

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 8672

11194 SENATE JUDICIARY

SOILS



ALASKA, P.C.

February 4, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

Edwin S. Clarke P.E.]

FEB 09 2004



ahba

Affiliated with NAHB

January 16, 2004

Representative Kevin Meyers
Alaska House of Representatives
Room 513 Capitol Building
Juneau, Alaska 99801-1182

In Re: HB340, relating to construction defect awards

Dear Rep. Meyers:

This letter is to help show my support to get HB340 passed this legislative session.

Businesses like mine in the housing industry are finding that general liability insurance unobtainable due to extreme cost increases and fewer and fewer carriers offering policies in Alaska.

Something needs to be done. HB340 will help.

State law requires contractors to register with the Division of Occupational Licensing, and also to obtain bonding and insurance. If insurance becomes unavailable or unaffordable, many residential contractors in this state will simply have to lapse their state registration. Consumer protection will suffer if our system becomes an incentive to offer unregistered, unlicensed, and uncovered home construction services.

HB340 offers a win win situation by establishing a system that tries to focus on getting construction defects repaired rather than litigated. It is reasonable by solely applying to defect claims and not to claims in tragic situations of personal injury or death.

Thank you for your efforts towards solving an issue that is a big and growing problem for the housing industry. HB340 is an important bill, and I would like to see it pass.

Sincerely,



"Building Better Places to Live, Work and Play"

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January 28, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

RE: HB340, Construction Defect Claims

Dear Representative Meyer:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

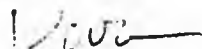
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Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Sincerely,



Doug Isaacson
President

FEB 02 2004



ahba

Affiliated with NAHB

January 16, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

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This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,



Jim Jackson
AHBA President

“Building Better Places to Live, Work and Play”

ANCHORAGE HOME BUILDERS ASSOCIATION, INC.

8301 Schoon Street, Suite 200 • Anchorage, AK 99518 • (907) 522-3605 • Fax (907) 522-3757





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Affiliated with NAHB

January 16, 2004

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Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

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Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

Amy Alcasin
One of A Kind Design

JAN 22 2004

“Building Better Places to Live, Work and Play”

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Tilly & Company, Ltd.
Tanana Builders
P.O. Box 72080
Fairbanks, Alaska 99707
Ph 907-456-5565 Fax 907-452-3175
Contractors License #24415 Residential Endorsement #178

January 28, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential homebuilders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that the builder should correct and fix the problem; in fact, almost all problems are resolved by the homeowner and the builder working together to address the issues requiring attention. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires homeowners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that works toward avoiding the expense and consequences of legal action. We need a process that encourages both parties to arrive at a resolution that fixes the defect without the burden of additional expense involved in litigation.

This letter is to help you, as the sponsor of HB340, show that this bill is important for the health and security of the Alaska housing industry. I support HB340, and I look forward to its' passage this Legislative Session. I thank you in advance for your efforts.

Respectfully submitted,

R. S. Tilly
Richard S. Tilly
President
Tilly & Company, Ltd.



LeRoy and Diana Symbol

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1540 West Shoreline Drive • Wasilla, Alaska 99654
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prosrvs@yahoo.com

January 20, 2004

Representative Kevin Meyers
Alaska State Legislature
State Capitol Building, Room 513
Juneau, Alaska 99811

Dear Rep. Meyers:

My business is facing rising insurance rates that are debilitating, and I see others in the housing industry facing the same problem. I am encouraged to see a bill like House Bill 340.

I am sending you this letter to ask the Legislature to pass HB340.

Like many other builders, my construction company has seen insurance premiums increase over 500% just in the last year. (Other builders say their rates have gone up as much as 2500%.) This is ridiculous! Insurance costs per home are averaging anywhere from \$2,500 to \$4,000, depending on how many homes a contractor builds.

Insurance costs are not calculated into the amount of the appraisal, which means small to medium size building companies will probably go out of business unless something is done. They simply aren't going to be able to absorb costs this large. Mortgage loans used to pay for home prices are limited by the appraisal, and in most cases lending institutions have underwriting standards for loan-to-value ratios at 95% or even less.

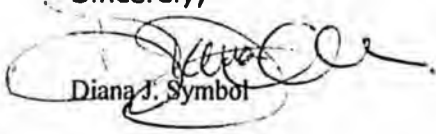
HB340 provides reasonable limitations on awards for construction defect claims. If there is a problem in the construction of a home, everyone is better served if the problem is fixed. By limiting awards to actual damages, this creates a situation where there is always an incentive to simply repair the damage.

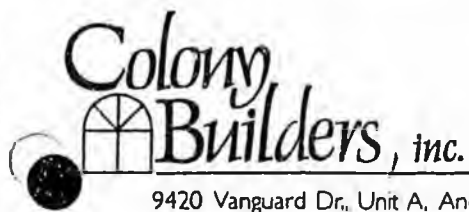
If something isn't done to help avoid and limit construction claims and awards, the housing market will suffer from the loss of registered contractors – many who have been in business in Alaska for a long time and have solid reputations as good quality builders.

I support HB340 because I would rather fix defects and see a system aimed toward fixing defects and limiting awards to their actual costs.

Thank you for all your time and efforts in supporting HB340.

Sincerely,


Diana J. Symbol



January 16, 2004

Representative Kevin Meyers
Alaska State Legislature
State Capitol Building, Room 513
Juneau, Alaska 99811

Dear Rep. Meyers:

My business is facing rising insurance rates that are debilitating, and I see others in the housing industry facing the same problem. I am encouraged to see a bill like House Bill 340.

I am sending you this letter to ask the Legislature to pass HB340.

Like many other builders, my construction company has seen insurance premiums increase over 200% just in the last year. (Other builders say their rates have gone up as much as 2500%.) This is ridiculous! Insurance costs per home are averaging anywhere from \$2,500 to \$4,000, depending on how many homes a contractor builds.

Insurance costs are not calculated into the amount of the appraisal, which means small to medium size building companies will probably go out of business unless something is done. They simply aren't going to be able to absorb costs this large. Mortgage loans used to pay for home prices are limited by the appraisal, and in most cases lending institutions have underwriting standards for loan-to-value ratios at 95% or even less.

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I support HB340 because I would rather fix defects and see a system aimed toward fixing defects and limiting awards to their actual costs.

Thank you for supporting HB340.

Sincerely,



Bill Taylor-President



ANCHORAGE

3035 C Street, 99503
(907) 561-1344 (Fax) 561-1948

EAGLE RIVER

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(907) 694-1456 (Fax) 694-1474

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(907) 286-7503 (Fax) 284-7719

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(907) 262-9700 (Fax) 262-9994

WASILLA

165 East Cross Hwy, Suite 101, 99654
(907) 576-3240 (Fax) 576-6010

January 16, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

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This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,


Wesley E. Keller
Branch Manager

JAN 21 2004

HB

342

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

INTERIM ADDRESS:
600 E Railroad Avenue
Wasilla, AK 99654
Phone : (907) 376-2679
Fax: (907) 373-4745

Representative Carl Gatto

May 2, 2004

To: Senator Seekins – Chairman (S) Judiciary

RE: HB 342

Dear Senator Seekins,

I would appreciate it if you would schedule HB 342 for a committee hearing at your earliest convenience. Your consideration is appreciated.

Enclosed are:

- 1) Text of HB 342
- 2) Fiscal notes
- 3) Supporting documentation

Thank you for your time and consideration.

cr/CG

Alaska State Legislature

SESSION ADDRESS:

Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

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600 E Railroad Avenue
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Fax: (907) 373-4745

Representative Carl Gatto

Sponsors' Statement CSHB 342 (FIN)

CSHB 342 (FIN) strengthens the consequences of Driving Under the Influence; gives more authority to Wellness and Therapeutic Courts, an effective tool in reducing recidivism; and rectifies a few critical unintended side-effects of the current laws.

Wellness Court and Therapeutic Court are proven tools in fighting recidivism for people with alcohol and drug addictions. The premise for these Courts is that a person is watched closely throughout the intensive treatment program. After a significant time of sobriety a person's fine will be reduced and possibly their incarceration time. This bill will also allow these Courts to issue limited-licenses based on a stringent guideline set by the Court. These principles are supported by the Federal Office of Justice Programs.

This bill also changes Alaska's current lifetime look-back provision to a more rational look-back provision of fifteen years. An unintended side-effect Alaska's lifetime look-back provision was that it caught people in its penumbra that it never intended to catch. Take, for instance, the man who has a DUI at the age of 21, then receives a second DUI at the age of 40. As an adult with a full time job that supports his family, he will now have to spend twenty days in jail and pay \$3000 in fines. These consequences are necessary for the person who receives multiple DUIs within a short time. However, it is not necessary for a person who is clearly not a habitual offender.

Limited Driver's license provisions are also being remodeled. Under current law, a person convicted of multiple misdemeanor DUI's stands to lose their license for one year for a second offense, and three years for a third offense. A person will be eligible to get a license for work purposes, and thereby maintain their employment, if they have an ignition interlock and are in compliance with ASAP requirements.

I would appreciate your support on this bill.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 342(JUD)
(H) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
Title DUI Fines BRU Alaska Court System
Component Trial Courts
Sponsor Representative Gatto
Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 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 342.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
Division Alaska Court System Date/Time 1/29/04 4:27 PM
Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 1/29/2004
Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 342(JUD)
(H) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title "An Act relating to driving while intoxicated..." RDU Criminal
Component Criminal Justice Litigation
Sponsor Representative Gatto
Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
This bill amends AS 28.35.030 by adding a minor change to clarify that a person convicted of driving under the influence of an alcoholic beverage, inhalant, or controlled substance is guilty of a class A misdemeanor even though the fine exceeds the maximum fine for a class a misdemeanor.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughetee, Director Phone 465-3673
Division Administrative Services Date/Time 2/13/04 12:29 PM
Approved by: Kathryn Daughetee for Gregg D. Renkes, Attorney General Date 2/13/2004
Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 342(JUD)
 (H) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to driving while intoxicated... RDU Alaska State Troopers
 Component AST Detachment
 Sponsor Representative Gatto
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 If passed, this bill will provide enhanced sentencing for those convicted of DUI. It establishes exceptions to the maximum amount of fines for class A misdemeanors and class C felonies related to DUI convictions. It also establishes "triggering" mechanisms for the enhanced fines based on the blood alcohol level of the defendant.

 No fiscal impact.

Prepared by: Lieutenant Al Storey Phone 269-4532
 Division Alaska State Troopers Date/Time 2/2/04 11:39 AM
 Approved by: Commissioner William Tandeske Date 2/2/2004
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 342(JUD)
 (H) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to DWI... BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representative Gatto
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Doubling and quadrupling the fines for convictions for DUI, depending on the results of a blood or breath/alcohol test, will likely result in more cases handled by the Agency going to trial because of the exposure to increased penalties. Trials are more costly for the Agency than cases resolved short of trial. It is also very likely that the Agency will bear the additional collective cost of challenging this bill on constitutional grounds for violations of equal protection. Because of the inability to predict with any certainty the extent of the fiscal impact this bill will generate, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time January 16, 2004
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 342(JUD)
 (H) Publish Date: 3/8/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An act relating to driving while intoxicated..." RDU Administration & Operations
 Component: Institution Director's Office

Sponsor Representative Gatto
 Requester _____ Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

At this time, the department does not anticipate a fiscal impact due to the passage of this legislation.

