administrative Requirements for Grants (A-102).
2. For FY 00, requests for reimbursement from the Network were not supported by sufficient documentation of expenditures. Council staff disbursed funds based on these requests, which is in violation of federal allowable cost principles (A-87).
3. For FY 00 and FY 01, the Network was excluded from the monitoring schedule established by the council. This is in violation of federal Common Rule (A-102) requirements codified at 28 CFR 66.40.

Each of these actions severely limited the council's review of the Network's activities. This limitation affected the council's ability to carry out its responsibility outlined in a letter from Governor Knowles dated April 15, 1995. In this letter, the governor designates "...*Council on Domestic Violence and Sexual Assault (council) as the state agency in Alaska that will have programmatic and administrative oversight of Violence Against Women Act funds.*" In making this designation, the governor required that "*[i]n developing its plan for use of Violence Against Women Act funds, the council must actively involve the Network on Domestic Violence and Sexual Assault in all stages of the process.*"

The council has complied with the governor's condition to actively involve the Network in the development of the VAWA plan. However, the council must keep in mind that the governor designated the council to have programmatic and administrative oversight of VAWA funds. As the pass-through agency for the federal VAWA funding, the council bears ultimate responsibility for the administration of those funds. Without adequate oversight, errors or improprieties may be committed by grantees and not detected by the council.

The Network and the council often work jointly or contractually on statewide projects to strengthen the state's response to violence against women. These joint efforts have a positive impact. However, in its working relationship with the Network, we recommend that the council define clear and distinctive roles for the council members and staff. These roles should be defined in manner consistent with federal grant requirements and the governor's directive for programmatic and administrative oversight.

### Recommendation No. 3

The legislature should amend AS 18.66.050 referring to the council hiring staff, and the council should address personnel issues and promote strong leadership by the executive director.

Alaska Statute 18.66.050(1) states that "[t]he council shall hire an executive director and necessary staff." This statute adds confusion to the council's lines of authority. In order for the executive director to have authority over the staff, it is critical for staff to have only one leader.

Administrative weaknesses were identified throughout the course of our fieldwork. These weaknesses primarily relate to lines of authority and job responsibilities, and are further explained below:

1. Confusion regarding lines of authority. Confusion exists regarding lines of authority between council members, the executive director, council staff and representatives of the Network. Staff members have apprised the council members about their concerns with the council organizational structure and travel restrictions due to budgetary concerns without going through the executive director.

Additionally, staff identified instances when the council members directly contacted them without first going through the executive director. Finally, the council's staff

may directly contact, or be contacted by, Network personnel regarding a specific issue or responsibility without the knowledge of the executive director.

Because so many individuals affect the responsibilities of council staff, it is imperative that the council set the priorities and policies, and the executive director manage the staff to ensure these priorities and policies are addressed. This will allow the council members to observe the program functioning as a whole, not on a microscopic level. An executive director with strong leadership abilities, whose administration is supported by all council members, would help to establish clear lines of authority.

2. Lack of definitive duties, policies and procedures. The three associate coordinator positions have broad position descriptions that are identical.<sup>2</sup> The position descriptions state that:

*"Because of the limited number of staff, the on-going responsibilities assigned to any one position may be focused in one program area; however, the staff is expected to know and be able to perform or assist with the activities in any program areas."*

With broad position descriptions, more specific directives defined in an agency procedure or desk manual are critical to ensure that personnel have a clear understanding of their responsibilities and priorities. Not only did we find that staff members were having difficulty addressing their responsibilities, a lack of prioritizing was also evident. These coordinator positions are responsible for the development, coordination, evaluation/monitoring and technical assistance of new and existing programs to ensure regulatory and policy compliance.

Between FY 98 and FY 01, the council's budgeted staff has increased 100% (from four to eight individuals). As stated in AS 18.66.050, the council's broad statute regarding the hiring of staff adds to the confusion with lines of authority. Although the council may hire the staff, the staff report to the executive director and should take direction solely from the executive director. The executive director needs strong leadership skills that emphasize teamwork and open communication among the council staff. For the executive director, leadership skills are as critical as program background in domestic violence and sexual assault.

Explicit documentation of each individual's responsibilities would allow the executive director of the council to hold staff accountable for their actions and their job duties. The council members should also provide clear guidance to the executive director and work through the executive director when addressing issues with the staff.

We recommend that the legislature change AS 18.66.050 to state:

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<sup>2</sup> Position control numbers 12-0087, 12-0071 and 12-0070 have the same description of duties.

"[t]he council shall hire an executive director, and the executive director shall hire staff as identified in budgetary documents."

We recommend that the council promote and support strong leadership authority with the executive director. We also recommend that the executive director develop council personnel policies, procedures, and desk manuals (or update position description questionnaires) to describe the tasks of the individuals in each position. Once staff roles are established, the executive director should provide cross-training and encourage communication and teambuilding.

#### Recommendation No. 4

The council should address statutory responsibilities that relate to consultation with the Department of Health and Social Services (AS 18.66.050 (12)) and other entities and organizations (AS 18.66.050 (14)).

The council's statute was amended effective July 1, 1996 to include new requirements. Two of these new requirements have not been addressed. Alaska Statute 18.66.050(12) and (14) state that the council shall:

*(12) consult with the Department of Health and Social Services in the formulation of standards and procedures for delivery of services to victims of domestic violence by health care facilities and practitioners of healing arts and personnel in those facilities as required in AS 18.66.300.*

*(14) consult with public employers, the Alaska Supreme Court, school districts, and prosecuting authorities who are required by AS 18.66.300 - 18.66.310 to provide continuing education courses in domestic violence to employees.*

Both of these statutes discuss the council working with other agencies and public employers to develop standards, procedures, and continuing education courses. However, due to personnel deficiencies (see Recommendation No. 3) and lack of prioritization, the council has been unable to fully address these areas. We recommend that the council prioritize their responsibilities and determine a means to efficiently implement AS 18.66.050(12) and AS 18.66.050(14).

#### Recommendation No. 5

Council members and the executive director should consult with the Department of Education and Early Development, school district representatives, and grantees who have worked toward curriculum development to create a comprehensive standardized curriculum to be used within the schools across the state.

The council's approach to domestic violence and sexual assault education within the school districts is inconsistent and inadequate. There is a need for a more coordinated effort towards

education in school districts throughout the state. The council has left the responsibility for education in the schools to the grantees. The grantees have varying degrees of success in gaining access to their local schools, and use a variety of methods in attempting to address the need for domestic violence and sexual assault education within the schools.

Alaska Statute 18.66.050 states, in part, that:

*The council shall (3) in consultation with authorities in the field, develop, implement, maintain, and monitor domestic violence, sexual assault, and crisis intervention and prevention programs, including education programs....and school curricula on the cause, prevention, and treatment of domestic violence and sexual assault. [emphasis added]*

The council has avoided developing and implementing a standardized curriculum in an attempt to respect the autonomy of its victim services grantees. This has been the council's overall strategy in victim services program issues, where the individual grantees are better able to assess the needs of their communities. The grantees each have their own method of approaching education within their local schools. Some grantees simply send advocates to speak to a classroom when invited by the teacher. Other grantees have attempted to develop a K-12 curriculum for use within their local schools.

Development of a standardized curriculum can be an overwhelming task for a small or rural program whose resources are already stretched to the limit. Many grantees lack the expertise needed to approach the development of a curriculum for children that covers such extremely sensitive subjects as domestic violence and sexual assault.

We recommend the council consult with the Department of Education and Early Development, school district representatives, and grantees who have worked toward curriculum development to create a comprehensive standardized curriculum to be used within the schools across the state.

#### Prior Sunset Audit Recommendation No. 1

The Council on Domestic Violence and Sexual Assault's (council) executive director should continue to improve administrative procedures to adequately satisfy duties of the council.

#### Prior Finding

Due to increasing responsibilities and a limited number of staff positions, the council experienced deficiencies in carrying out its administrative and statutory responsibilities during FY 97. The lack of staff availability to carry out the full scope of the council's duties was further aggravated by staff turnover and extended illnesses. Weaknesses identified were as follows:

1. Data collected from grantees has not been processed since February 1997.

2. The annual report to the governor for FY 96 had not been completed.
3. On-site monitoring of grantees was not performed and reported in a timely manner.

#### Current Status

Administrative weaknesses continue to exist, though to a lesser degree than existed during the prior sunset audit. The current status of the prior year sunset recommendation is as follows:

1. Data collection - substantially implemented. The council implemented a statewide data collection system in July 2000. Some grantees expressed dissatisfaction with the new data system and felt that the forms were confusing and had too many categories. Some grantees feel that the system requires duplicative work by grantee staff. There are concerns on the validity of the data and how to measure outcomes. However, others feel that the system is easy, accurate and provides consistent data reporting. Overall, there is a critical need for coordinated statewide standardized measurement and recording of statistical data across agency lines. Statistics are needed to accurately provide information to decision makers.
2. Timeliness of annual reports – some improvement. Although reports prior to FY 00 have been untimely, the annual report for FY 00 was completed timely and posted on the council website.
3. On-site monitoring – some improvement. An on-site monitoring schedule has been established and on-site monitoring of most grantees has been performed. However, while the council has improved in the consistency and timeliness of their on-site monitoring, this monitoring was limited to primarily programmatic issues. The council failed to monitor its grantees who were subrecipients of federal grant funds for compliance with federal requirements. Weaknesses regarding federal compliance subrecipient monitoring issues were identified in the Statewide Single Audit for Fiscal Year Ended June 30, 2000 (Audit Control Number 02-40001-01).