Prepared by: Jerry D. Burnett, Director
 Division: Administrative Services
 Approved by: Portia C.K. Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone: (907) 465-3339
 Date/Time: 2/2/04 12:13 PM
 Date: 2/2/2004

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSHB 342(FIN)
 (H) Publish Date: 4/28/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to DWI... BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representative Gatto
 Requester (H) Finance Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

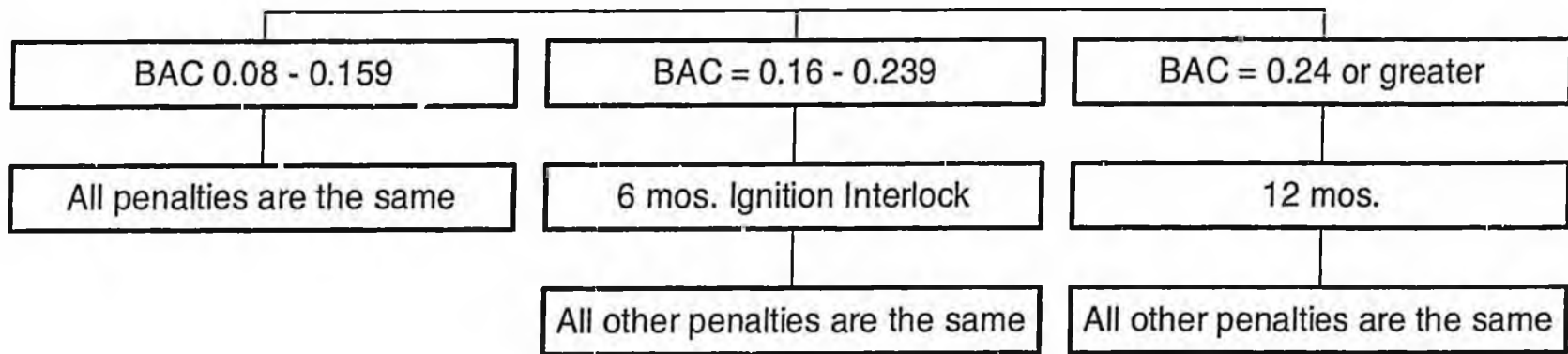
ANALYSIS: (Attach a separate page if necessary)

This bill will likely have some fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Increasing the fines for convictions for DUI, depending on the results of a blood or breath/alcohol test, will likely result in more cases handled by the Agency going to trial because of the exposure to increased penalties, and increased litigation over the issue of the defendant's BAC level. Trials are more costly for the Agency than cases resolved short of trial. Because of the inability to predict with any certainty the extent of the fiscal impact this bill will generate, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director
 Division: Public Defender Agency
 Approved by: Kevin Jardell, Assistant Commissioner
 Agency: Administration

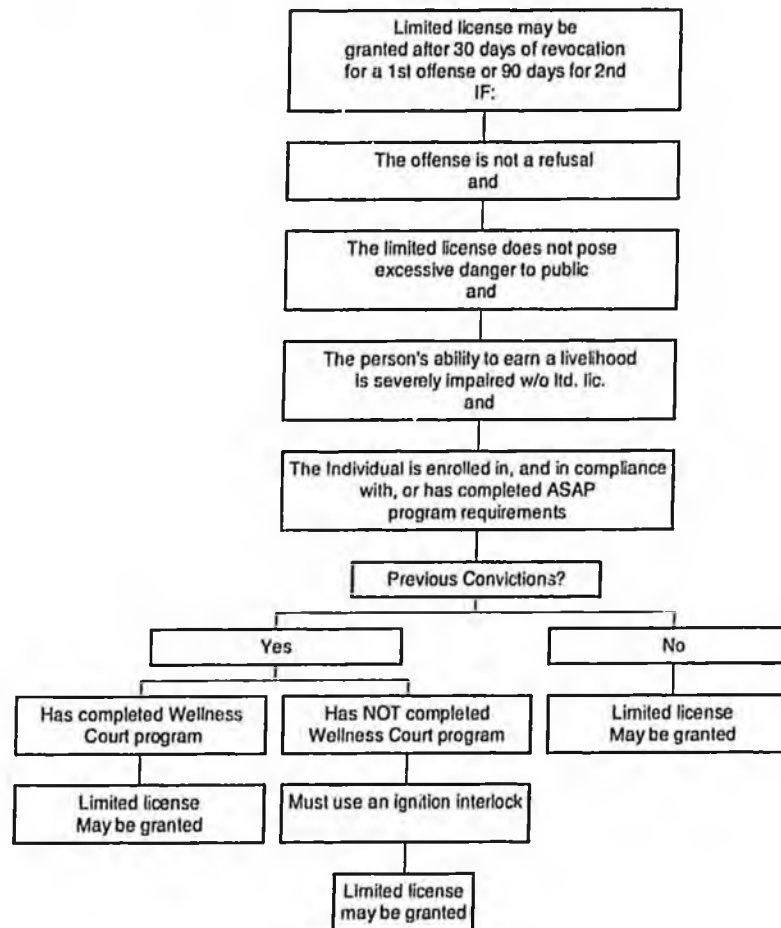
Phone (907)-334-4416
 Date/Time 4/12/04 12:00 AM
 Date 4/12/2004

HB 342 – DUI Penalties



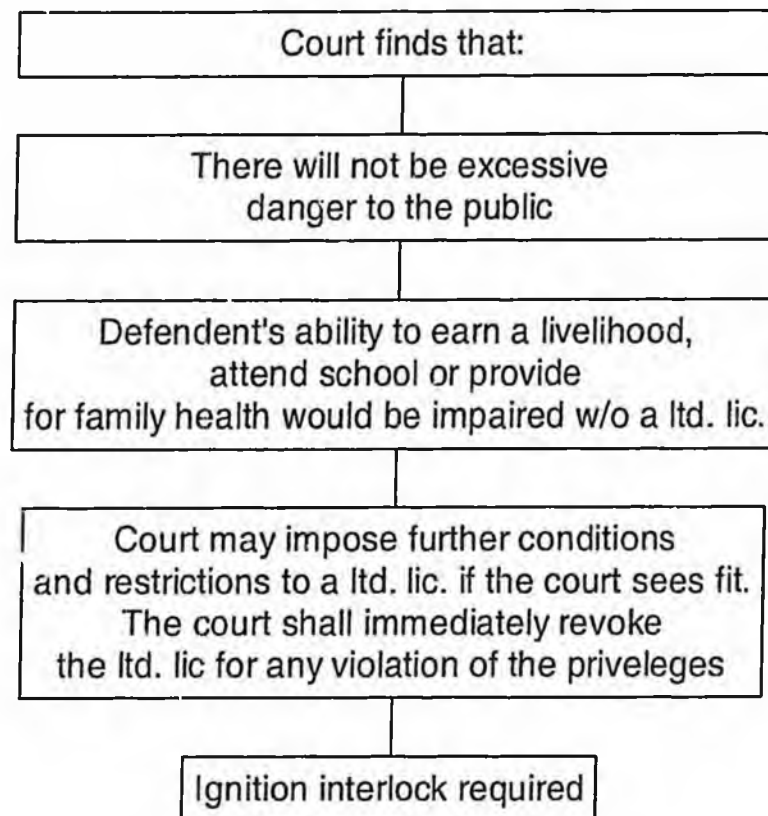
Limited Licenses

Misdemeanor



Limited Licenses part 2

Therapeutic Courts



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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Wrangell
Pres. Wrangell Chapter

February 9, 2004

Representative Carl Gatto
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Gatto,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 342, an act relating to driving while intoxicated; and providing for an effective date.

This proposed legislation will require an individual convicted of driving under the influence to pay a fine, which exceeds the maximum for a class A misdemeanor. This legislation should be of great benefit to the citizens and law enforcement in Alaska. We thank you for addressing this issue.

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

Sincerely,

Leo J. Brandlen
State President



Trial Courts

State of Alaska

JAMES N. WANAMAKER
DISTRICT COURT JUDGE

THIRD JUDICIAL DISTRICT
825 W. 4TH AVENUE
ANCHORAGE, ALASKA 99501-2005

(907) 264-0666
FAX: (907) 264-0872
jwanamaker@courts.state.ak.us

January 11, 2004

Senator Fred Dyson
Chairman, Health & Education and Social Services Committee
Alaska State Senate

Re: "An Act relating to limited drivers' licenses for successful therapeutic court graduates"

Dear Senator Dyson:

It is an excellent idea to create a process whereby a graduate of a misdemeanor therapeutic court may receive a limited driver's license.

These comments are based on my personal experience as a judge presiding over the Anchorage Wellness Court. I suggest that therapeutic court graduates are deserving of consideration for this program because:


- 1) They will have graduated from a comprehensive and demanding therapeutic court program.
- 2) They will have demonstrated 18 months of sobriety.
- 3) They will possess many tools for maintaining sobriety.
- 4) Having a driver's license for purposes of work, education and family care will improve the ability of graduates to maintain the habits of responsible citizenry that they developed during their 18 months in the Wellness Court.
- 5) The therapeutic court judge will be well acquainted with the character of these defendants.
- 6) This is a small group of people who are easily monitored.
- 7) The proposed legislation would serve as an incentive to defendants to enter the therapeutic courts programs.

You will note that the proposed language allows the court to impose conditions and restrictions on a case-by-case basis to ensure continuing sobriety. Monitoring of the limited licenses will be a key condition in some cases.

It is a big achievement each time an alcoholic defendant gains sobriety and graduates. However, all alcoholics remain subject to relapse. Therefore, the bill is written to give the court the ability to require strict monitoring of sobriety on a case-by-case basis. Recently, a new sweat-activated monitoring bracelet, "SCRAM", has come on the market. When fully staffed and tested, use of this new technology may be an appropriate condition for the court to impose before some graduates receive a limited driver's license.

Please feel free to call on me if I may be of assistance.

Sincerely,


James N Wanamaker
District Court Judge

cc: Doug Wooliver



Mothers Against Drunk Driving
JUNEAU CHAPTER
211 4th St., Suite 314
Juneau, AK 99801
Phone (907)463-2562
Fax (907)463-2540
madd@alaska.net
www.madd.org/ak/juneau

February 2, 2004

Representative Carl Gatto
State Capitol, room 411
Juneau, AK 99801

RE: House Bill 342, An Act relating to driving while intoxicated; and providing for an effective date.

Dear Representative Gatto:

As part of the progressive sanctions approach to impaired driving and in an effort to impact the higher risk driver, Mothers Against Drunk Driving (MADD) supports legislation that would provide for enhanced or escalating penalties for drivers convicted of DUI/DWI whose blood alcohol content (BAC) at the time of arrest was .15 or higher.

Blood alcohol concentration is a measure of how much alcohol is in someone's blood. It is the most accurate and measurable gauge of alcohol impairment. During a typical weekend night, one percent of drivers will have a blood alcohol concentration (BAC) of .15 or higher. However, 58 percent of alcohol-related fatalities involve someone with a .15 BAC or higher.

This is because a driver at a .15 BAC level is 382 times more likely to be involved in a fatal crash than someone who has had nothing to drink. This is not social drinking – it is callous disregard for human life. High-BAC offenders require additional sanctions that "normal" DUI sanctions cannot provide.

MADD's recommendations for dealing with these higher-risk offenders have been scientifically shown to work. MADD recommends restitution sanctions such as significant fines as part of the high risk driver plan.

Sincerely,

Cindy Cashen

Executive Director

LAW OFFICES
WILLIAM R. SATTERBERG, JR.

FAX (907) 452-3988

ATTORNEY AT LAW
709 FOURTH AVENUE
FAIRBANKS, ALASKA 99701
(907) 452-4454

February 26, 2004

Representative Carl Gatto
State Capitol, Room 411
Juneau, Alaska 99801-1182

Dear Representative Gatto:

Recently, Representative Rokeberg introduced a new bill, House Bill 175, which purports to shorten the "look back" provisions of the DWI law to fifteen (15) years. I believe that this is an extremely fair and reasonable solution to a problem which developed with the passage of the previous legislation.

Specifically, there have been many individuals who might have had a DWI several years in their past, but who now are looking at extremely harsh results because they had a second DWI in the recent past.

For example, I have one client who had a DWI in the mid-1970s. He recently was charged with a second DWI, and is looking at a year loss of license, loss of his CDL, and twenty (20) days in jail with a \$3,000 fine when over twenty-eight (28) years had passed since his previous brush with the law. As the law is currently crafted, it would not matter how earlier in this person's life he had this DWI.

Representative Rokeberg's proposed provision to the law solves this serious problem, and gives a break point for individuals who have been compliant and not involved in any further DWI processes for at least fifteen (15) years.

I would recommend some additional clarifications, however.

1. The law should be retroactive, allowing anybody who has lost their license to reapply to have the license reissued in the event that they now fall within the fifteen (15) year "look back" provisions. There are already a number of individuals who have lost their license for a significant period of time because the DMV and the court systems were required to go back to the beginning of their life.