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## ANALYSIS OF PUBLIC NEED

The following analysis of the council's activities relates to the public need factors defined in the "sunset" law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

*Determine the extent to which the board, commission, or agency has operated in the public interest.*

The council has awarded and administered grant funds to local community organizations and programs that provide services to victims of domestic violence and sexual assault, batterer intervention services to perpetrators of domestic violence, and crisis intervention and prevention programs. Although the presentation element of the funding meeting is not generally accepted and approved by all the grantees, the council's grant award process is objective, and grantees are treated equally in the process. Public participation was encouraged, and legislative intent was considered in the funding process. The council strives to treat urban and rural participants fairly throughout the grant award process. The council exercises oversight and performs on-site audits of most grant recipients. However, some exceptions were identified for the Alaska Network on Domestic Violence and Sexual Assault. (See Recommendation No. 2.)

The council coordinates the efforts of many state and community agencies working toward a comprehensive statewide system to combat domestic violence and sexual assault. Overall, we conclude that the council is performing its coordination duties.

The council provides technical assistance in various forms to state agencies, law enforcement agencies, grantees, and community groups on a regular basis.

The council has provided funds to assist in the development of training materials and participation in training events relating to domestic violence and sexual assault. This training has been used by law enforcement officers, prosecutors, and judicial officers. Upon request, council staff is available to state and local law enforcement agencies to consult on training matters.

The council produces public service announcements for distribution statewide, and provides domestic violence and sexual assault education on a local level through its grantees. The council maintains a lending library with educational and reference materials available that are both adequate and appropriate to address the cause, prevention, and treatment of domestic violence and sexual assault.

The council consults with the Department of Health and Social Services, Section of Maternal Child and Family Health, on the Alaska Family Violence Prevention Project (AFVPP) to increase awareness and community capacity to prevent and intervene in family violence. AFVPP provides multidisciplinary training and technical assistance on family violence for

health and social service providers and communities across the state. During the last year, in collaboration with the council, AFVPP conducted domestic violence/child abuse workshops in fifteen rural communities across the state. Although they have collaborated on issues such as this, the council and AFVPP have not addressed the statutory mandate in AS 18.66.050(12). (See Recommendation No. 4.)

*Determine the extent to which the operations of the board has been impeded or enhanced by existing statutes, procedures, and practices, which it has adopted, and any other matter, including budgetary, resource, and personnel matters.*

There are a variety of issues that have had an impact on the operations of the council. Our primary concerns involve the following:

1. Personnel issues. For some time, the council has been facing personnel issues resulting from new positions, new statutory and federal grant responsibilities, and turnover. The executive director should develop council personnel policies, procedures, and desk manuals to describe the tasks of the individuals in each position and to adjust for increased responsibilities and other changes. There also were other personnel issues that existed between the former executive director and council staff (See Recommendation No. 3).
2. Statutes related to composition of the council. The council should consider including a representative from the Department of Corrections as either a full council member, or as an advisor, to increase awareness of batterer programs. Some council members would also like to see additional public members. Because the Network has been receiving grant funds from the council, the legislature should consider amending AS 18.66.020 by 1) removing the clause that requires the Network to make recommendations for public members on the council to the governor, and 2) delete the requirement that the governor consult with the council regarding initial and reappointment of public members to the council. (See Recommendation No. 1.)
3. Program reporting requirements. AS 18.66.050(10) requires the council to submit an annual report to the governor, and notify the legislature about the availability of the report. Although the statute is silent if such a report is to be based on the calendar or fiscal year, customarily the council has submitted reports on a fiscal year basis. Although the reports for FY 97 through FY 99 were not provided to the governor in a timely manner, the FY 00 annual report was. (See Prior Sunset Audit Recommendation No. 1)
4. Data collection process. The council implemented a statewide data collection system in July 2000. Some grantees expressed dissatisfaction with the new data system and felt that the forms were confusing and had too many categories. Some grantees feel that the system requires duplicative work by grantee staff. There are concerns on the validity of the data and how to measure outcomes. However, others feel that the system is easy, accurate and provides consistent data reporting. Overall, there is a

critical need for coordinated statewide standardized measurement and recording of statistical data across agency lines. Statistics are needed to accurately provide information to decision makers. (See Prior Sunset Audit Recommendation No. 1.)

*Determine the extent to which the board has recommended statutory changes that are generally of benefit to the public interest.*

The council is generally asked by other agencies to review statutory changes contained in proposed legislation. Typically, council members and staff review and comment on proposed legislation rather than developing and seeking support for its own measures. The council discusses pertinent bills and decides which legislation the council should support, remain neutral, or oppose. The executive director develops, analyzes, and testifies on bills at the direction of the council. The Network is also actively involved in domestic violence and sexual assault related legislation, and provides an update of pertinent legislation at council meetings.

*Determine the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of services, economy of service, and availability of services that it has provided.*

The council encourages interested parties to comment on its decisions or regulations by publicly announcing its meetings. The council holds at least four meetings per year, normally in Anchorage or Juneau. Meetings held in Juneau are typically teleconferenced statewide. The council also encourages input from the Network regarding its policies.

*Determine the extent to which the board has encouraged public participation in the making of its regulations and decisions.*

The council encourages public participation by advertising meetings and teleconferences and by posting the council's meeting schedule on their website. Time is provided on the agenda of every public meeting for public comment. The council works with the Network and their membership in the development of regulations and policy decisions.

*Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.*

We found no problems in this area. Complaint procedures are in place, followed when complaints are made, and files are maintained. No complaint activity was noted.

*Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board to its own activities and the area of activity or interest.*

No complaints against the council were identified.

*Determine the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the board to better serve the interest of the public and to comply with the factors enumerated in this subsection.*

The council has left the responsibility for education within the schools to their grantees. The grantees have varying degrees of success in gaining access to their local schools and use a variety of methods in attempting to address the need for domestic violence and sexual assault education within the schools. There is a need for a more coordinated effort towards education in school districts across the state. The council should consult with the Department of Education and Early Development, school district representatives and grantees who have worked toward curriculum development to create a comprehensive standardized curriculum to be used within schools across the state. (See Recommendation No. 5.)

*Identify the problems or the needs that the programs and activities of the council are intended to address.*

Per AS 18.66.010, the council's purpose is to provide for planning and coordination of services to victims of domestic violence or sexual assault or to their families, to perpetrators of domestic violence and sexual assault, and to provide for crisis intervention and prevention programs.

*Identify any other programs having similar, conflicting or duplicate objectives.*

One of the council's major objectives is the coordination of agencies, both state and local, that share the similar objective of combating the effects of domestic violence and sexual assault. No other agency is in a position to have an impact on this issue in this manner. Its existence is to help ensure that the various agencies work together to effectively respond to Alaska's high rate of domestic violence and sexual assault.

APPENDIX A

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Appendix A  
 Council on Domestic Violence and Sexual Assault  
 Schedule of Grants Awarded FY 99 through FY 02  
 (unaudited)

	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>
<b>Victim Services Grants</b>				
Advocates for Victims of Violence (Valdez)	\$ 204,810	\$ 209,810	\$ 212,970	\$ 213,181
Abused Women's Aid in Crisis (Anchorage)	792,900	753,255	795,605	795,816
Aiding Women from Abuse and Rape Emergencies (Juneau)	486,725	481,925	489,430	489,641
Arctic Women in Crisis (Barrow)	239,655	-0-	242,360	242,571
Alaska Women's Resource Center (Anchorage)	194,920	190,120	197,625	197,836
Bering Sea Women's Group (Nome)	417,790	417,790	420,495	420,706
Cordova Family Resource Center	48,505	41,505	51,210	51,421
Emmonak Women's Center	147,025	150,525	153,685	180,885
Kenai/Soldotna Women's Resource and Crisis Center	394,485	388,595	397,190	669,296
Kodiak Women's Resource and Crisis Center	261,410	257,182	264,115	397,401
North Slope Borough	-0-	232,655	-0-	-0-
Safe and Fear-Free Environment (Dillingham)	317,200	317,200	319,905	264,326
Sitkans Against Family Violence	300,485	298,094	303,190	320,116
Seward Life Action Council	74,895	73,787	77,600	303,401
South Peninsula Women's Services (Homer)	246,175	242,251	248,880	77,811
Standing Together Against Rape (Anchorage)	383,790	376,114	386,495	249,091
Tundra Women's Coalition (Bethel)	564,885	566,385	569,545	386,706
Unalaskans Against Sexual Assault and Family Violence	120,085	120,085	122,790	584,547
Victims for Justice (Anchorage)	72,545	68,918	72,078	123,001
Valley Women's Resource Center (Palmer)	415,570	407,259	418,275	26,078
Interior Alaska Center for Non- Violent Living (formerly Women in Crisis - Counseling and Assistance - Fairbanks)	666,380	661,580	669,085	418,486
Women in Safe Homes (Ketchikan)	494,265	489,465	496,972	497,183
<b>Total Victim Services Grants</b>	<u>\$ 6,844,500</u>	<u>\$ 6,744,500</u>	<u>\$ 6,909,500</u>	<u>\$ 6,909,500</u>
<b>Community Based Batterer Intervention Programs</b>				
Male Awareness Program (Anchorage)	\$ 90,000	\$ 80,000	\$ 80,000	\$ -0-
Sound Alternatives (Cordova)	11,000	11,000	11,000	15,000
South Peninsula Women's Services (Homer)	27,000	23,000	23,000	27,000
	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>	<u>FY 02</u>

Appendix A  
 Council on Domestic Violence and Sexual Assault  
 Schedule of Grants Awarded FY 99 through FY 02  
 (unaudited)

**Community Based Batterer Intervention Programs - Continued**

Tongass Community Counseling Center (Juneau)	68,000	67,500	67,500	67,500
IAC Women In Crisis Counseling Center (Fairbanks)	50,000	50,000	50,000	66,000
SE Islands Violence Prevention Program - Wrangell/Petersburg	31,000	29,000	29,000	-0-
Sitka Prevention and Treatment Services	-0-	39,500	39,500	-0-
Islands Counseling Services (Sitka)	-0-	-0-	-0-	40,000
Ketchikan Indian Corporation (Ketchikan)	-0-	20,000	20,000	50,000
Valley Women's Resource Center (Palmer)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>54,500</u>
<b>Total Community Based Batterer Intervention Programs</b>	<b><u>\$ 277,000</u></b>	<b><u>\$ 320,000</u></b>	<b><u>\$ 320,000</u></b>	<b><u>\$ 320,000</u></b>

**Prison Batterer Intervention Program Grants**

Interior Alaska Center for Non-Violent Living (formerly Women in Crisis - Counseling and Assistance - Fairbanks)	\$ 39,200	\$ 39,200	\$ 39,200	\$ 24,137
Tongass Community Counseling Center (Juneau)	34,100	34,100	34,100	34,100
Valley Women's Resource Center (Palmer)	<u>24,937</u>	<u>24,937</u>	<u>24,937</u>	<u>40,000</u>
<b>Total Prison Batterer Intervention Program Grants</b>	<b><u>\$ 98,237</u></b>	<b><u>\$ 98,237</u></b>	<b><u>\$ 98,237</u></b>	<b><u>\$ 98,237</u></b>

**Violence Against Women Act (VAWA) Grant**

Alaska Network on Domestic Violence and Sexual Assault	\$ 225,354	\$ 342,285	\$ 309,716	\$ 356,624
Department of Law Reimbursable Services Agreement	176,585	179,535	72,578	See "Note"
Alaska Court System Reimbursable Services Agreement	52,572	41,681	31,664	See "Note"
Department of Public Safety Reimbursable Services Agreement	<u>54,525</u>	<u>232,155</u>	<u>116,666</u>	<u>See "Note"</u>
<b>Total VAWA Grant</b>	<b><u>\$ 509,036</u></b>	<b><u>\$ 795,656</u></b>	<b><u>\$ 530,624</u></b>	<b><u>\$ 356,624</u></b>
<b>TOTAL</b>	<b><u>\$ 7,219,737</u></b>	<b><u>\$ 7,162,737</u></b>	<b><u>\$ 7,327,737</u></b>	<b><u>\$ 7,327,737</u></b>

Note: Amounts have not yet been determined

December 21, 2001

Ms. Pat Davidson, CPA  
Legislative Auditor  
Division of Legislative Audit  
P.O. Box 113300  
Juneau, AK 99811-3300

Dear Ms. Davidson:

This letter is in response to the Preliminary Audit Report, Council on Domestic Violence and Sexual Assault, Department of Public Safety, Dated October 31, 2001 and transmittal letter dated December 6, 2001. The Department's positions are stated below each findings and recommendation.

Recommendation No. 1

The legislature should amend the Council on Domestic Violence and Sexual Assault's statutes related to appointment of council members.

**CDVSA Response: Do not Agree**

As stated in the response to the management letter dated November 14, 2001 the Council does not agree that Alaska Statute 18.66.020 needs to be amended. The Governor is not required to appoint public members solely from the names submitted by the Alaska Network on Domestic Violence and Sexual Assault (ANDVSA). The statute requires the Governor to "consult" with ANDVSA, but does not mandate that the Governor accept the names submitted. The Governor has the authority to appoint a person not recommended, provided he "consults" with ANDVSA.

ANDVSA is the only statewide coalition for the issues involving domestic violence and sexual assault. ANDVSA works closely with the programs on a statewide basis and is, aside from the Council itself, the organization most familiar with these important societal issues. It is entirely appropriate for a Governor to ask those with the most knowledge, expertise and involvement in a particular field to submit names for consideration for appointment to boards and/or commissions. We further disagree that an appearance of a personal conflict of interest exists on the part of the appointment or reappointment of public members. The fact that the Council awards grant money to ANDVSA does not mean that public member is indebted to ANDVSA. Public members are devoted to the issue, the cause, and public service. If the Governor believes a public member is

Ms. Pat Davidson, CPA  
December 21, 2001  
Page 2

doing a good job, he can reappoint the person even if ANDVSA recommends against it. The Executive Ethics act does not preclude persons with interest in a field from serving on boards and commissions; rather, it requires that they have no direct financial conflict of interest. ANDVSA has never nominated, nor has the Governor's Office ever named, anyone who was an employee or officer of ANDVSA. Rather, public members have been persons active in domestic violence or sexual assault issues in their local communities. Public members are also required to step down from any involvement in their local programs during their service on the Council.

#### Recommendation No. 2

The council should define and communicate clear and distinctive roles for the council members and staff in dealing with the Network. The council should adhere to these roles in their federal grant oversight of the Network.

#### **CDVSA Response: Partially Agree**

1. In FY01, ANDVSA modified their final grant contract relating to access to all records to reflect financial records only. This change was not noticed by Council staff or approved by the Council. In FY02, ANDVSA formally requested that the Council change the grant contract condition that allows the Council to review all records. ANDVSA asked the Council review only the financial records. The request was made during the quarterly Council public meeting of September 11, 2001. **The Council denied this request on record in the meeting.**
2. CDVSA will adhere to federal allowable cost principles (A87) by addressing the reimbursement documentation during on-site monitoring activities and through review of financial documentation and by requesting clarification on questionable expenditures.
3. ANDVSA and other VAWA grantees are being included in the on-site monitoring and evaluation schedule for FY02 and FY03.

At every meeting the Council reviews VAWA expenditures, so the Council is aware of what is going on. To ensure initial approval, the VAWA committee will submit the plan to the Council for final review and approval. The Council's initial review and approval will be consistent with the Governor's directive, April 15, 1995, on programmatic and administrative oversight.

The Council will communicate the roles of the Council to staff and the Network consistent with the federal grant requirements and the governor's directive for programmatic and administrative oversight.

Ms. Pat Davidson, CPA  
December 21, 2001  
Page 3

Recommendation No. 3

The legislature should amend AS 18.66.050 referring to the council hiring staff, and the council should address personnel issues and promote strong leadership by the executive director.

**CDVSA Response: Partially Agree**

1. Confusion regarding lines of authority. The Council acknowledges some confusion existed recently and is working towards assuring the correct level of authority of the executive director and the role of the staff.
2. Lack of definitive duties, policies and procedures. The three associate coordinator positions have position descriptions that are identical. This will allow the Council to have all three coordinators work as a team to design, coordinate, conduct evaluations, monitor the programs, plus offer technical assistance to new and existing programs. This will further allow the staff to be cross-trained and work in a cohesive team environment with the executive director being the supervisor and leader of the team.

The Council does not agree that AS 18.66.050 needs to be modified. The Council has never been involved in hiring of staff. The Council recognized that hiring of staff is the responsibility appropriately placed with the executive director. Guidance from the Council to the executive director and the further development of personnel policies, procedures and desk manuals and where necessary, updating position descriptions, will adequately address any previous confusion.

Recommendation No. 4

The Council should address statutory responsibilities that relate to consultation with the Department of Health and Social Services (AS 18.66.050(12) and other entities and organizations (AS 18.66.050(14)).

**CDVSA Response: Agree**

The Council agrees that we should be working with these other agencies and public employers in developing standards and provide information and education surrounding the issues of domestic violence and sexual assault. We will strive to meet this recommendation.

Ms. Pat Davidson, CPA  
December 21, 2001  
Page 4

Recommendation No. 5

Council members and the executive director should consult with the Department of Education and Early Development, school district representatives, and grantees who have worked toward curriculum development to create a comprehensive standardized curriculum to be used within the schools across the state.

**CDVSA Response: Agree**

The Council agrees that we should be working with the Department of Education and Early Development, school district representatives, and grantees to develop a comprehensive standardized curriculum to be used in schools across the state. The difficulty comes when developing a standardized curriculum with such cross-culture and diversified populations throughout the state and getting school districts to agree to include the curriculum material in their classrooms.

Sincerely,

Glenn G. Godfrey  
Commissioner

January 11, 2002

Members of the Legislative Budget  
and Audit Committee:

We have reviewed the Department of Public Safety's response to our audit. Nothing contained in the response has provided sufficient information to persuade us to remove or revise our recommendations.

Sincerely,

Pat Davidson  
Legislative Auditor

**HB**

**348**

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 348  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act relating to violations of BRU Legal and Advocacy Services  
domestic violence protective orders." Component Public Defender Agency  
 Sponsor Rep. Croft  
 Requester (H) Judiciary Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

See attached.