2. Provisions should be made to allow the fine amounts which are currently rather excessive to be applied towards alcohol rehabilitation treatment at approved institutions. In short, if a DWI offender chooses to voluntarily submit to rehabilitation at an institution, the funds which would ordinarily go for fines or penalties would, instead, be applied to documented costs of rehabilitation. Recognizing that many DWI offenders choose to exercise the community work service option to pay off their fine, regardless, it does not necessarily mean that the State obtains

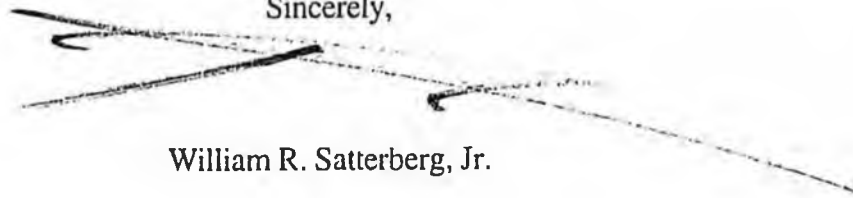
February 26, 2004
Page 2 of 2

a fiscal benefit from these large fines. To the contrary, the State of Alaska often loses the fiscal benefits, because these individuals do not get alcohol rehabilitation and thus are more likely to re-offend.

I would hope that, in evaluating Representative Rokeberg's proposed statute, consideration also be given to these two possible amendments. They are simple to enact, and would have a tremendous rehabilitative effect for the State of Alaska.

Finally, I have practiced in the field of criminal law extensively, having been admitted in 1976. I would be willing to offer testimony with respect to my experiences in the DWI field for various clients, with hope that we can make Alaska's highways safer for all.

Sincerely,

A handwritten signature in dark ink, appearing to read "William R. Satterberg, Jr.", with a long horizontal flourish extending to the right.

William R. Satterberg, Jr.

WRS/ljs

cc: Representative Norman Rokeberg

Please enter into the record my testimony to HB 342 on Driving Fines
Transportation Committee Dated 2/3/04

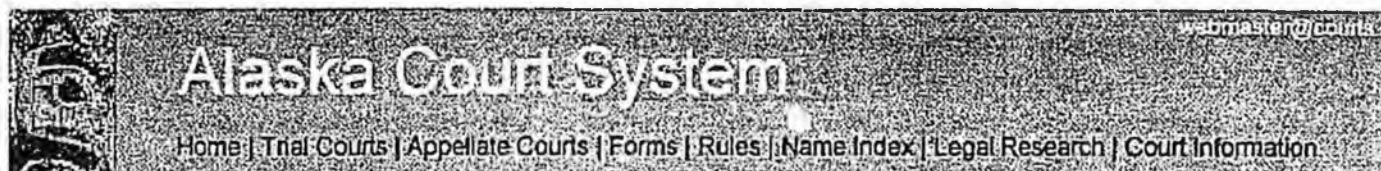
I was unable to stay for the delayed start on testimony for the above. I fully support any legislation that increases all fines, provided the money is used to increase the number of patrol officers. We can have little impact on the chronic abuser who drives but the state is making progress on those who do not want to be arrested for DUI. And it is the threat of arrest that is making the difference. The more officers we can put on the street the more we will curtail the problem. And I do believe that the potential results of a DUI are far more costly to the state than the additional patrols.

However, I also wanted to bring up another aspect of this and that is the loss of revenue from the current fines. Every report in the Fairbanks paper shows the majority of the fines have a portion excused. In the case of the 1/22 paper the underage drinkers were excused \$6100. This is quite common. At that rate I calculated over \$350,000 in revenue the state is leaving on the table for this or underfining DUI.

The other fine relates to paying for time in jail. The convicted pays \$90 a day for 3 days, often the full fine for 7 and never the full fine for much more. There is a cap of \$1000 and I want to see that raised to \$3000. That way you at least get 30 days covered.

I am assuming that the 3x offender, who loses his license permanently, has all his vehicles remanded to the state for sale. I would also like to see anyone who knowingly aids this person by giving them a vehicle to drive is also fined \$10,000.

Carter Crawford
Representing self
107 Maple Dr Fairbanks 99709 452-1395



Anchorage Wellness Court

1. What is the Anchorage Wellness Court?

The Anchorage Wellness Court is a special court for municipal misdemeanor defendants who are addicted to alcohol and want to overcome their addiction.

2. What is the purpose of the Anchorage Wellness Court?

The court's aim is to assist alcoholic offenders who want to overcome their addiction and achieve lifetime sobriety. To accomplish this, the Wellness Court team oversees the treatment program of the offender.

The principle benefits of completing the Wellness Court program are achieving sobriety and avoiding future criminal cases. Graduates generally receive a reduced sentence and thus minimize jail time on their current case.

3. Who is eligible?

A defendant is eligible to participate in the Anchorage Wellness Court if he/she has been charged with an alcohol-motivated misdemeanor offense and is an alcoholic.

Admission to the Anchorage Wellness Court program is not automatic. Cases are reviewed on a case-by-case basis.

4. How does the Anchorage Wellness Court work?

The Wellness Court program is a voluntary program that requires commitment and persistence. Once a defendant has successfully "opted-in" to the Wellness Court program (see question 5 below), he/she will follow the basic structure of the Wellness Court Treatment Plan:

- o Alcohol treatment and counseling,
- o Take the prescription medication Naltrexone for 120 days. Naltrexone reduces or stops cravings for alcohol allowing the defendant to concentrate on treatment,
- o Frequent court appearances before the Wellness Court judge,
- o 12 step meetings (e.g. Alcoholics Anonymous),
- o Nalgroup® meetings (a support group for people taking Naltrexone),
- o Moral Reconation Therapy® (a cognitive behavioral training addressing moral reasoning, decision making and faulty, irrational beliefs in addicts),
- o Compliance logs for all treatment plan requirements,
- o Monitoring for continued sobriety (e.g. urinalysis, Sobrietyor, APD home visits, etc.),
- o Obtain employment and/or attend school,

- o Maintain sobriety for 18 months,
- o Recognition for progress and sanctions imposed for non-compliance.

5. How do you get referred to the Anchorage Wellness Court?

If a defendant is interested in participating in the program and would like to be considered for Wellness Court, the defendant or his attorney should contact the Wellness Court Case Coordinator at 343-6437 and request a Wellness Court "opt-in" hearing.

If after the initial interview the defendant is found to be appropriate for the program, and he/she wishes to enter the program, the municipal prosecutor makes a Criminal Rule 11 offer (a plea agreement) to the defendant, which incorporates the Wellness Court program. The defendant then accepts the Criminal Rule 11 offer. The defendant completes a treatment assessment and is examined by a physician. If the defendant meets the eligibility requirements, the defendant voluntarily agrees to complete the Wellness Court Treatment Plan. The Wellness Court Judge approves the Criminal Rule 11 Agreement and the Wellness Court Treatment Plan. Then the defendant enters a plea of guilty, sentencing is set for 18 months later and the defendant commences the Wellness Court Treatment Plan (see above).


6. Contact/Court Information

Wellness Court Case
Coordinator:
Prosecutor, Municipality of
Anchorage:

Steve Christopher, 343-6437
Bruce Roberts, 343-4250

The Anchorage Wellness Court meets on Friday afternoons at 1:30 p.m. in courtroom 202. Judge Jim Wanamaker presides. Members of the public are invited to attend.

Rev. 09 December 2003
© Alaska Court System

 You'll need to download a free copy of [Adobe Acrobat Reader](#) in order to view and print documents with this symbol. Visually impaired visitors to our website can use Adobe Acrobat's [online conversion tools](#) to convert PDF documents into HTML or ASCII text.

www.state.ak.us/courts
webmaster@courts.state.ak.us

Felony DUI Court

is a special court within the justice system that seeks to:

- enhance public safety by reducing DUI offenses;
- engage offenders in overcoming addictions and rebuilding their lives;
- return criminal offenders to the community as contributing members

The Felony DUI Court Team includes the judge, the prosecutor, the offender's defense attorney and probation officer, and the treatment provider.

DUI Court participants make regular court appearances and participate in intensive outpatient treatment. DUI Court makes judicious use of incentives and sanctions that encourage participant performance in this 12 – 18 month program

Benefits

This is an opportunity for an offender to:

- overcome addiction in a supportive, tightly structured program;

- avoid future criminal involvement;
- depending on prior convictions, possibly have charges dismissed upon successful completion of the program.

Eligibility An offender who is in pre-trial or pre-indictment stage, *may* be eligible for the DUI Court program if:

- he or she has been charged with a felony DUI or DUI-related offense;
- he or she meets Eligibility Standards listed on back of this brochure.

How it works

Eligible offenders are signed up for a 12-18 month program that includes:

- screening to determine level of care needed to succeed in recovery;
- placement in an intensive, outpatient treatment program;
- attendance at weekly court hearings;
- frequent and random drug and alcohol testing;

- personal accountability for progress;
- seeking employment or enrolling in school or training;
- making payments for restitution (if applicable).

How to get in If you are considering getting into DUI Court, you need to:

- *First, make a serious commitment to change your life and beat addiction;*
- talk to your lawyer who will ask the district attorney to review your eligibility;
- if you are eligible, the district attorney will negotiate a pre-agreed sentence and make a Rule 11 offer. You will need to successfully complete the DUI Court program in order to receive the benefits of this deal;
- make a change of plea—the judge will accept your Rule 11 agreement, enter judgment, and “sentence” you to work the DUI Court Program.

National Conference of State Legislatures
Drunk Driving Sanctions
Time Frames Used by States for Inclusion of Prior Offenses

State	Time period	State	Time period
Alabama.....	5 years	Montana.....	5 years
Alaska		Nebraska.....	8 years
Arizona	60 months	Nevada.....	7 years
Arkansas	5 years	New Hampshire.....	7 years
California	7 years	New Jersey	10 years
Colorado	5 years	New Mexico	10 years
Connecticut.....	5 years	New York.....	10 years
Delaware	5 years	North Carolina.....	7 years
Florida.....	3 years	North Dakota	5 years
Georgia	5 years	Ohio.....	5 years
Hawaii.....	5 years	Oklahoma	5 years
Idaho	5/10 years	Oregon.....	5 years
Illinois	5 years	Pennsylvania.....	7 years
Indiana	5/10 years	Rhode Island.....	5 years
Iowa	6 years	South Carolina.....	10 years
Kansas.....	5 years	South Dakota	5 years
Kentucky	5 years	Tennessee	10 years
Louisiana.....	3 years	Texas	10 years
Maine	5/6 years	Utah.....	6 years
Maryland.....	3 years	Vermont.....	5 years
Massachusetts	*	Virginia.....	10 years
Michigan	7 years	Washington.....	5 years
Minnesota	5/15 years	West Virginia	n/a
Mississippi.....	5 years	Wisconsin.....	5 years
Missouri	n/a	Wyoming.....	2 years

* unlimited

n/a: not available or not specified in statute

Sources: Digest of State Alcohol/Highway Safety Related Legislation, US Dept. of Transportation, National Highway Traffic Safety Administration, 2001; Westlaw bill tracking searches, 2003.