Prepared by: Barbara Brink, Director  
 Division Public Defender Agency  
 Approved by: Jim Duncan, Commissioner  
 Agency Department of Administration

Phone (907) 334-4416  
 Date/Time 2/22/02 5:27 PM  
 Date 2/22/2002

FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 348

ANALYSIS CONTINUATION

This legislation would amend the class A misdemeanor crime of violating a protective order to clarify the culpable mental state required for the defendant's degree of awareness that his or her conduct would violate the protective order. The statute, as written currently, is ambiguous as to that necessary culpable mental state. The Court of Appeals interpreted the statute in Strane v. State, 16 P.3d 745 (Alaska App. 2001) to require the culpable mental state of "knowingly" to apply both to the conduct and with respect to the circumstance that their conduct violated the protective order. This bill would require that the defendant act "with reckless disregard" that the act violates or would violate the protective order.

The Public Defender Agency does not anticipate that this bill would have a fiscal impact on it. The Agency is already appointed to cases of this nature and clarifying the culpable mental state in the statute should not significantly change that caseload.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 348  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to violations of domestic violence protective orders." BRU Criminal Division  
 Sponsor Representative Croft Component 1st-4th Judicial Districts; Criminal Appeals/Special Litigation  
 Requester House Judiciary Committee Component No. 2198-99;2201/03/61/79

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

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

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 AS 11.56.740(a) prohibits violating a domestic violence order. HB 348 specifies the mental state and requires the state prove that the defendant acted with reckless disregard that his or her conduct violated the order.

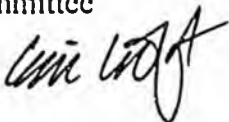
Passage of this legislation is not anticipated to have a fiscal impact on the Department of Law.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 2/22/02 2:07 PM  
 Approved by: Kathryn Daughphotoe for Bruce M. Botelho, Attorney General Date 2/22/2002  
 Agency: Department of Law



Representative Eric Croft

## Memorandum

Date: April 25, 2002  
To: Senator Robin Taylor  
Chair, Senate Judiciary Committee  
From: Representative Eric Croft   
Subject: Hearing Request

---

House Bill 348 unanimously passed the House on March 27, 2002, and was moved by the Senate HESS Committee on April 24. The sponsor would appreciate the opportunity to present the bill to the Judiciary Committee and to respond to questions that may arise.

I respectfully request that House Bill 348 be scheduled for a hearing before the Senate Judiciary Committee at your earliest convenience.



## Representative Eric Croft

### HB 348 Sponsor Statement

Early last year, an Alaska appellate court decision exposed a dangerous flaw in the existing legal protections for victims of domestic violence. The Strane decision opened the door for perpetrators to ignore the provisions of domestic violence restraining orders. The loophole: under Strane, the State must prove that the defendant knew that his or her conduct violated the restraining order. The defendant need only claim to have misunderstood the order, no matter how clear, as a defense to the charge.

Under the introduced legislation, only violations of a restraining order based on a reasonable misunderstanding of the terms of that order will be tolerated – unreasonable excuses will be prosecuted to the full extent of the law. Currently, if a jury believes that the defendant felt his action was not in violation of the order, no matter how unreasonable his excuse may be, the jury must acquit.

In a nutshell, the current law gives violators a “get out of jail free” card by allowing them to assert ignorance or unreasonable understanding. HB 348 takes that card away, without infringing upon the defendant’s right to a defense.



## Representative Eric Croft

**Subject:** Sectional Summary of House Bill 348, related to Violations of Domestic Violence Orders (Work Order No. 22-LSO615L)

This bill addresses violations of domestic violence protection orders, and the standard for conviction of such violations.

**Section 1.** Amends AS 11.56.740(a) by changing the requisite mental state required for conviction.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF PUBLIC SAFETY**  
**COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 465-4358  
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OFFICE ADDRESS: 450 WHITTIER ST.

February 22, 2002

The Honorable Eric Croft  
Alaska State House of Representatives  
State Capitol, Room 400  
Juneau, AK 99801

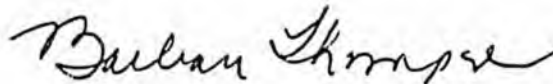
Dear Representative Croft:

As the state council charged with providing leadership in meeting the needs of victims of domestic violence and sexual assault, the Council on Domestic Violence and Sexual Assault strongly supports House Bill 348, "an Act relating to domestic violence protective orders." This bill closes loopholes in the prosecution of protective orders, thus allowing these orders to more fully serve their true purpose—to keep victims safe from their perpetrators.

Domestic violence is a serious problem in our state. Last year alone, more than 7,000 women and children sought immediate safety in shelters throughout Alaska. House Bill 348 could increase the safety of victims of domestic violence by allowing for proper enforcement of protective orders.

The Council supports your efforts and appreciates your concern for the protection and safety of Alaskans.

Sincerely,



Barbara Thompson  
Chair

**LETTER OF SUPPORT**

# Alaska Public Defender Agency

900 West Fifth Avenue, Suite 200  
Anchorage, Alaska 99501  
(907) 334-4400

February 22, 2002

Representative Eric Croft  
State Capital  
Juneau, AK 99801

Re: HB 348 "An Act relating to violations of domestic violence protective orders."

Dear Representative Croft:

The Public Defender Agency supports this draft of HB 348. This legislation would amend the class A misdemeanor crime of violating a protective order to clarify the culpable mental state required for the defendant's degree of awareness that his or her conduct would violate the protective order. The statute, as written currently, is ambiguous as to that necessary culpable mental state. The Court of Appeals interpreted the statute in Strane v. State, 16 P.3d 745 (Alaska App. 2001) to require the culpable mental state of "knowingly" to apply both to the conduct and with respect to the circumstance that their conduct violated the protective order. This bill would amend the statute to require that the defendant act "with reckless disregard" that the act violates or would violate the protective order.

The Public Defender Agency supports your effort to clarify the culpable mental state required in the statute.

Sincerely,

Linda K. Wilson  
Deputy Public Defender

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# ◆ The Legal Advocate ◆

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Volume 5 Issue 1

July-September 2001

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## Strane v. State

*Summary of case by Christine McLeod Pate*

*A case issued early this year by the Alaska Court of Appeals will make it harder to prosecute abusers for violations of protective orders.*

In Strane v. State the Court of Appeals was asked to construe AS 11.56.740(a), which makes it a crime for a person to "knowingly" commit or attempt to commit an act that violates one or more of seven restraining order provisions (no threatening, no contacting, stay away from residence, stay away from employment, stay away from propelled vehicle, no deadly weapon, and no firearms). At issue was the interpretation of the term "knowingly" which the court found was left ambiguous in the statute.

The state argued that "knowingly" required no mental state on the part of the defendant and that they should be found guilty even if they had no awareness that their actions would violate the law (similar to the theory that ignorance of the law is no excuse). The defendant argued that he could be found guilty only if he understood the provisions of the

protective order and knew that by his conduct, he was violating the order.

The Court held in this case that the correct mental state required for the statute is "knowingly" which it interpreted to mean - 1) that the state must prove that Strane knew that his conduct violated the order or, alternatively, 2) that Strane was aware of a substantial probability that his conduct violated the order, unless Strane actually believed that his conduct did not violate the order.

The State will now have to prove that the defendant knew that his conduct violated the protective order, or, at least, that the defendant was aware of a substantial probability that his conduct violated the order. An honest mistake, even if an unreasonable mistake, will be a good defense to the charge.

The opinion is long and arduous. Advocates with questions should contact the LAP or their local DA's office. ☞

<i>Inside This Issue</i>	page
Stalking Resource Center Update	2
Stalking Incident/Behavior Log	3
Meet Your Sister Programs	5
Understanding and Challenging Systematic Oppression: Group Agreement	6
<i>Breaking the Silence</i> on PBS in October	7

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*Views expressed in this newsletter do not necessarily represent ANDVSA opinions*

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NOTICE

The text of this opinion can be corrected before the opinion is published in the Pacific Reporter. Readers are encouraged to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts:

303 K Street, Anchorage, Alaska 99501  
Fax: (907) 264-0878  
E-mail: corrections@appellate.courts.state.ak.us

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

PATRICK STRANE,	)	
	)	Court of Appeals No. A-7014
Appellant,	)	Trial Court No. 3AN-98-887 Cr
	)	
v.	)	
	)	O P I N I O N
STATE OF ALASKA,	)	
	)	
Appellee.	)	[No. 1711      January 12, 2001]
	)	

Appeal from the District Court, Third Judicial District, Anchorage, John R. Lohff, Judge.

Appearances: Quinlan Steiner, Jill E. Farrell, and Michael Dieni, Assistant Public Defenders, and Barbara K. Brink, Public Defender, Anchorage, for Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Appellee.

Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

MANNHEIMER, Judge.

The Alaska Legislature has authorized the courts of this state to issue special protective orders in domestic violence cases. These protective orders can contain one or more of the types of restraining provisions listed in AS 18.66.100(c)(1)-(7). [Fn. 1] Under AS 11.56.740(a), if a person is subject to a domestic violence protective order that contains one or more of these seven restraining provisions, it is a crime for that person to "knowingly" commit or attempt to commit an act that violates these provisions.

In this appeal, we are asked to construe this criminal statute and determine what culpable mental state, if any, the State must prove with respect to the defendant's degree of awareness that their conduct violated (or might violate) the protective order. We conclude that the statute requires proof of a culpable mental state, but the statute is irresolvably ambiguous as to whether that culpable mental state is "recklessly" or "knowingly". Construing this ambiguity against the government, we conclude that the State must prove that the defendant acted "knowingly" as that term is defined in AS 11.81.900(a)(2).

The positions of the parties to this appeal

The statute at issue, AS 11.56.740(a), declares:

A person commits the crime of violating a

protective order if the person is subject to a protective order containing a provision listed in AS 18.66.100(c)(1)-(7) and knowingly commits or attempts to commit an act in violation of that provision.

The question, ultimately, is to determine what the legislature intended when it defined this crime in terms of "knowingly" committing or attempting to commit an act that violates the listed restraining provisions. [Fn. 2]

Strane and the State approach this statute from radically different perspectives. Strane argues that the legislature used the word "knowingly" to convey the notion that the crime is committed only if the defendant understood the provision(s) of the protective order and was aware that, by their conduct, they were violating the protective order. The State argues the polar opposite. The State contends that, just as ignorance of the law does not excuse a person's violation of a criminal statute, so too ignorance or misunderstanding of the provisions of a protective order does not excuse a person's violation of that order. The State argues that a person who violates the provisions of a protective order is guilty of a crime under AS 11.56.740(a) even if they acted with no culpable mental state i.e., acted with absolutely no awareness that their conduct might violate the provisions of the order.

The culpable mental state that would govern in the absence of a statute

The rule at common law that is, the rule that would prevail in the absence of a statute lies in between the positions staked out by Strane and the State. Violation of a domestic violence protective order is but one specific, codified instance of the more general crime of contempt of court. In previous cases dealing with contempt of court, this court has held (1) that the applicable culpable mental state is "recklessness" (i.e., the government must prove that the defendant recklessly disregarded the possibility that their conduct violated an order of the court), and (2) that a person charged with contempt can defend by asserting that they made a reasonable mistake concerning the terms or the effect of the court order.

Alaska law recognizes that not all violations of a court order are contemptuous. Indirect contempt (i.e., contempt of court not committed in the judge's presence) requires proof that the defendant acted "willfully" when the defendant violated the court's order. In this context, willfulness means that the defendant was aware of, and knowingly violated, the terms of the order:

For an act of contempt to be willful, the defendant must have been aware of the requirements of the court order, and the defendant must knowingly violate the court's order. [Although some earlier cases seem] to suggest that "willfully" might require proof of a specific intent to violate a court order[, other] case law clarifies that [what is] required is an intentional act which the defendant knows violates the court order, not an act motivated by the intent to violate a court order.

O'Brannon v. State, 812 P.2d 222, 228 (Alaska App. 1991).

Even when a defendant has knowingly violated the terms of a court order, the defendant may still defend by showing that there was some lawful excuse for failing to comply with the order. As the Alaska Supreme Court declared in Johansen v. State [Fn. 3]:

[When we speak of disobedience] of a lawful order of the court[,] [this] connotes more than the mere failure to comply with [the] order. The word "disobey" has the connotation of wilfully failing to comply, without some lawful or reasonable excuse for not complying. If such an excuse ... is

established, there can be no contempt of the authority of the court.

Johansen, 491 P.2d at 767 (footnote omitted).

Thus, Alaska case law on this subject is at odds with the State's position in this appeal the State's argument that any violation of a restraining order is contemptuous, even though the defendant acted with no culpable mental state.

On the other hand, decisions from other jurisdictions indicate that contempt can be proved even when the defendant does not subjectively "know" or understand the precise terms of the court order. Instead, the requisite "willful" failure to comply can be established by proof that the defendant recklessly disregarded the possibility that their conduct violated the requirements of a court order. This rule is illustrated most starkly in cases where defendants purposely refused to read or listen to a court order, so that they remained ignorant of the exact terms of the order. In such cases, courts have upheld contempt convictions even though the defendants could truthfully assert that they were not subjectively aware of the precise requirements of the court order. [Fn. 4]

In Russell v. State [Fn. 5], this court adopted and implemented this interpretation of the law. The defendant in Russell was convicted of AS 9.50.010(10), a statute that codifies another aspect of contempt: disobedience of a properly served subpoena. Russell was subpoenaed to attend a criminal trial scheduled to commence in January 1988. When the trial was postponed until March, the trial judge ordered that all existing subpoenas would remain in effect. [Fn. 6] Although Russell was informed that the trial had been postponed, she failed to appear in March. She claimed that she mistakenly believed that her subpoena was no longer valid once the trial was rescheduled. [Fn. 7]

One might plausibly argue that Russell's defense amounted to a claim of "mistake of law" a mistake concerning the legal effect of the subpoena. However, this court characterized Russell's defense as "a mistake of fact". [Fn. 8] This characterization makes a crucial difference. Alaska law generally does not recognize mistake of law as a defense to a criminal charge. [Fn. 9] But under AS 11.81.620(b), a mistake of fact will constitute a defense if the mistake is reasonable and if it either negates the culpable mental state required for commission of the offense or supports a defense of justification. Accordingly, this court declared that Russell's guilt hinged on two issues: (1) did the government prove that Russell acted with at least reckless disregard of the subpoena's directive to appear?, and (2) if Russell was truly mistaken concerning the continuing effect of the subpoena, was this mistake reasonable?

The judge [who adjudicated the contempt charge] found that, at best, Russell acted recklessly in assuming that her subpoena was no longer valid because the trial had been postponed. On this basis, the judge concluded that Russell's subjective belief that the subpoena was no longer valid did not absolve her of responsibility for contempt.

[The judge's] ruling is not error. Under AS 11.81.620(b), a mistake of fact can be a defense to a crime only when it is a reasonable mistake. There is ample evidence in the record to justify [the] finding that, if Russell actually did believe [that] she was no longer bound to appear, her mistake was not reasonable. Accordingly, [the evidence supports] Russell's conviction for contempt of court.

Russell, 793 P.2d at 1087.

This court's decision in Russell stands as a rejection of the State's position in the present appeal: the contention that a

defendant's violation of a restraining order can never be excused because of the defendant's ignorance of the terms of the restraining order or the defendant's misunderstanding concerning the meaning of those terms. Under Russell, questions as to what conduct is required or prohibited by a court order are treated as questions of fact. When the government charges a defendant with violating a court order, the fact that the court order requires or prohibits certain conduct is the circumstance that makes the defendant's conduct a contempt.

In deciding what culpable mental state the government must prove with respect to this circumstance, Russell adopted the approach codified in AS 11.81.610(b)(2): when a person's conduct constitutes a crime only under a particular factual circumstance, the government normally must prove that the defendant acted "recklessly" with respect to that circumstance. In addition, Russell recognized that a defendant charged with violating a court order could claim the defense of reasonable mistake codified in AS 11.81.620(b). Because the court order is a factual circumstance that determines the legality of the defendant's conduct, the law will excuse the defendant's conduct if (1) the defendant made a reasonable mistake concerning the terms of the court order, and if (2) under this reasonable but mistaken interpretation of the court order, the defendant's conduct did not violate the order.

As explained above, the approach adopted in Russell flows from the explanations of the law of contempt contained in O'Brannon and Johansen. We therefore reaffirm that the approach taken in Russell is a correct interpretation of the common law of contempt

the law that governs adjudications of contempt in the absence of a statute. Under Alaska common law, contempt requires proof that the defendant recklessly disregarded the possibility that their conduct violated a court order, and defendants are allowed to plead reasonable mistake of fact as a defense. We reject the contrary arguments that the State presents in this appeal.

Interpreting the statute at issue, AS 11.56.740(a)

The foregoing discussion of the common law does not resolve Strane's case. Strane is charged with violating a statute, AS 11.56.740(a), and not the common-law crime of contempt. The statute declares that a person commits the crime of violating a protective order if the person "knowingly" commits an act (or attempts to commit an act) that violates the protective order.

As explained above, when a statute declares that conduct is criminal only under certain circumstances, AS 11.81.610(b)(2) provides that the government must normally prove that the defendant acted "recklessly" with respect to those circumstances unless the statute prescribes a different culpable mental state. Here, the statute in question could be read to require proof that the defendant acted "knowingly" with respect to the inculpatory circumstance (i.e., the circumstance that the defendant's conduct violated a domestic violence protective order).

The problem is that the legislature's use of the word "knowingly" is ambiguous. As explained in the legislative commentary to AS 11.81.900(a)(1)-(4) [Fn. 10], the culpable mental state of "knowingly" can apply to conduct (in fact, it is the sole culpable mental state that applies to conduct), and it can also apply to circumstances. Thus, there are two potential ways of interpreting AS 11.81.740(a).

One interpretation is that the word "knowingly" applies to the defendant's conduct. Under this first interpretation, the statute would mirror the elements of contempt under common law. The State would have to prove that Strane knowingly engaged in conduct, that his conduct violated the terms of the protective order, and that Strane recklessly disregarded the possibility that his conduct violated the protective order. That is, the State would have to

prove that Strane was aware of and consciously disregarded a substantial and unjustifiable risk that his conduct violated the court order. [Fn. 11] Strane could assert a defense of mistake of fact (mistake concerning the requirements of the court order), but this mistake would have to be reasonable.

On the other hand, the legislature might have intended the word "knowingly" to apply to the fact that the defendant's conduct (or attempted conduct) violated the terms of the protective order. Under this second interpretation, the State would again have to prove that Strane knowingly engaged in conduct (since "knowingly" is the only culpable mental state that applies to conduct), and that Strane's conduct violated the terms of the protective order. But instead of merely proving that Strane acted "recklessly" with respect to the circumstance that his conduct violated the court order, the State would have to prove that Strane "knowingly" disregarded the fact that his conduct violated the protective order. That is, the State would have to prove that Strane knew that his conduct violated the court order or, in the alternative, (1) that Strane was aware of a substantial probability that his conduct violated the court order and (2) that he did not actually believe that his conduct was permitted by the court order. [Fn. 12]

In practical terms, these differing interpretations of the statute lead to two major differences in the way the criminal charge would be prosecuted and defended.