27 STATES, WASHINGTON, DC AND AMERICAN SAMOA HAVE TIERED BAC SYSTEMS

State	1st Tier BAC	2nd Tier BAC	3rd Tier BAC	4th Tier BAC	Resulting Action
Arkansas	.08	≥ .15			Increased licensing actions, may order <u>ignition interlock</u> installed
Arizona	.08	≥ .15			Increased incarceration and mandatory <u>ignition interlock</u>
California	.08	≥ .20			<u>Ignition interlock</u> installation may be ordered, mandatory alcohol assessment
Colorado	0.1	≥ .20			Subject to same sanctions as repeat offenders and mandatory treatment
Connecticut	.08	≥ .16			Increased licensing actions
Idaho	.08	≥ .20			Increased licensing actions, <u>fin</u> es, incarceration, and mandatory alcohol assessment
Illinois	.08	≥ .16			<u>Increased fine</u> and incarceration, and mandatory treatment
Indiana	.08	≥ .15			<u>Increased fine</u> and incarceration
Iowa	.10	≥ .15			<u>Increased fine</u> , mandatory alcohol evaluation. Diversion programs and probation not allowed
Kentucky	.08	.18 or above			Increased incarceration and mandatory alcohol assessment
Louisiana	.08	≥ .15			Increased incarceration and mandatory alcohol assessment
Maine	.08	≥ .15			Increased incarceration and mandatory alcohol assessment
Minnesota	.10	≥ .20			<u>Increased fine</u> , licensing actions doubled, drivers license and license plate impoundment, and possible vehicle forfeiture
Nevada	.10	≥ .18			Mandatory alcohol treatment
New Hampshire	.08	≥ .16			<u>Increased fine</u> , mandatory vehicle registration revocation, and <u>ignition interlock</u> may be ordered
New Mexico	.08	≥ .16			
North Carolina	.08	≥ .16			Increased penalties and mandatory <u>ignition interlock</u>
Ohio	.10	≥ .17			Increased incarceration
Oklahoma	.08	≥ .15			Mandatory treatment and aftercare, <u>ignition interlock</u> and community service
Pennsylvania	.10	.16-.19	≥ .20		Increased licensing actions
Rhode Island	.08	≥ .15			<u>Increased fine</u> , incarceration, and community service
South Carolina	.10	≥ .15			Subject to pre-conviction licensing actions
South Dakota	.08	≥ .17			Mandatory alcohol evaluation
Tennessee	.10	≥ .20			Increased incarceration
Virginia	.08	≥ .20	≥ .25		Increased incarceration and mandatory treatment
Washington	.08	≥ .15			Increased licensing actions, fine, incarceration, and mandatory treatment
Washington, D.C.	.08	.20-.24	≥ .25		Increased incarceration
Wisconsin	.10	.17-.19	.20-.24	≥ .25	<u>Increased fines</u>
American Samoa	.08	No specific level			<u>Increased fines that are correlated to the BAC level</u>

This table lists those states using a graduated, or tiered, system to assign sanctions and treatment based on BAC levels of .08 and above. Greater sanctions and/or increased treatment are required when an offender's BAC level reaches the second tier level, and the increased penalty or treatment is noted under *Resulting Action*.

How Effective Are BAC Graduated Systems?

According to recent study of Minnesota's high BAC law, "high BAC sanctioning systems are viewed as one of the few promising approaches for reducing recidivism among 'hardcore' impaired drivers" (McCart and Shabanova 2002). Minnesota's high-BAC law appears to have successfully increased the severity of case dispositions for high-BAC offenders, and evidence suggests an initial reduction in recidivism.



Ignition Interlock - Issue Brief

[Overview](#) | [Take Action](#) | [Related Issues](#) | [Resources](#)

Overview

Repeat offenders are a significant portion of the drunk driving problem – about one-third of all DUI arrests each year are of people who have been convicted previously of driving under the influence. (Fell, 1995) Considering that between 50 and 75 percent of those whose licenses are suspended or revoked as the result of driving under the influence continue to drive without their license, (Nichols and Ross, 1990) (Voas and Tippetts, 1994) revoking a license is good, but not always enough.

Ignition interlocks prevent people who have alcohol in their system from driving a car. An operator breathes into an interlock device to determine blood alcohol concentration. If there is measurable alcohol in the blood, the vehicle does not start.

As one might expect, this stops offenders from re-offending while the interlock device is on the vehicle. Interlocks have been shown to be effective in Maryland (Beck, 1999), Alberta (Voas, et al, 1999), California (Tashima and Helander, 1999), and elsewhere (Weinrath, 1997) (Coben, 1999) with results ranging from 50 to 90 percent reductions in subsequent offenses by those offenders who were assigned interlock devices, compared with those who were not.

While interlocks are not the only solution, as offenders tend to go back to their old ways once the device is off of the vehicle, they certainly keep the roads safer while these devices are in place.

Take Action

[Click here to email your federal representatives](#), urging them to support Senate Bill 1141 and House Bill 2681, which require repeat and high-BAC offenders to put ignition interlock devices on their vehicles.

Related Issues

- [Federal higher-risk driver initiative](#)
- [Repeat offenders](#)
- [High-BAC drivers](#)
- [Driving while suspended](#)
- [Administrative license revocation \(ALR\)](#)
- [Vehicle impoundment](#)
- [Mandatory assessment and treatment](#)

Resources

- [Official Position Statement](#)
- [State Laws](#)
- [Studies](#)
 - [MADD's Impaired Driving Summit Report \(PDF\)](#)
 - Beck, KH, et al. "Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offenses: A Randomized Trial in Maryland." [American Journal of Public Health](#), 89 vol. 11 (1999):

HB

348

ALASKA STATE LEGISLATURE

Chair:

House Finance Subcommittees for:
Department of Public Safety
Department of Law

Member:

House Finance Committee
Legislative Council



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

MEMORANDUM-

TO: Senator Ralph Seekins, Chairman
Senate Judiciary Committee

FROM: Representative Bill Stoltze

DATE: March 03, 2004

SUBJECT: Hearing Request

A handwritten signature in black ink, appearing to read "Bill Stoltze", written over the printed name in the "FROM:" field.

I respectfully request a hearing be scheduled for House Bill 348, relating to notice to crime victims, as soon as possible.

Thank you for your consideration.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

ALASKA STATE LEGISLATURE

Chairman:
House Finance Subcommittees for:
Department of Public Safety
Department of Law

Member:
House Finance Committee
Legislative Council



Session:
Alaska State Capitol
Juneau, AK 99801-1182
Phone: (907) 465-4958
Fax: (907) 465-4928

Interim:
PO Box 464
Chugiak, AK 99567

REPRESENTATIVE BILL STOLTZE

Representative_Bill_Stoltze@legis.state.ak.us

Sponsor Statement

CS House Bill 348 (JUD)

“An Act relating to the rights of certain victims of crime to receive information about the office of victims’ rights.”

When a person is the victim of a crime, it is often difficult to know who to talk to for help. It is instances where the victim didn't know there were advocates to assist them through the process that prompted the drafting of House Bill 348. The legislation requires police and prosecutors to notify victims about the Alaska Office Of Victims' Rights.

The Alaska Office Of Victims' Rights (OVR) was created by the legislature in 2002 to protect and advance the rights of crime victims and to investigate complaints that their rights under the constitution and laws of the state have been denied to them in their dealings with criminal justice adult and juvenile agencies of the state.

Experience has taught us that too often victims learn about the OVR only after a case has worked its way through the system rather than at the beginning of that process when OVR lawyers and support staff can be more vigilant and effective advocates of victims' rights as a case unfolds. HB 348 requires police and prosecutors to provide a printed brochure about the OVR to victims of felony and other serious crimes up front -- upon first contact and without request by the victim. OVR will absorb the cost of the brochures.

DISTRICT 16

BIRCHWOOD • BUTTE • CHUGIAK • EKLUTNA • FAIRVIEW LOOP
KNIK RIVER ROAD • LAZY MOUNTAIN • PALMER • PETERS CREEK

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 348(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to the rights of victims BRU: Legal and Advocacy Services
 Component: Office of Public Advocacy
 Sponsor: Representatives Stoltze, Dahlstrom, Samuels & McGuire
 Requester: (H) Judiciary Component No. 43

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill should have no fiscal impact on the operations of the Office of Public Advocacy.

Prepared by: Josh Fink, Director Phone 907-269-3501
 Division: Office of Public Advocacy Date/Time 1/26/04 1:14 p.m.
 Approved by: Mike Miller, Commissioner Date _____
 Agency: Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 348(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to the rights of victims BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representatives Stoltze, Dahlstrom, Samuels & 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 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill should have no fiscal impact on the operations of the Public Defender Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 1/24/04 10:42 a.m.
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 348(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the rights of certain victims RDU Criminal
of crime..." Component CDCO
 Sponsor Representatives Stoltze, Dahlstrom, Samuels, McGuire, Gruenberg
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 12.61 by adding to the victims' rights statute the right to be notified and receive information about the office of victims' rights from the law enforcement officer initially investigating the crime and from the prosecuting attorney assigned to the offense - such information to minimally include the address, telephone number, and Internet address of the office of victims' rights. The right to be notified applies only to victims of felonies and to victims of class A misdemeanors if the class A misdemeanor is a crime involving domestic violence or a crime against a person under AS 11.41.

If the Office of Victims' Rights furnish a brochure or other written material to be disbursed to victims that would fulfill the minimal informational requirements, at no cost to the Department of Law, passage of this bill will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 1/23/04 4:24 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/23/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 348 (JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title "An Act relating to the rights of BRU _____
certain victims of crime..." Component _____
 Sponsor Representatives Stoltze, Dahlstrom, Samuels, McGuire, Wilson _____
 Requester House Judiciary Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The amendments and letter of intent adopted by the House Judiciary Committee will have no fiscal impact on state spending.

Prepared by: House Judiciary Committee Phone 465-4990
 Division _____ Date/Time 2/11/04 11:50 AM
 Approved by: Representative Lesil McGuire Date 2/11/2004
 Agency Chair, House Judiciary Committee

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSHB 348(JUD)
 (H) Publish Date: 2/12/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Act Relating to certain Victim's Rights RDU Alaska State Troopers
 Component Alaska State Trooper Detachments
 Sponsor Rep. Stoltze
 Requester (H) Judiciary Component No. 799

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 12.61 and will require that Law Enforcement Officers and District Attorney's offices notify victim's of the Office of Victim's Rights. The information will minimally include the address, telephone number, and internet address of the Office of Victim's Rights. The right applies only to victims of felonies and to victims of class A misdemeanors if the class A misdemeanor is a crime involving domestic violence or crimes against a person under AS 11.41.

 It is the intent that the Office of Victim's Rights will produce the materials that would be distributed by law enforcement officers. Passage of this bill will have no foreseeable fiscal impact on the Department of Public Safety.

Prepared by: Lt. Al Storey Phone 269-4532
 Division Alaska State Troopers Date/Time 2/11/04 8:40 AM
 Approved by: Commissioner William Tandeske Date 2/11/2004
 Agency Department of Public Safety

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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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Pres. Aleutian Islands Chapter

Dan Siamhart, Member
Wrangell
Pres. Wrangell Chapter

February 9, 2004

Representative Bill Stoltze
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Stoltze,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for co-introducing HB 348, an act relating to the rights of certain victims of crime to receive information about the office of victims' rights.

This proposed legislation will require oral and written notification to victims of felonies and class A misdemeanors, by law enforcement, advising the victim about the office of victims' rights. This legislation should be of great benefit to the citizens and law enforcement in Alaska. We thank you for addressing this issue.

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

Sincerely,

Leo J. Brandlen
State President

Dear Representatives:

I am writing this letter of support for House Bill 348 as an Alaskan citizen whose family utilized the services of 'The Office of Victims' Rights' (OVR). My family suffered a horrendous crime which was compounded by emergency services failure to deliver aid as they were expected to. The OVR was there to aid my family in a manner that no other government or nonprofit organization could. Incidentally, I sit on the state's Violent Crime Compensation Board (VCCB) and I have observed numerous occasions where other crime victims in Alaska have had the need for the OVR when there is no other office that can serve their needs. Since sitting on the VCCB I have witnessed the aftermath of violent crimes and the toll it takes physically, emotionally, psychologically and financially on the victims of it. There are a certain percentage of crime victims in Alaska in which the OVR is uniquely structured to assist, provided that these victims are aware of the OVR's existence and function.

Typically, when people are victims of crime they are reluctantly introduced into the criminal justice system. The criminal justice system is an adversarial process that pits one side against another. The victim of a crime is automatically expected to operate as an aid to the state in this adversarial scenario. In the process of aiding the state the victim's rights are often forgotten and even sometimes disregarded by the zealous pursuit of justice. Conversely, a crime victim may find that there is a presence of apathy or indifference towards his or her plight by the justice professionals, which in turn leads to a mediocre pursuit of justice or a lackluster attempt at a conviction of the perpetrator(s). Although these are opposite outcomes within the criminal justice system by victims of crime, both of these instances are what The Office of Victims' Rights was created for.