The first difference concerns the defendant's level of subjective awareness that their conduct might violate the terms of the protective order. If the culpable mental state is "recklessly", the State would have to prove only that the defendant consciously disregarded a substantial and unjustifiable risk that their conduct violated the protective order. But if the culpable mental state is "knowingly", the State would have to prove that the defendant knew that their conduct violated the protective order or, at least, that the defendant was aware of a substantial probability that their conduct violated the order.

The second difference concerns the issue of whether a defendant should be found guilty if they honestly but unreasonably believed that their conduct was permitted by the protective order. If the culpable mental state is "recklessly", then the rule announced in Russell would apply: a defendant could assert a defense of "mistake of fact" under AS 11.81.620(b), but the defendant's mistake would have to be reasonable. If the defendant's mistake about the requirements of the protective order was unreasonable, it would be no defense. But if the culpable mental state is "knowingly", then any honest mistake, even an unreasonable mistake, would appear to be a good defense to the charge.

This follows from the definition of "knowingly" contained in AS 11.81.900(a)(2). Applying this definition to the crime of violating a protective order, the State would have to prove either (1) that the defendant knew that their conduct violated the protective order or (2) that the defendant was aware of a substantial probability that their conduct violated the order unless the defendant actually believed that their conduct was permitted by the order. Under either theory of prosecution, if the defendant honestly believed that their conduct was permitted by the protective order, this honest mistake even if unreasonable would constitute a defense to the charge.

(We note, however, that, according to the legislative commentary to AS 11.81.900(a)(2), a defendant's mistake will not be deemed honest or in good faith if the defendant is guilty of willful blindness that is, if the defendant "deliberately avoids acquiring [the pertinent] knowledge by closing his eyes". [Fn. 13])

Which interpretation of the statute did the legislature intend? The legislative history of AS 11.56.740(a) is scanty. It is clear that this statute was intended to supersede AS 11.61.120(a)(6), an earlier provision dealing with violations of

protective orders that was part of the statute on "harassment". Under this former statute, it was a crime to violate a protective order if the defendant acted "with intent to harass or annoy another person".

According to the minutes of a hearing held on February 7, 1991, by the House Committee on Health, Education, and Social Services, AS 11.56.740(a) was drafted by Representative (now Lieutenant Governor) Fran Ulmer, and the goal of the statutory change was to improve legal protection for victims of domestic violence by eliminating the requirement that the State prove an intent to harass or annoy:

Representative Fran Ulmer told the committee that [House Bill 44] came as a result of conversations she has had ... with individuals in the law enforcement community as well as people who work in domestic violence shelters around the state ... who pointed out some shortcomings pertaining to the protection of victims of domestic violence.

[The bill] includes ... [a] change in the harassment statute to clarify that if a person knowingly violates a provision of a domestic violence restraining order, the crime of harassment is committed. Under current law, arrests and prosecutions are not being made because it is difficult to prove that the defendant acted with "intent" to harass.

But these committee minutes are just as ambiguous as the resulting statute itself on the question facing this court: does the culpable mental state of "knowingly" apply just to the defendant's conduct, or does it also apply to the defendant's degree of awareness that their conduct violated the protective order?

When we turn to the principles of statutory construction, we find that two common principles of construction point to opposing conclusions in this case.

The first principle is that "statutes imposing criminal liability should be construed narrowly. When the scope of a criminal statute is unclear, courts should normally construe the statute against the government that is, construe it so as to limit the scope of criminal liability." [Fn. 14] Here, the question is which culpable mental state "recklessly" or "knowingly" applies to the defendant's degree of awareness that their conduct violated the terms of the protective order. If we follow the principle that ambiguous criminal statutes should be construed to limit criminal liability, we should construe AS 11.56.740(a) to require proof that the defendant acted "knowingly" with respect to this circumstance.

But the second principle is that "statutes in derogation of the common law should be construed strictly." [Fn. 15] That is, when courts are presented with a question as to the proper construction of a statute that potentially modifies the common law, "the normal rule of interpretation is that such statutes are construed so as to preserve the pre-existing common law unless the legislature has clearly indicated its purpose to change that law." [Fn. 16] Here, as explained above, the common law would require proof that Strane acted "recklessly" with respect to the circumstance that his conduct violated the protective order. If we follow the principle that statutes should not be construed to alter the common law unless the legislature has clearly indicated their intention to do so, we should construe AS 11.56.740(a) to require proof that Strane acted "recklessly" with respect to the circumstance that his conduct violated the protective order.

But this second principle arguably should not apply to Strane's case. As explained above, the legislature first codified this crime (violation of a protective order) as part of the harassment statute. At that time, the crime required proof of

intent to harass or annoy an unmistakable departure from the common law. Now, under AS 11.56.740(a), the definition of the crime is closer to common-law contempt. But the statute's ancestry indicates that the legislature may still be purposefully departing from the common-law definition of the crime.

Finally, we note that both potential interpretations of the statute are reasonable. That is, policy arguments could be made in favor of each of the competing culpable mental states "knowingly" or "recklessly".

In these circumstances, we conclude that the principle of lenity should hold sway. The wording of the statute and its legislative history are irresolvably ambiguous on the issue before us. We can not tell which culpable mental state the legislature intended. In such a case, the law directs us to decide in favor of individual liberty and against the government.

We therefore hold that the applicable culpable mental state is "knowingly". To prove Strane guilty of violating a protective order under AS 11.56.740(a), the State must prove that Strane acted "knowingly" with respect to the circumstance that his conduct violated the protective order. That is, the State must prove that Strane knew that his conduct violated the order or, alternatively, that Strane was aware of a substantial probability that his conduct violated the order, unless Strane actually believed that his conduct did not violate the order.

Despite the wording of the last sentence, we do not intend to express any opinion on the question of who bears the burden of production or proof on the issue of Strane's potential actual belief that his conduct did not violate the court order. With respect to any inculpatory circumstance, AS 11.81.900(a)(2) declares that a defendant's awareness of a "substantial probability" of the existence of that circumstance is enough to establish guilt "unless the [defendant] actually believes [that the circumstance] does not exist". (Emphasis added.) As we have explained, this statutory definition allows a defense for honest but unreasonable mistakes of fact a broader defense than the reasonable mistake of fact defense codified in AS 11.81.620(b). But based on the wording of AS 11.81.900(a)(2), it is conceivable that an honest, unreasonable mistake is an "exception" to criminal liability meaning that the defendant would bear the burden of proof on this issue, or at least the burden of coming forward with evidence. [Fn. 17]

#### Conclusion

The district court ruled that even if Strane had a good-faith belief that his conduct did not violate the terms of the protective order, this belief was irrelevant to his guilt or innocence under AS 11.56.740(a). We have concluded that this ruling was error. Even at common law, a reasonable mistake concerning the requirements of a court order is a potential defense to a charge of contempt. And, because we have construed AS 11.56.740(a) to require proof that a defendant acted "knowingly" with regard to the circumstance that their conduct violated the protective order, Strane can potentially defend on the basis of a good-faith mistake concerning the terms of the protective order, even if that mistake was objectively unreasonable.

Strane was convicted at a bench trial. Normally, when a defendant is tried without a jury and we later conclude that the trial judge applied the wrong law in finding the defendant guilty, we would vacate the defendant's conviction and direct the trial judge to re-assess the defendant's guilt or innocence under the proper law. But here, Strane agreed to a bench trial only after the district court ruled that he could not defend the charge by asserting a good-faith mistake. Under these circumstances, we conclude that Strane should be given a choice: either to consent to a second bench trial, or to rescind his waiver of jury trial and

be tried by jury.

Strane's conviction for violating a protective order is REVERSED, and this case is remanded to the district court for further proceedings on the complaint.

#### FOOTNOTES

##### Footnote 1:

These seven provisions of AS 18.66.100(c) authorize a court to:

(1) prohibit the respondent from threatening to commit or committing domestic violence, stalking, or harassment;

(2) prohibit the respondent from telephoning, contacting, or otherwise communicating directly or indirectly with the petitioner;

(3) remove and exclude the respondent from the residence of the petitioner, regardless of [the] ownership of the residence;

(4) direct the respondent to stay away from the residence, school, or place of employment of the petitioner or any specified place frequented by the petitioner or any designated household member;

(5) prohibit the respondent from entering a propelled vehicle in the possession of or occupied by the petitioner;

(6) prohibit the respondent from using or possessing a deadly weapon if the court finds the respondent was in the actual possession of or used a weapon during the commission of domestic violence; [and]

(7) direct the respondent to surrender any firearm owned or possessed by the respondent if the court finds that the respondent was in the actual possession of or used a firearm during the commission of the domestic violence[.]

##### Footnote 2:

"The guiding principle of statutory construction is to ascertain and implement the intent of the legislature." *Sakeagak v. State*, 952 P.2d 278, 284 (Alaska App. 1998) (citing *Millman v. State*, 841 P.2d 190, 194 (Alaska App. 1992)).