The OVR clearly serves an essential function for victims of crime in this state. I know this personally as my mother (an attempted homicide victim) feels deeply indebted to the creators of the office as well as the office staff. She has stated on many occasions that, "they (the OVR) are a Godsend" and they have been "invaluable" to her in the endeavor thrust upon her in an attempt to right flaws in the emergency response system in Anchorage, which became apparent at her expense. Although my family would have likely learned of the OVR no matter how little publicity the office garnered, most other victims cannot say the same.

Because of the nature of what the OVR does there may be apprehension by some in the law enforcement community to inform victims of the OVR's existence or its function. This may be predictable when one considers that the OVR can and does at times serve as an oversight entity, regarding victims rights, of those very same law enforcement agencies expected to notify victims about the OVR. In essence, when law enforcement and judicial officials encounter victims and notify them about the OVR, they are empowering those victims with guidance towards a resource that can ensure that those same law enforcement and judicial officials, are honoring their rights.

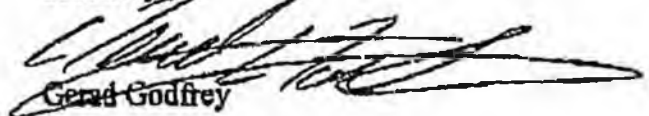
On multiple occasions since I have served on the VCCB we have inquired whether certain claimants were aware of the existence of the OVR. On those occasions it appeared to the board that the OVR may have been able to assist them with certain needs that were unable to. Crime victims are often informed about The Violent Crimes Compensation Board because we are a benign entity regarding a checks and balances function with law enforcement/judicial entities. Unfortunately, the OVR may be

publicized less because it serves a function that is not as innocuous toward the law enforcement/judicial entities. This, of course, is by design and was the OVR creators' intent. If publicizing the OVR came as easy for justice professionals as it does for publicizing the VCCB it would likely mean the OVR is not serving its function or that victims' rights are never being overlooked. I contend that neither statements are true and that, in fact, the OVR is serving its function so well that it is necessary to legislate the "informing of the OVR's existence" to victims. Simply stated, the function of the OVR requires that, occasionally, they will be forced to intercede with justice professionals on the behalf of crime victims and it will likely not sit well with those justice professionals at times. Thus, it can be anticipated that there is a lack of enthusiasm on the part of justice professionals to advise some victims about the OVR. This is why I believe HB 348 is necessary. The only way to consistently ensure that victims of crime are informed of the resources that the state has placed there for them is to statutorily compel the justice professionals to disclose this information.

Being an unintended participant in the justice system can be difficult enough when one is aware of his or her rights, please consider how much more difficult it can be without knowing your rights. The 22nd legislature created the Office of Victims Rights. Undoubtedly, they wanted victims of crime to know it existed, who better to tell them about it than their first contacts with the justice system, that being the law enforcement official followed by the prosecutor's office.

Please support HB 348 for the sake of crime victims in the state of Alaska.

Sincerely,



Gerald Godfrey

2/2/04

January 22, 2004

ATTENTION: VANESSA TONDINI

Representative Lesli McGuire, Chairperson
House Judiciary Committee
Alaska Legislature

RE: HB 348

Dear Represent McGuire:

Please make every effort for HB 348 to pass. Alaska needs it. Our 17 year old daughter was hit by a drunk driver in March 2003. The drunk driver was on probation for her **SECOND CONVICTION** and she left the scene of the accident. Our daughter was injured in the accident. So what kind of jailtime did this repeat offender end up with? A total of eight months. She was also fined, got lifetime license revocation, and ordered to pay restitution. As far as I am concerned, these three details of her sentence deserve minimal time addressing. If a drunk driver wants to drive they will do whatever it takes to drive. Statistics speak for themselves in that regard. This letter is being sent to support HB 348 which requires notification to the victim of the Office of Victims Rights. We were unaware of their office. Alaska needs to have a law that requires victims are told this office exists.

Our daughter was driving home from a basketball game in broad daylight when a repeat offender drunk driver ran a stop sign and sideswiped the car. The drunk driver left the scene. Fortunately, our daughter's injuries were not serious however she is expected to have longterm neck/back trouble. We had no idea what emotional turmoil this crime was going to cause our family and would have been grateful to have the Office of Victims Rights assist us through this crisis and help us through the whole ugly process. This process included arguing with the Kenai District Attorney to push for more jailtime.

Incarceration is the only way to keep drunk drivers out of society. *Within the last year in Kenai there was another felony DWI case with no injuries and the man received TWO YEARS JAILTIME. How does that compare to three felony convictions getting EIGHT MONTHS?* Everyone we have talked to about this sentence is amazed about the low jailtime.

I want it to be perfectly clear that my husband and I were not standing by doing nothing. We had several conversations with District Attorney Dwayne McConnell's office about their plea bargaining. We were told this amount of jailtime would probably be what would be given if it went to trial anyway - your daughter wasn't seriously injured. We asked if we could get a different judge and were told no, the time limit had passed for that request. So how were we supposed to know you have a time limit?

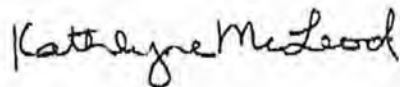
Page Two

The Office of Victims Rights would have known all of this info and helped us. I feel very strongly that with their involvement the sentence given to the repeat offender would have definitely included more jail time. This is the main objection I have: three felonies and you get a total of eight months incarceration? To elaborate on the "not seriously injured" statement, the State Trooper who responded to the scene stated that our daughter saved herself serious injury if not death by punching the gas pedal when she saw the truck heading for her. That split second probably saved our daughter's life because the pickup didn't hit the driver's door, it impacted the passenger area. Here's where I'll insert a few "what ifs": what if there were other people sitting in the back seat that were injured/killed OR what if there was a baby in a carseat in the backseat of the car? Comments similar to these were made to the DA's office when the "not seriously injured" line came up. How dare a District Attorney's Office treat a triple felony case in such a way?

We had never been through anything like this before and it was overwhelming to deal with the system and then end up with a triple felon walking out of jail in just eight months. The emotions we went through were extreme - when your loved one is in a near death experience it's an emotional rollercoaster. We were so glad our daughter wasn't killed and thought we were focusing on the right thing by pressuring the DA's office. I still think we did the right thing.

If the Office of Victims Rights was helping us I feel totally convinced this felon would still be in jail where she belongs. Why doesn't the general public know about the Office of Victims Rights? Now I would strongly urge the passage of HB 348 so that the people of Alaska know about the Office of Victims Rights. Other horrible situations like this don't have to happen for other Alaskans.. Thank you for your consideration.

Sincerely,



Kathlyne McLeod
2625 VIP Drive
Kenai AK 99611
907.283.5775

Cc: Office of Victims Rights
Representative Kelly Wolf

HB

349

Adopted

AMENDMENT # 1

OFFERED IN THE SENATE
TO: ~~SB~~ 349 (1322Q.A)
HB

BY Senator Hollis French

- 1 Page 2, lines 11-14
- 2
- 3 Delete all material
- 4
- 5 Page 2, line 11
- 6
- 7 Insert
- 8
- 9 (B) any criminal action, to impeach the defendant,
- 10 codefendant, or a former defendant in the case if the prosecution
- 11 shows that the evidence
- 12 (i) was the product of a statement illegally obtained
- 13 in violation of the right to warnings under Miranda v. Arizona,
- 14 384 US 436 (1966) and
- 15 (ii) was not obtained in substantial violation of the
- 16 rights of the defendant, codefendant, or a former defendant in
- 17 the case, as appropriate.

REPRESENTATIVE RALPH SAMUELS

HOUSE DISTRICT 29

CS HB 349

Sponsor Statement

“An Act Amending Rule 412, Alaska Rules of Evidence”

HB 349 is a bill that promotes truth telling by criminal defendants who choose to testify at trial.

Every criminal defendant has a constitutional right to testify in his defense. But that right must never be construed to include the right to commit perjury. Alaska's current law prevents courts from using suppressed prior inconsistent statements to challenge the credibility of defendants. This perverts the truth-finding process. It gives those who would lie under oath in a bid to escape justice a license to deceive jurors and judges as happened in a recent murder trial in Anchorage.

Under the supervision of a judge, a new law will permit prosecutors to cross-examine defendants using prior suppressed statements and evidence. Passage of HB 349 will bring Alaska into the mainstream of American and federal jurisprudence where such rules have been the law for years.

Email: Representative_Ralph_Samuels@legis.state.ak.us

Session: Alaska State Capitol, Juneau, Alaska 99801-1182 • Phone: (907) 465-2095 Fax: (907) 465-3810
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0240 Fax: (907) 269-0242

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 349(JUD)
 (H) Publish Date: 2/18/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title: "An Act relating Rule 412, Alaska Rules of Evidence." RDU: Criminal
 Evidence: _____ Component: CDCO
 Sponsor: Representatives Samuels, McGuire, Stolze, Dahlstrom, Wilson
 Requester: House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Rule 412, Alaska Rules of Evidence is amended in this bill to allow illegally obtained evidence to be used if a statement illegally obtained in violation of the Miranda Warning would be used to accuse or charge the person who made the statement if the prosecution shows that the statement was otherwise voluntary and not coerced. The bill also makes admissible illegally obtained evidence in a prosecution to impeach a witness if the prosecution shows that the evidence did not substantially violate the rights of the witness.

Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division: Administrative Services Date/Time 1/23/04 4:28 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/23/2004
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 349(JUD)
 (H) Publish Date: 2/19/04

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act amending Evidence Rule 412 BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representatives Samuels, 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 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill, as amended in the CS, could have a fiscal impact on the operations of the Agency, but hopefully not a significant one. If enacted however, there will be additional hearings required to determine admissibility of illegally obtained evidence, and likely constitutional challenges, both of which will affect the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time 2/13/04 12:00 AM
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

Number of states that permit the use of illegally seized evidence to impeach

29 states in addition to ALL federal courts under the Harris opinion by the US Sup. Ct.

Those states are:

1. Arkansas
2. Georgia
3. Tennessee
4. Arizona
5. Colorado
6. Florida
7. Illinois
8. Missouri
9. New York
10. Texas
11. Pennsylvania
12. Washington
13. Alabama
14. Delaware
15. Florida
16. Indiana
17. Kentucky
18. Louisiana
19. Maryland
20. Massachusetts
21. Michigan
22. Minnesota
23. Mississippi
24. Montana
25. New Jersey
26. Oregon
27. South Dakota
28. Virginia
29. California

The only states which do not permit it are Hawaii, West Virginia and Alaska

That's not to say the remaining 19 states do or do not permit it-it's just that there are no reported cases for those states to say the issue may not ever have been addressed by the courts in those states.

IMPORTANT: Even though AK doesn't permit illegally seized evidence to impeach a defendant at trial, an Alaska case that DOES permit illegally seized evidence to be used by the judge when "it is reliable, when the police conduct involved in obtaining the evidence does not shock the conscience of the court, and when it is clear that the evidence was not obtained for purposes of influencing the sentencing judge"
Elson v. State, 633 P2d 292 (Alaska App 1982).

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ALASKA RULES OF COURT

2003 — 2004 Main Edition

A list of specific rules changed in this edition
can be found after the title/copyright pages.



LexisNexis

(iii) Judgment on a plea of guilty or nolo contendere is reversed on direct or collateral review.

(b) This rule shall not apply to (1) the introduction of voluntary and reliable statements made in court on the record in connection with any of the foregoing pleas when offered in subsequent proceedings as prior inconsistent statements, and (2) proceedings by a defendant to attack or enforce a plea agreement.

(Added by SCO 364 effective August 1, 1979)

Rule 411. Liability Insurance.

Evidence that a person was or was not insured against liability is not admissible upon the issue whether the person acted negligently or otherwise wrongfully. This rule does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness.

(Added by SCO 364 effective August 1, 1979; amended by SCO 1153 effective July 15, 1994)

Annotations

Cases

When examining a defendant's conduct to determine whether punitive damages are appropriate, it should make no difference that the defendant is insured or uninsured; accordingly, where jury responded "no" to question on special verdict form on whether plaintiff was entitled to punitive damages, exclusion of evidence of liability insurance was, if error, merely harmless error, even though defendant was allowed to present evidence to demonstrate his inability to absorb a punitive damage award. *Shane v. Rhines*, Op. No. 2750, 672 P2d 895 (Alaska 1983).

Where liability was not an issue in victim's suit against driver, evidence of driver's insurance coverage focused on the relevance of insurance to the driver's financial condition, a purpose not excluded by Alaska R. Evid. 411. *Fleegel v. Estate of Boyles*, Op. No. 5641, 61 P.3d 1267 (Alaska 2002).

Rule 412. Evidence Illegally Obtained.

Evidence illegally obtained shall not be used over proper objection by the defendant in a criminal prosecution for any purpose except:

(1) a statement illegally obtained in violation of the right to warnings under *Miranda v. Arizona*, 384 U.S. 436 (1966), may be used in a prosecution for perjury if the statement is relevant to the issue of guilt or innocence and if the prosecution shows that the statement was otherwise voluntary and not coerced; and

(2) other evidence illegally obtained may be admitted in a prosecution for perjury if it is relevant to issue of guilt or innocence and if the prosecution

shows that the evidence was not obtained in substantial violation of rights.

(Added by SCO 364 effective August 1, 1979)

Annotations

Cases

Where the arrest is lawful, fact that arresting officer uses excessive force does not make the evidence obtained as a result of the arrest the product of illegality. *Martin v. State*, Op. No. 2298, 623 P2d 1225 (Alaska 1981).

Illegally seized evidence may be considered in fashioning a sentence when the illegally seized evidence is reliable, when the police conduct involved in obtaining the evidence does not shock the conscience of the court, and when it is clear that the evidence was not obtained for purposes of influencing the sentencing judge. *Elson v. State*, Op. No. 40, 633 P2d 292 (Alaska App. 1982).

The traditional requirement of standing has not been abrogated in search and seizure cases by adoption of this rule. *G.R. v. State*, Op. No. 61, 638 P2d 191 (Alaska App. 1982).

Defendant did not have standing to argue that his confession should be suppressed on the ground that it was the product of an illegal arrest and detention of his companion. *G.R. v. State*, Op. No. 61, 638 P2d 191 (Alaska App. 1981).

Defendant had no standing to object to police officers' contact with his building manager and no right to seek suppression of the evidence derived from her even if the contact was the result of a trespassory entrance into the apartment building. *Hubert v. State*, Op. No. 62, 638 P2d 677 (Alaska App. 1981).

Defendant had standing to contest the illegal arrest of codefendant which led to defendant's confession. *Unger v. State*, Op. No. 65, 640 P2d 151 (Alaska App. 1982).

This rule, which permits evidence illegally obtained to be used under certain circumstances in perjury prosecutions, applies to such evidence regardless of the basis for determining that it was illegally obtained. *Wortham v. State*, Op. No. 69, 641 P2d 223 (Alaska Op. No. 1982).

Suppression of illegally obtained evidence in defendant's cocaine prosecution was not *res judicata* nor did it collaterally estop the state from using the evidence in defendant's subsequent perjury prosecution where there was no suggestion that this rule was considered at the first suppression hearing. *Wortham v. State*, Op. No. 69, 641 P2d 223 (Alaska App. 1982).

Illegally obtained tape recording of conversation between defendant and undercover police agent which was properly suppressed at defendant's drug trial was admissible at defendant's subsequent perjury trial where the recording was made in good faith and was not an intentional violation of the law. *Wortham v. State*, Op. No. 214, 657 P2d 856 (Alaska App. 1983).

Although this rule is not necessarily limited to violations of constitutional rights, it does not automatically apply to violations of all statutes. *Harker v. State*, Op. No. 2665, 663 P2d 932 (Alaska 1983).

Illegally obtained tape recording of conversation between defendant and undercover police agent was admissible at defendant's perjury trial. *Wortham v. State*, Op. No. 2697, 666 P2d 1042 (Alaska 1983).

This rule contains a standing requirement for search and seizure violations, but under the Alaska Constitution there are

exceptions to the requirement. *Waring v. State*, Op. No. 2719, 670 P2d 357 (Alaska 1982).

A defendant has standing to assert the violation of a co-defendant's fourth amendment rights if he or she can show (1) that a police officer obtained the evidence as a result of gross or shocking misconduct, or (2) that the officer deliberately violated the co-defendant's rights. *Waring v. State*, Op. No. 2719, 670 P2d 357 (Alaska 1983).

Assuming, without deciding, that the warnings received by defendant regarding his testimony at a coroner's inquest were less than adequate to safeguard his right to remain silent, his testimony was nevertheless not involuntary or the product of coercion; therefore, his testimony at the coroner's inquest could be used against him in subsequent trial for perjury. *Esmailka v. State*, Op. No. 721, 740 P2d 466 (Alaska App. 1987).

Exclusionary rule did not apply to error by trial court in using telephonic testimony in support of search warrant without following statutory procedure since violation of statute was not in bad faith and since there was no claim that absent telephonic testimony warrant would have been invalid. *Burreece v. State*, Op. No. 1618, 976 P2d 241 (Alaska App. 1999).

ARTICLE V. PRIVILEGES

Rule 501. Privileges Recognized Only as Provided.

Except as otherwise provided by the Constitution of the United States or of this state, by enactments of the Alaska Legislature, or by these or other rules promulgated by the Alaska Supreme Court, no person, organization, or entity has a privilege to:

- (1) refuse to be a witness; or
- (2) refuse to disclose any matter; or
- (3) refuse to produce any object or writing; or
- (4) prevent another from being a witness or disclosing any matter or producing any object or writing.

(Added by SCO 364 effective August 1, 1979)

Rule 502. Required Reports Privileged by Statute.

A person, corporation, association, or other organization or entity, either public or private, making a return or report required by law to be made has a privilege to refuse to disclose and to prevent any other person from disclosing the return or report, if the law requiring it to be made so provides. A public officer of an agency to whom a return or report is required by law to be made has a privilege to refuse to disclose the return or report if the law requiring it to be made so provides. No privilege exists under this rule in actions involving perjury,

false statements, fraud in the return or report, or of failure to comply with the law in question.

(Added by SCO 364 effective August 1, 1979)

Rule 503. Lawyer-Client Privilege.

(a) **Definitions.** As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal service

(2) A representative of the client is one having authority to obtain professional legal services and act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client (1) between the client or the client's representative and the client's lawyer or the lawyer's representative or (2) between the client's lawyer and the lawyer's representative, or (3) by the client or the client's lawyer to a lawyer representing another in a matter of common interest, or (4) between representative of the client or between the client and a representative of the client, or (5) between lawyers representing client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, the client's guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of communication may claim the privilege but only on behalf of the client. The authority to do so is presumed in the absence of evidence to the contrary.

of insurance coverage is a tenuous one, as is its converse, evidence of insurance coverage or of the absence of such coverage lacks great probative value on the issue of fault. More importantly, perhaps, the rule is designed to prevent a jury from deciding a close case on an improper basis — i.e., whether or not a party is insured. There is a danger that insurance evidence might skew the decision-making process of the jury by making it regret a possibly wrong decision against an uninsured person much more than a similar decision under identical facts against a person whose insurance status is unknown, or by making the jury regret any erroneous decision against an insured party less than it would an erroneous decision against a person whose insurance status is unknown. This is not to suggest that a jury will intentionally make a mistake. It suggests only that in close cases someone must bear the risk of error, that the presence or absence of insurance is not regarded as an appropriate guide for allocating the risk, and that it is possible that a jury will misuse insurance evidence. This rule, identical to the federal rule, is drafted in broad terms so as to include contributory negligence or other fault of a plaintiff as well as fault of a defendant.

The second sentence of this rule describes the limitations on it. Whereas evidence of insurance coverage is inadmissible to prove negligence, there are several well established issues for which evidence of insurance coverage, or the lack of it, has probative value and is therefore admissible. Evidence of insurance of an object often indicates the person who controls or owns the object in question. Or, if A has insured B, there is some reason to draw the inference that A considers himself responsible for B's acts. While it is inconclusive proof of an agency relationship, the existence of such insurance has evidentiary value in helping to establish such a relationship.

Bias or prejudice of a witness or juror is a common concern when a witness or juror is connected with an insurance company. Such information often has been elicited during voir dire when a prospective juror is asked whether or not he has any connection with the insurance business. Although this is often a legitimate question, it may serve to remind the jury that a party may be insured. Similarly, questions as to a witness' affiliation with insurance interests may be legitimate impeachment tools, despite the danger of misuse of the insurance evidence.

But, the fact that evidence of insurance is sometimes admissible does not mean that it must be admitted whenever offered for a proper purpose. The

danger of misuse of the evidence by the jury does not totally disappear when the evidence is introduced for a reason other than to prove fault or absence thereof, even though a limiting instruction will be given upon request under Rule 105. Rule 403 requires the trial judge to balance the probative value of the evidence on one issue against the potential danger that the jury will favor uninsured defendants and disfavor insured defendants.

Trial lawyers are on notice that insurance is admissible for some purposes and not others. Alaska R. Civ. P. 26(b) (2) allows discovery of insurance agreements, and the parties should be able to obtain a judicial decision on whether insurance evidence is to be admitted or otherwise utilized and for what purposes before such evidence is brought to the attention of the jury. *Poulin v. Zartman*, 542 P.2d 251, 265 (Alaska 1975).

If this rule is to have maximum effectiveness, it must be enforced by the trial judge. Inadvertent or deliberate tactical references to insurance should be cured immediately, if possible, with instructions to the jury to disregard the information. The trial judge is vested with wide discretion to grant a new trial where such slips are not easily cured. *See Peters v. Benson*, 425 P.2d 149, 152-153 (Alaska 1967).

Rule 412. Evidence Illegally Obtained.

Although illegally obtained evidence may be highly probative, this rule recognizes that such evidence must generally be excluded in order to breathe life into constitutional guarantees and to remove incentives for governmental intrusion into protected areas. While these rules of evidence generally do not incorporate constitutional doctrine, Rule 412 will go beyond what federal constitutional decisions require in protecting the rights of those accused of crime. Thus, for example, in *Harris v. New York*, 401 U.S. 222, 28 L.Ed.2d 1 (1971), the United States Supreme Court approved the use of statements obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 695 (1966), for impeachment purposes but not as part of the prosecutor's case-in-chief. *Walder v. United States*, 347 U.S. 62, 98 L.Ed. 503 (1954), sanctioned the introduction of testimony on illegally seized heroin to rebut the defendant's denial of prior drug possession. Rule 412 would forbid such uses as long as proper objection is made by the defendant. This last proviso is a change from Criminal Rule 26 (g).

This ban on the use of both testimonial and physical evidence for impeachment purposes should not amount to a significant incentive for defendants

to commit perjury. The prosecution will still be able to cross-examine the defendant on his claims, if it believes in good faith that the defendant's testimony is false. And, as discussed below, some otherwise inadmissible evidence will still be permitted in perjury prosecutions.

Rule 412 also does not bar the use as impeachment evidence of statements made by a defendant who testifies on a preliminary question of fact as permitted by Rule 104(d). If the preliminary question of fact involves a constitutional question, the argument could be made that a ruling favorable to the defendant renders any statements made during the preliminary hearing "fruit of the poisonous tree" and therefore inadmissible. *Cf. Harrison v. United States*, 392 U.S. 219 (1968) (use of evidence in case-in-chief). *But see People v. Sturgis*, 317 N.E.2d 545 (Ill. 1974), cert. denied, 420 U.S. 936, 43 L.Ed.2d 412 (1975). *See also United States v. Kahan*, 415 U.S. 239, 39 L.Ed.2d 297 (1974); *United States v. Mandujano*, 425 U.S. 564, 584, 48 L.Ed.2d 212, 277 (1976) (Brennan, J., concurring in the judgment). Where the defendant is successful in suppressing evidence the underlying constitutional right is protected. It seems an extravagant extension of constitutional protection to permit one version of facts from the defendant's mouth to keep evidence from a tribunal and to permit the defendant to offer another version at trial. If the motion to suppress is unsuccessful, there is even less reason to refrain from using the defendant's statements in support of the motion as impeachment evidence. The decision to take the oath and testify is attenuation enough to remove the taint of the initial illegality. The record of the statements, the advice of counsel, and the oath together remove many of the problems associated with *Harris v. New York*, *supra*.