##### Footnote 3:

491 P.2d 759 (Alaska 1971).

##### Footnote 4:

See *Vermont Women's Health Center v. Operation Rescue*, 617 A.2d 411, 415-16 (Vt. 1992); *People v. Poe*, 47 Cal.Rptr. 670, 677-78 (Cal. App. 1965); *United States v. Southern Wholesale Grocers' Ass'n*, 207 F. 434, 444 (N.D. Ala. 1913).

Footnote 5:

793 P.2d 1085 (Alaska App. 1990).

Footnote 6:

See id. at 1087.

Footnote 7:

See id.

Footnote 8:

See id.

Footnote 9:

AS 11.81.620(a) declares: "Knowledge, recklessness, or criminal negligence as to whether conduct constitutes an offense, or knowledge, recklessness, or criminal negligence as to the existence, meaning, or application of the provision of law defining an offense, is not an element of an offense unless the provision of law clearly so provides."

Footnote 10:

See 1978 Senate Journal, Supp. No. 47 (June 12th), pp. 139-142.

Footnote 11:

See AS 11.81.900(a)(3), the definition of "recklessly".

Footnote 12:

See AS 11.81.900(a)(2), the definition of "knowingly".

Footnote 13:

See 1978 Senate Journal, Supp. No. 47 (June 12th), pp. 140-41.

Footnote 14:

State v. ABC Towing, 954 P.2d 575, 579 (Alaska App. 1998).

Footnote 15:

Id.

Footnote 16:

Id.

Footnote 17:

See Trout v. State, 866 P.2d 1323, 1324-25 (Alaska App. 1994).

**HB**

**350**

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 350(TRA)  
(H) Publish Date: 2/20/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title: Terroristic threatening BRU: Alaska Court System  
Component: Trial Courts  
Sponsor: Representative McGuire  
Requester: Representative McGuire Component No.: 768

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
The court system does not anticipate any fiscal impact from the passage of HB 350.

Prepared by: Douglas Wooliver Phone: 463-4750  
Division: Alaska Court System Date/Time: 2/20/02 9:28 AM  
Approved by: Stephanie Cole Date: 2/20/02  
Agency: Alaska Court System

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 350(TRA)  
(H) Publish Date: 2/20/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title: "An Act relating to terroristic threatening." BRU: Criminal Division  
Component: 1st-4th Judicial Districts; Criminal Appeals/Special Litigation  
Sponsor: Representative McGuire Component No.: 2198-99;2201-03;61;79  
Requester: House Transportation Committee

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

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

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

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

Estimate of any current year (FY2002) cost: 0.0  
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 350 would expand the actions that could lead to a charge of terroristic threatening, a class C felony. Specifically, if an individual causes the evacuation of a public area, public conveyance, or building; disrupts the schedule of a public transportation entity; or threatens, even jokingly, a transportation service provider or transportation support services provider with physical injury, even if the person threatened was not placed in fear of physical injury, that individual could be charged with this crime.

The language in subsection (2) regarding threats to persons actually providing transportation services or support services would cover a very large variety of situations not currently considered felonies. Felony prosecutions are costly, but the Department of Law has no way of estimating how many new cases might be referred for prosecution if this bill becomes law, and cannot assign a potential fiscal impact.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
Division: Attorney General's Office Date/Time 2/19/02 8:27 AM  
Approved by: Kathryn Daughhelee for Bruce M. Botelho, Attorney General Date 2/19/2002  
Agency: Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: CSHB 350(JUD)  
 (H) Publish Date: 4/18/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act relating to criminal mischief  
and terroristic threatening..." BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Rep. McGuire  
 Requester (H) Judiciary Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	.	.	.	.	.	.

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

**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2002) cost: 0.0  
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 See attached.

Prepared by: Barbara Brink, Director Phone (907) 334-4416  
 Division Public Defender Agency Date/Time 2/21/02 1:29 PM  
 Approved by: Jim Duncan, Commissioner Date 2/21/2002  
 Agency Department of Administration

FISCAL NOTE #4

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. CSHB 350(JUD)

**ANALYSIS CONTINUATION**

This legislation would amend the crime of criminal mischief in the first degree (class B felony) to include tampering with a water supply with intent to cause physical injury. The crime currently prohibits tampering with other items with intent to cause physical injury (food, drugs, cosmetics). The bill also proposes to amend the crime of terroristic threatening (a class C felony) to include when a person knowingly makes a false report that a circumstance dangerous to human life exists or is about to exist that disrupts the schedule of a public transportation service or causes evacuation of a public area or public conveyance, or a false report that a circumstance exist or is about to exist that is dangerous to the safe functioning of an oil or gas pipeline or supporting facility, utility, or transportation or cargo facility.

The last provision in Section 2, subsection (a)(2) would likely have a fiscal impact on the Public Defender Agency. This subsection may cover a sizeable variety of situations not currently covered as felonies. It is not possible to determine the extent of that impact, however, because it is unknown how many potential cases would result from this broadly written proscriptive language. Since the Agency cannot predict how many more felony cases would result if this proposed legislation passed, an indeterminate fiscal note is submitted.

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: CSHB 350(JUD)  
 (H) Publish Date: 4/18/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act relating to terroristic threatenin BRU: Administration and Operations  
 Component: All  
 Sponsor: Rep. McGuire  
 Requester: House Judiciary Committee Component No.: 694

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

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

**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation expands the circumstances under which someone can be charged with Terroristic Threatening, a felony. This bill will add a provision to include knowingly making a false report that a circumstance dangerous to human life exists or is about to exist and causes evacuation of a public area, mode of public transportation or building or disrupts the schedule of an entity providing transportation services for persons or property. It additionally will include false reports of a circumstance exists or is about to exist regarding the safe or proper functioning of oil or gas pipeline or supporting facility, etc. Any addition of circumstances expanding felony prosecution will likely have a fiscal impact on the Department of Corrections. It is anticipated that the number of cases that apply in this legislation will be minimal, therefore, the Dept. of Corrections is submitting an indeterminate fiscal note.

Prepared by: Candace Brower  
 Division: Commissioner's Office  
 Approved by: Margaret Pugh, Commissioner  
 Agency: Dept. of Corrections

Phone 465-4652  
 Date/Time 2/26/02 4:53 PM  
 Date 2/26/02

# *Alaska State Legislature*

*Representative Lesil McGuire*

*District 17*

State Capitol Rm 418, Juneau, Alaska 99801-1182 Phone (907)465-2995 Fax (907)465-6592



## *Memorandum*

To: Senator Taylor  
Chair; Senate Judiciary Committee

From: Representative Lesil McGuire 

Re: HB 350  
Terroristic Threatening

Date: Thursday, April 25, 2002

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Please accept this memorandum as a request to schedule a hearing for HB 350 at your earliest convenience. CSHB 350 (JUD) unanimously past out of the House Thursday, April 25.

House Bill 350 would increase criminal penalties for certain acts of terrorism and would prohibit terroristic threats intended to frighten or cause specific harm to citizens. House Bill 350 also increases penalties of threats to our water and food supplies, utilities and pipelines.

House Bill 350 will provide law enforcement the necessary tools to arrest, detain and ultimately prosecute an individual who threatens public areas or conveyances.

Please contact David Brewster in my office at X4955 if you have any questions regarding this matter.

Attached: Sponsor Statement  
HB 350 (FIN) am  
Fiscal Notes  
Sectional Analysis per Anne Carpeneti, Assistant Attorney General  
Bill History  
Background information

**REQUEST FOR  
HEARING**

# Alaska State Legislature

Session  
State Capitol Building, Room 418  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
Fax (907) 465-6592

Interim  
716 West Fourth Avenue, Suite 430  
Anchorage, Alaska 99501  
Phone (907) 269-0250  
Fax 9907) 269-0249



Chair, House Special Committee  
on Economic Development, Trade  
and Tourism

Chair, Joint House and Senate  
Administrative Regulation and  
Review Committee

Member  
Resources Committee  
Rules Committee

## Representative Lesil McGuire

*House District 17*

### SPONSOR STATEMENT HOUSE BILL 350

**“An Act relating to murder, conspiracy, criminal mischief, and terroristic threatening; and providing for an effective date.”**

September 11<sup>th</sup>, 2001 has changed the lives of Alaskan and Americans alike. What was once a concern for the safety of those living, working or visiting foreign destination from terroristic acts has painfully come home. Likewise, we have been warned of the dangers associated with terrorism.

Terrorism is not confined to public transportation, or the bombing of buildings or government offices. The added threat of chemical and biological warfare and weapons of mass destruction make it clear that we are in need of redefining our laws regarding terroristic acts.

The threat alone of a terroristic act can cripple a community. Imagine the chaos that would occur if someone said that they had just contaminated the public water utility with a deadly chemical agent. Citizens would panic, schools and businesses would close, and in general the community would come to standstill.

House Bill 350 would increase criminal penalties for certain acts of terrorism and would prohibit terroristic threats intended to frighten or cause specific harm to citizens. House Bill 350 also increases penalties of threats to our air, water and food supplies, utilities and pipelines.

House Bill 350 will provide law enforcement the necessary tools to arrest, detain and ultimately prosecute an individual who threatens public areas or conveyances.

A threat in this day and age must be taken seriously. House Bill 350 increases criminal penalties for certain acts of terrorism, terroristic threats and criminal mischief and punishes these criminals in accordance with the law.

**Sponsor Statement**

CS FOR HOUSE BILL 350(FIN)am

SECTIONAL ANALYSIS

**Section 1** is a conforming amendment. It adds criminal mischief in the fourth degree to those offenses that allow for full, reasonable attorney fees to a victim or the estate of a victim in a civil lawsuit to recover damages based on the criminal conduct.