In perjury prosecutions, the government's interest in convicting guilty defendants and the extreme difficulty of obtaining reliable evidence warrant controlled use of illegally obtained evidence. Hence Rule 412 contains two narrow exceptions to the blanket prohibition on the use of illegally obtained evidence properly objected to.

The first exception governs statements obtained in violation of the right to warnings under *Miranda*, if the statement whose admission is sought is relevant to the issue of guilt or innocence and shown to be otherwise voluntary and not coerced. The latter limitation, meant to guarantee the statement's reliability, is derived from *Harris v. New York*, *supra*, where the U.S. Supreme Court observed, "Petitioner makes no claim that the statements made to the police were coerced or involuntary." 401 U.S. at 224, 28 L.Ed.2d at 4.

The second exception governs evidence obtained in violation of the fourth amendment and/or its Alaska counterpart, article I, section 14. Again a limitation is imposed: the evidence must be relevant to the issue of guilt or innocence, and must not have been obtained "in substantial violation of rights." This limitation is not imposed to ensure reliability of the evidence, but rather recognizes that judicial integrity requires the exclusion of evidence for all purposes if the police misconduct involved in obtaining it was flagrant. The concept of a "substantial violation of rights" is necessarily flexible, and whether or not such a violation occurred will depend on the facts of each case. The simple reference to "rights" is intended to emphasize that this section has no bearing on the law of standing in search and seizure cases.

ARTICLE V. PRIVILEGES

Introductory Comment

Article V provides for eight different privileges and recognizes that other privileges may be created by statute or court rule. Because most of the privileges covered by Article V were recognized before the adoption of these Rules, the Reporter's Comments do not attempt to state the rationales for the various privileges and to justify them. Most of the privileges have been debated elsewhere, and the privileges have survived the debate. The Reporter's Comments accompanying the various rules do explain, however, why particular approaches to defining rules were taken and why others were rejected.

Two rules of privilege which are found in several jurisdictions are omitted from these rules. One is the privilege for official information; the other is the privilege previously provided by Rule 43 (h) (7), Alaska R. Civ. P., covering evidence tending to degrade the character of a witness. This Comment explains the omissions.

The Wigmore treatise, 8 Wigmore on Evidence § 2378, at 807-08, (J. McNaughton rev. 1961), states that the best collection of arguments in favor of an official information privilege is as follows (quoting Gellhorn & Byse, *Administrative Law Cases and Comments* 617-18 (4th ed. 1960):

[The discussion relates to the SEC and summarizes that agency's brief in a federal case]. The documents and testimony relating to intra-agency discussions, communications, memoranda, reports, recommendations, positions taken at staff and Commission level with respect to the

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

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STATE OF ALASKA,)
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Plaintiff,)
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vs.)
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ISAIAH L WALLNER,)
)
DOB: 12/29/76)
)
APSIN ID: 6714211)
)
DMV NO. 6714211)
)
SSN: 574-84-4768)
)
ATN: 107-284-518)
)
Defendant.)

Court No. 3AN-S02-4342 Cr.
Search Warrant Nos: 3AN-02-229, 230, 231 SW

INFORMATION

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.

The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: ALL COUNTS

Count I - AS 11.41.100(a)(1)(A)
Murder In The First Degree
Isaiah L Wallner - 001

Count II - AS 11.41.110(a)(1)
Murder In The Second Degree
Isaiah L Wallner - 002

Count III - AS 11.56.610(a)(1)
Tampering With Physical Evidence
Isaiah L Wallner - 003

THE DISTRICT ATTORNEY CHARGES:

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 268-6300

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Count I

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER intentionally caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.100(a)(1)(A) and against the peace and dignity of the State of Alaska.

Count II

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER with intent to cause serious physical injury to Brenda L. Wallner or knowing that the conduct was substantially certain to cause death or serious physical injury to another person, caused the death of Brenda L. Wallner.

All of which is an unclassified felony offense being contrary to and in violation of AS 11.41.110(a)(1) and against the peace and dignity of the State of Alaska.

Count III

That on or about May 22, 2002, at or near Anchorage in the Third Judicial District, State of Alaska, ISALAH L WALLNER destroyed, mutilated, altered, suppressed, concealed, or removed physical evidence with intent to impair its verity or availability in an official proceeding or a criminal investigation.

All of which is a class C felony offense being contrary to and in violation of AS 11.56.610(a)(1) and against the peace and dignity of the State of Alaska.

The undersigned swears under oath this Information is based upon a review of police report 02-24984 submitted to date.

On May 22, 2002, at approximately 6:52 a.m. the Anchorage Police Department received a 911 call from Patricia Barazi stating that there was a female in the parking lot, unable to breathe, who had apparently been stabbed in the chest. A second call came from the upstairs neighbors who reported a female screaming for help in apartment number nine. Anchorage Police Officers arrived at the scene, in the

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 620
ANCHORAGE, ALASKA 99501
(907) 269-6300

1 parking lot at 1338 Ingra. Officers Foraker and Robinson made contact with the female,
 2 trying to hold her still, waiting for the paramedics. She was later identified as Brenda
 3 Wallner. When asked who did this to her, she replied "my husband", and when asked
 4 why, she said she did not know. The victim was transported to ARH and was declared
 5 dead at approximately 7:30 a.m. She had at least one stab wound in her chest, one on
 6 her arm, and three stab wounds in the back.

7 Sgt. Spadafora and Officer Jensen knocked at the door of the victim and
 8 suspect's apartment, 1335 Hyder #9. A person later identified as the defendant, Isaiah
 9 Wallner, the victim's husband, opened the door, and the police entered. The defendant
 10 was seated on the floor in the corner of the kitchen, with a knife to his throat. After
 11 refusing repeated demands to drop the knife, he was shot with a less lethal weapon four
 12 times. He was taken into custody and transported to Providence Medical Center for
 13 treatment of his injuries. He had bruising and tearing on both legs, and one arm.

14 After treatment for his injuries, he was transported to the Anchorage
 15 Police Department for an interview. He stated that he had been working the night shift,
 16 getting off work at 1:30 a.m. He walked home. The victim and two children were
 17 asleep on mattresses in a bedroom upstairs. One child, T.W., 20 months, is the child of
 18 the defendant and the victim. The other child, T.G., eight years old, is the child of the
 19 victim. His father lives out of state. The defendant stated that he sat on the corner of
 20 the mattress watching the victim sleep from approximately 1:45 until 5:00. He stated
 21 that he was "contemplating killing her". At one point he went down to the kitchen and
 22 got a paring knife, returning to the bedroom. The victim woke up and went to the
 23 kitchen. The victim and the defendant got into a verbal argument. Part of the argument
 24 included the fact that she was going to get a divorce, and take his child out of state. The
 25 defendant stated that she was always "poking" at him, calling him names, arguing about
 26 minor things. At one point the victim asked the defendant what he had been doing
 earlier that morning and he told her that he had been contemplating killing her. She told
 him that she was going out to call the police. He went upstairs to get the knife where he
 had left it, and then returned to the kitchen. The victim pushed him away to get to the

DISTRICT ATTORNEY, STATE OF ALASKA
 310 K STREET, SUITE 520
 ANCHORAGE, ALASKA 99501
 (907) 269-6300

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door, after he pulled the knife on her. He said that he did not want her to call the police. They began to struggle, and he admitted stabbing her in the back. He said he was looking for a good "vantage point" when he stabbed her in the back. When asked how far the knife went in, he stated "all the way". She fell to the floor on her back, and he stabbed her in the chest. According to the defendant, the victim then said to him "I'm going to die". The defendant let go of the knife. The victim was able to get out of the apartment. The defendant stated he began pacing around the kitchen. He said that there was a lot of blood. He began cleaning up the blood with a mop, and then heard the sirens. When he heard a knock on the door, he looked out and saw the police. He unlocked the door and left it ajar. He sat down with another knife, holding it to his throat. He admitted he wanted to kill himself. He said he would not drop the knife because he did not want to go to jail. He said that neither he nor the victim had been drinking or using drugs. When he was told that his wife had died, he responded "I wish there was the death penalty, I deserve it."

Members of the crime scene team recovered the murder weapon near where the victim had been found. Bloodstain patterns reveal that the stabbing was confined to the kitchen. There was quite a bit of blood in the kitchen, and it was noted that there was an attempt to mop up blood. There was a bloody palm print on the door leading outside from the hallway of the apartment building, where the victim had apparently run.

The eight-year-old boy, T.G. was also interviewed. He said he saw the defendant go into the kitchen and get a knife and stab his mom in the chest. He also said that his mom had been "grumpy" that morning.

BAIL INFORMATION

Defendant has following Alaska criminal conviction:
08/02/95 Damage Property

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 268-6300

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NCIC indicates Tennessee shows the following arrests but no disposition on the cases.

- 03/16/00 Possession of Marijuana
- 03/16/00 Possession of Drug Paraphernalia
- 03/16/00 Carrying Weapon For Purpose Of Going Armed
- 01/26/02 Domestic Assault
- 02/29/02 Theft Of Property

Particulars of these police contacts will be filed in a bail document tomorrow.

Dated at Anchorage, Alaska, this 22nd day of May, 2002.

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: Mary Anne Henry
Mary Anne Henry
Assistant District Attorney
Alaska Bar No. 7610097

SUBSCRIBED AND SWORN to before me this 22nd day of May, 2002 at Anchorage, Alaska.

Linda D. Kusiee
Notary Public in and for Alaska
My commission expires: 06/20/05

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-6300

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

STATE OF ALASKA,)
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Plaintiff,)
)
vs.)
)
ISAIAH L. WALLNER,)
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DOB: 12/29/76)
)
APSIN ID: 6714211)
)
DMV NO. 6714211)
)
SSN: 574-84-4768)
)
ATN: 107-284-518)
)
Defendant.)

No. 3AN-S02-4342 CR.

INDICTMENT

I certify this document and its attachments do not contain the (1) name of a victim of a sexual offense listed in AS 12.61.140 or (2) residence or business address or telephone number of a victim of or witness to any offense unless it is an address identifying the place of a crime or an address or telephone number in a transcript of a court proceeding and disclosure of the information was ordered by the court.
The following counts charge a crime involving DOMESTIC VIOLENCE as defined in AS 18.66.990: All

- Count I - AS 11.41.100(a)(1)(A)
Murder In The First Degree
Isaiah L. Wallner - 001

- Count II - AS 11.41.110(a)(1)
Murder In The Second Degree
Isaiah L. Wallner - 002

- Count III - AS 11.56.610(a)(1)
Tampering With Physical Evidence
Isaiah L. Wallner - 003

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 620
ANCHORAGE, ALASKA 99501
(907) 269-6300

1
2 THE GRAND JURY CHARGES:

3 **Count I**

4 That on or about May 22, 2002, at or near Anchorage in the Third Judicial
5 District, State of Alaska, ISAAH L. WALLNER intentionally caused the death of
6 Brenda L. Wallner.

7 All of which is an unclassified felony offense being contrary to and in
8 violation of AS 11.41.100(a)(1)(A) and against the peace and dignity of the State of
9 Alaska.

10 **Count II**

11 That on or about May 22, 2002, at or near Anchorage in the Third Judicial
12 District, State of Alaska, ISAAH L. WALLNER with intent to cause serious physical
13 injury to Brenda L. Wallner or knowing that the conduct was substantially certain to
14 cause death or serious physical injury to another person, caused the death of Brenda L.
15 Wallner.

16 All of which is an unclassified felony offense being contrary to and in
17 violation of AS 11.41.110(a)(1) and against the peace and dignity of the State of Alaska.

18 **Count III**

19 That on or about May 22, 2002, at or near Anchorage in the Third Judicial
20 District, State of Alaska, ISAAH L. WALLNER destroyed, mutilated, altered,
21 suppressed, concealed, or removed physical evidence with intent to impair its verity or
22 availability in an official proceeding or a criminal investigation.

23 All of which is a class C felony offense being contrary to and in violation
24
25
26

DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 269-6300

1 of AS 11.56.610(a)(1) and against the peace and dignity of the State of Alaska.