**Section 2** adds criminal mischief in the first degree (raised in this bill from a class B to a class A felony) and terroristic threatening in the first degree (a class B felony adopted in this bill) to those offenses for which a person can be charged with conspiracy to commit the offense.

**Section 3** amends murder in the first degree to include conduct where a person commits or attempts to commit criminal mischief in the first degree and, in furtherance of the offense or in immediate flight, any person causes the death of a person other than a participant in the crime. **Section 3** also adds to murder in the first degree conduct where a person commits terroristic threatening in the first degree and, in the furtherance of the offense or in immediate flight, any person causes death of a person other than one of the participants.

**Section 4** is a conforming amendment that adds the conviction for terroristic threatening in the first degree as a predicate offense that would raise the offense of stalking in the second degree to stalking in the first degree.

**Sections 5** changes criminal mischief in the first degree from a class B felony in current law (maximum period of incarceration 10 years) to a class A felony (maximum period of incarceration 20 years). The conduct prohibited includes intentionally damaging an oil or gas pipeline, causing damage to a utility or emergency responder resulting in substantial interruption in service to the public, and damaging property in an amount over \$100,000 by widely dangerous means such as an explosion.

**Sections 6 and 7** add tampering with water or air to the prohibition of tampering with food or cosmetics, with intent to cause physical injury, to criminal mischief in the second degree. This conduct remains a class B felony. These sections also add to criminal mischief in the second degree tampering with an oil or gas pipeline or supporting facility, an airplane, or a helicopter with reckless disregard for the risk to property. This conduct would be a class B felony, and is prohibited in current law as a class C felony.

**Section 8** makes conforming amendments to the definitions of "deliver" and "distribute" for criminal mischief in the second degree, by adding the delivery or distribution of air or water to the definitions.

**Sections 9, 10, and 11** make conforming amendments that change criminal mischief in the second degree to third degree. This conduct remains a class C felony.

**Sections 12 and 13** make conforming amendments that change what is currently criminal mischief in the third degree to criminal mischief in the fourth degree. This conduct remains a class A misdemeanor.

**Section 14** is a conforming amendment that changes what is currently criminal mischief in the fourth degree to criminal mischief in the fifth degree. This conduct remains a class B misdemeanor.

**Section 15** is a conforming amendment to criminal mischief in the fourth degree, by renumbering a statutory reference.

**Section 16** makes a conforming amendment to making a false information or report in violation of AS 11.56.800(a) to exclude conduct that would be prohibited by terroristic threatening in the second degree.

**Section 17** adopts the crime of terroristic threatening in the first degree. It prohibits sending or delivering a bacteriological, biological, chemical, or radiological substance or an imitation bacteriological, biological, chemical, or radiological substance, and, as a result, place another in reasonable fear of physical injury to any person, cause the evacuation of a building or other facility, or cause serious public inconvenience. This conduct is a class B felony.

**Section 18** changes the current terroristic threatening to the second degree offense, and adds the prohibition of making a false report with the intent to cause an evacuation of a public place, business premises, or means of public transportation. It also adds the prohibitions of making a false report that claims that a bacteriological, biological, chemical, or radiological substance has been sent or is present in specified places, or that threatens damage to an oil or gas pipeline or supporting facility. This conduct remains a class C felony.

**Section 19** is a conforming amendment that adds terroristic threatening in the first degree to those crimes that allow for the victim's or witness's address and telephone number to be kept confidential from the defendant if the court finds that the defendant may be a continuing threat to the victim or witness.

**Section 20** makes a conforming amendment to the definition of crime involving domestic violence by adding terroristic threatening in the first degree and criminal mischief in the first degree to those crimes that may potentially be a crime involving domestic violence.

**Sections 21 and 22** set forth applicability and effective date clauses.

STATE OFFICE  
ALASKA PEACE OFFICERS ASSOCIATION

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



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March 29, 2002

Representative Lesil McGuire  
State Capitol  
Juneau, AK 99801-1182

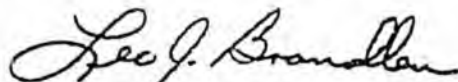
Dear Representative McGuire:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing House Bill 350 relating to terroristic threatening.

The Alaska Peace Officers Association fully supports HB 350. This will enhance police and prosecutor efforts to hold persons accountable for threatening public areas or conveyances, and causing disruption to public transportation due to threatening behavior. The world we live in has changed and law enforcement must respond to all threats against public facilities in a serious manner. This legislation will help facilitate the investigation and prosecution of these crimes.

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

Sincerely,

  
Leo Brandlen  
State President

# State frees man held for making threats

■ **ARREST:** Alaska Airlines bans Washington man from flights after he became angry over late luggage.

The Associated Press

SITKA — The state decided Friday not to prosecute a 58-year-old Washington man who was arrested at the Sitka airport after allegedly threatening an airline worker.

But Alaska Airlines has banned Dr. Bruce Stevenson from its flights for life because of Thursday's incident.

Stevenson apparently became upset about possible delays in retrieving baggage, police said. Lt. John Baeza said Stevenson told the Alaska Airlines ticket agent, "If I don't get my bag I'm coming back here as an assassin."

"He said it seriously, with no hint of a smile or that he was joking, and all the witnesses took it very seriously," Baeza said.

Sitka Police Chief Bill McLendon criticized the state's refusal to take the Woodinville, Wash., medical doctor to court.

"The decision reeks of favoritism and documents a steady history of political maneuvering and ineptness in handling cases," McLendon said Friday. "To say we have no confidence in (prosecutors') abilities would be a gross understatement."

Earlier Friday, assistant district attorney Corinne Vorenkamp told the Daily Sentinel in Sitka that the state did not have enough evidence for a criminal prosecution against Stevenson, a doctor at the prestigious Virginia Mason Hospital in Seattle.

"While there's certainly no accounting for the exceedingly poor taste and bad judgment of essentially ignoring a national tragedy, the state has decided to not file a complaint," Vorenkamp said.

Responding to a call from the airport Thursday afternoon, Sitka police arrested Stevenson on a felony charge of terroristic threatening and a misdemeanor charge of fourth-degree assault.

Stevenson was held overnight in the Sitka jail without bail and was released Friday after the charges were dropped.

In Anchorage, assistant U.S. attorney Stephan Collins said the federal government does not have jurisdiction in the case.

"The threat wasn't made by telephone or by wire, and it wasn't made in the air," Collins said. "If the plane were in the air at the time, we'd have jurisdiction -- maritime, or territorial -- but on the ground, in the airport, to a tick-



JAMES POULSON / The Associated Press

Sitka Police Lt. John Baeza, left, stands by as Dr. Bruce Stevenson, 58, background center, is placed in a patrol car following his arrest for allegedly threatening an airline worker at the airport in Sitka. Police say that Stevenson, a doctor at Virginia Mason Hospital in Seattle, apparently told the Alaska Airlines ticket agent, "If I don't get my bag I'm coming back here as an assassin."

et agent, from what details I understand about this case we don't have jurisdiction. That would be up to the state."

Vorenkamp said that to be prosecuted for terroristic threatening under state law, a person would have to "knowingly make a false report that a circumstance dangerous to human life exists or is about to exist."

"What Mr. Stevenson said certainly was insensitive to the fears of the person to whom he said it, and it's appalling in light of the national tragedy that happened this week," she said, "but under state law it is not a crime."

However, Stevenson will never be allowed onboard an Alaska Airlines flight again, company spokesman Greg Witter said from the airline's Seattle headquarters.

"We have a zero-tolerance policy for anyone who tries to abuse or threaten our employees in any way, shape or manner," he said.

# Doctor sorry for making threat to airline agent

■ **APOLOGY:** He admits he 'demonstrated a terrible lack of judgment.'

The Associated Press

SITKA — The Washington state doctor who was arrested in Sitka for making threatening comments to an Alaska Airlines ticket agent apologized Tuesday for his actions.

Dr. Bruce Stevenson was arrested at the Sitka airport Thursday, when commercial flights were allowed to resume after the terrorist attacks on the East Coast. The state, however, decided not to prosecute, though Alaska Airlines has banned the 58-year-old doctor from its planes for life.

In last week's incident, Stevenson became upset about possible delays in retrieving baggage and re-

portedly told the ticket agent he would "come back as an assassin" if that occurred.

Stevenson, a doctor at Virginia Mason Hospital in Seattle, issued a prepared statement Tuesday, saying he is sorry for the stress his comments caused.

Stevenson has been placed on indefinite administrative leave because of the incident, said hospital spokeswoman Linda Stepanich. The hospital faxed the doctor's comments to the Daily Sentinel in Sitka.

In the statement, Stevenson wrote: "I made an inappropriate remark that was interpreted as a threat.

"I demonstrated a terrible lack of judgment and I sincerely apologize for my actions. As a frequent traveler to Alaska, I have built many warm

See Page B-2, DOCTOR

## DOCTOR: *He's sorry*

Continued from B-1

relationships over the years. I genuinely regret jeopardizing the goodwill of the many friends and colleagues I have in your fine state.

"I am very sorry that this incident added to the stress of airline, airport and public officials during this difficult time."

Police had charged the doctor with felony, terroristic threatening and misdemeanor fourth-degree assault. Stevenson spent a night in the Sitka jail before charges were dropped Friday after the state decided not to prosecute.

Stevenson left Sitka Friday.