31st AM

2 DATED this ~~30~~ day of May, 2002 at Anchorage, Alaska.

3 A true bill

4
5 *David P. Bimford*
6 Grand Jury Foreperson

7 *Sharon A. S. Iilsley*
8 Sharon A. S. Iilsley
9 Assistant District Attorney
10 Bar No. 9009057

11 02-229 SW; 02-230 SW; 02-231 SW

12 WITNESSES EXAMINED BEFORE THE GRAND JURY:

- 13 Det. Pamela Perrenoud DSN 930
- 14 Karen Larkin
- 15 Dr. Franc Fallico

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DISTRICT ATTORNEY, STATE OF ALASKA
310 K STREET, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 260-6300

Wallner convicted of murder

FIRST DEGREE: Man who killed wife destroyed evidence also, jury finds.

7/24/03

Thursday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

A man who stabbed his wife 43 times intended to kill her, an Anchorage jury concluded Wednesday, convicting Isaiah Wallner, 28, of first-degree murder after one day of deliberation. Judge Larry Card set sentencing for Nov. 25.

Prosecutor Sharon Illsley said after the verdict that she'll wait for a report on Wallner from the Department of Corrections before deciding what sentence to request. However, it's "a very aggravated case," she said.

The sentence range for first-degree murder is from 20 to 99 years with about 60 years the average.

Wallner also was convicted of destroying evidence for trying to clean up his bloodied kitchen before police arrived.

There was never any question that Wallner killed his wife, stabbing her repeatedly with a paring knife the morning of May 22, 2002. But defense attorney Craig Howard insisted it was an unreasoning rage killing and urged jurors to convict Wallner of second-degree murder or even manslaughter.

Brenda Wallner, 28, stumbled from the couple's Hyder Street apartment shortly after 6 a.m., crying for help, awakening several neighbors who came to her aid. She had been stabbed in both lungs and in her heart, Illsley told jurors. She named her husband as her killer before she died.

Her two sons, 8 years and 20 months, were in the apartment and the 8-year-old witnessed the murder.

Shortly after being taken in to custody, Wallner told police he came home from his night job at about 1:45 a.m. and watched his sleeping wife for hours, contemplating killing her. According to charging documents, he said he was unhappy because she wanted a divorce and because she was always nagging him.

He said he went to the kitchen at one point and got a knife, then returned to the bedroom. When his wife woke up, an argument started and he told her he had been thinking about killing her. She said she was going to a nearby gas station to call police. Their apartment had no phone. He started stabbing her because he didn't want her to call police, he said.

But this statement was ruled inadmissible at the trial because police continued questioning Wallner after he mentioned possibly wanting to contact a lawyer. Thus, when Wallner took the witness stand Tuesday and said that his wife had a knife, that he stabbed her in self defense only after she lunged at him, and that he wasn't thinking of killing her, Illsley couldn't use his prior statement to suggest he was lying.

Illsley declined to discuss the suppressed statement but said Wednesday that there are legal consequences for lying under oath.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

All Archives

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Wallner says he stabbed his wife in self-defense

TRIAL: Defendant said he snapped when she came after him with knife.

7/23/03

Wednesday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

A man accused of killing his wife by stabbing her 43 times took the witness stand Tuesday and said it was self-defense.

Isaiah Wallner said his wife, Brenda, also had a knife the morning of May 22, 2002, when harsh words in the couple's apartment kitchen escalated to fatal violence.

Prosecutor Sharon Illsley told jurors Wallner killed his unarmed wife deliberately, stabbing her repeatedly after working himself into a fury over a series of minor irritations that culminated when she tried to leave the apartment to call police from a corner gas station.

The Hyder Street apartment did not have a phone.

Mortally wounded, Brenda Wallner ran from the apartment, covered in her own blood with a knife handle protruding from her chest, according to a neighbor who came to her aid. Before dying, she told witnesses and police that her husband killed her.

But Wallner said it wasn't an intentional killing. He just snapped when his wife lunged at him with her knife, he said. That caused him to also pick up a knife. He said he couldn't be more specific about what happened because he doesn't remember the killing.

Police found no trace of a second knife because he washed it and put it back in the drawer, he said. When police asked him about what happened that day, he didn't mention his wife also had a knife because he was trying to protect her.

Wallner's loss of memory caused some problems for him on cross-examination. He couldn't explain why his allegedly armed wife, who weighed 20 pounds more than him, had 43 wounds and he had only what seemed to be a fingernail scratch on his face.

And, although he doesn't remember what he repeatedly referred to as "the incident," he said his stepson's eyewitness testimony that he stabbed Brenda Wallner three times in the back "when she wasn't looking" was wrong.

According to medical testimony, Brenda Wallner had three stab wounds in her back, including one in each lung. She also had a knife wound in the heart, which Illsley said was probably the last blow delivered before she ran from the apartment. "He buried the knife in her chest" to keep her from leaving, but she got out, although it was too late for anyone to save her, Illsley said.

To assist Wallner's memory, Illsley played a tape of him talking to police shortly after the killing. He was sitting at his kitchen table threatening suicide with a knife and they were trying to talk to him. At one point he told them, "I think I lost it when she said she was going to call the cops when I said I was contemplating killing her."

Wallner said this wasn't what happened.

"So, you have no memory of what happened," Illsley snapped. "But you remember what didn't happen."

The two-knife theory dominated a long, agitated closing argument by defense attorney Craig Howard. "This was an uncontrollable rage," he told jurors, set off by a knife swipe from Brenda, the real cause of the scrape on Isaiah's face.

The defendant had no "conscious objective" to kill his wife, so he is obviously not guilty of first-degree murder, Howard said.

"Ms. Illsley should go into writing pulp fiction," he said, accusing the prosecution of trying to hide the presence of a second knife.

The 8-year-old stepson who witnessed the killing told police his mother started the fight and said he saw his stepfather clean and put a knife in the drawer after his mother left the apartment, Howard said. Police didn't photograph the contents of the drawer because they leaped to the conclusion that the bloody knife found on the ground outside was the only one involved, he said. The woman who testified that Brenda had a knife sticking out of her chest before she fell down was wrong, Howard said. The dying woman must have been carrying it in her hand. Use deductive logic, he urged jurors.

And why was the knife found with the victim so bloody since she obviously didn't stab anyone with it? Because the Wallners must have somehow switched knives before she left the apartment, Howard said.

Illsley told jurors there was no second knife. Offering a photograph of Brenda Wallner's palms, sliced with defensive wounds, Illsley said it was obvious the victim wasn't holding anything in her hands during the attack.

The jury is expected to begin deliberating the case today.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

BILL ROTH / Anchorage Daily News

Murder defendant Isaiah Wallner said Tuesday that police found no trace of a second knife because he washed it and put it back in the drawer.

Photo 1: [IsaiahWallner_072303.jpg](#)

All Archives

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**Trial focuses on whether man meant to kill wife
MURDER? Brenda Wallner was cut 43 times in May 2002.**

7/15/03

Tuesday

B1

Alaska

Final

By SHEILA TOOMEY

Anchorage Daily News

Staff

With stab wounds in both lungs, a knife handle protruding from her chest, and blood leaking from dozens of slices in her body, Brenda Wallner ran from her Fairview apartment one Wednesday morning last summer, screaming for help.

She collapsed near Patricia Barazi's first-floor balcony in a pool of blood that so drenched her T-shirt that the first police officer on the scene thought she was wearing a red top.

She fought to keep breathing and lived long enough to tell police and other people who came to her aid that her husband, Isaiah Wallner, killed her.

"I asked her, 'Who did this to you,'" said Karen Larkin, who was driving down Ingra Street on her way to work about 6:45 a.m. on May 22, 2002, and stopped to help.

"She told me, 'My husband did it.' "

In all, her husband did it 43 times, according to prosecutor Sharon Illsley in opening statements Monday at Wallner's trial: 24 stab wounds were found on Brenda Wallner's body, and 19 defensive cuts.

So whodunit is not an issue in Judge Larry Card's sixth-floor courtroom. The only question is intent. Despite the carnage, Isaiah intended only to hurt Brenda, attorney Craig Howard told jurors. He did not intend to kill her.

The issue is first-degree murder vs. second-degree murder and a commensurate difference in the likely prison sentence. First-degree sentences tend to be from 65 to 99 years.

Second-degree is more likely to earn a defendant 30 to 60 years.

Howard said the fact that most of the stab wounds, made with a common kitchen paring knife, were superficial is evidence the defendant didn't mean to kill his wife. Only three wounds were fatal, he said.

The Wallners met in Tennessee. She was a customer at a gas station where he worked, Howard said. They fell in love but had a contentious off-and-on relationship. She had an 8-year-old son by a previous marriage, and the two of them had a son together in September 2000. They married in 2001 and life was great, Howard said.

Isaiah's father is an Alaska state trooper and his mother lives in Tennessee, so he split his time between the two, Howard said. He came back to Alaska hoping to find a better job.

At the time of the murder, Isaiah, now 28, worked nights at a fast-food restaurant and Brenda, 30, worked days in an ulu factory.

Everything was fine on May 21 and 22, Howard told jurors during the defense opening

statement. Isaiah walked home from work with a co-worker and was upbeat about life. So how did Brenda end up mortally wounded a few hours later?

"Sometime in the early morning hours there was a confrontation between Isaiah and Brenda. It became irrational on both sides," Howard said. Isaiah's attack was a rage killing, he said. Brenda was walking and yelling when she left the apartment, so Isaiah had no way of knowing she was mortally wounded.

Howard said the fact that Wallner didn't realize his wife was dead until police told him shows he didn't intend to kill her.

After Brenda ran out, Isaiah started mopping up the blood in the kitchen, Illsley said. When police tracked Brenda's blood trail back to the apartment, they found Isaiah holding a knife to his neck, threatening suicide. Police tried to talk him down, then shot him with nonlethal ammunition and took him into custody.

What no one mentioned Monday were Isaiah's alleged statements to police as he sat there with the knife. He said he watched his wife sleep for about three hours after he got home from work and contemplated killing her because she wanted a divorce, according to charging papers filed at the time of his arrest. The statements are not admissible at the trial.

Wallner is a slight, pale man with a long, dark pony tail. He has not cut his hair since his wife died, Howard said. At the defense table, Wallner closed his eyes at the sight of bloody pictures of his wife on the overhead projector and bowed his head at the sound of her voice on a tape made as she lay dying.

The trial is expected to wrap up this week or early next week.

Daily News reporter Sheila Toomey can be reached at stoomey@adn.com.

Graphic 1: Quote marks_071503.pdf

All Archives

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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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February 9, 2004

Representative Ralph Samuels
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Samuels,

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for co-introducing HB 349, an act amending Rule 412, Alaska Rules of Evidence.

This proposed Alaska Rules of Evidence change will allow for statements to be admitted by the court, for impeachment purposes, if the statement was otherwise voluntary and not coerced and not obtained in substantial violation of rights of the witness. This change will be of benefit for the citizens and law enforcement of the State of Alaska. We thank you for addressing this issue.

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

Sincerely,

Leo J. Brandlen
State President

HB

350

Alaska State Legislature
House of Representatives



Representative Max Gruenberg

Representative Carl Gatto

March 31, 2004

Senator Ralph Seekins, Chair Judiciary

Re: Hearing Request for CSHB 350 (STA) Compensation for Victims of Arson

Dear Senator Seekins,

We would respectfully request the Judiciary committee schedule a hearing for CSHB 350, Compensation for Victims of Arson, at your earliest convenience.

If you have any questions or comments please free to contact our offices at extension 3743 Representative Gatto, or 4940 Representative Gruenberg so we may assist you further.

Thank you for your consideration to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Gatto".

Representative Carl Gatto

A handwritten signature in cursive script, appearing to read "Max Gruenberg".

Representative Max Gruenberg

Alaska State Legislature

House of Representatives



Representative Max Gruenberg

Representative Carl Gatto

SPONSOR STATEMENT

CSHB 350 (State Affairs)

Compensation for Victims of Arson

Late last summer a home in Anchorage was severely damaged by a fire deliberately set by an unknown perpetrator while the family was asleep. Fortunately the family survived without injury. However many other arson victims have not been so fortunate. Deliberately setting a fire that endangers someone else is first-degree arson, a class A felony. Current Alaska law does not include first-degree arson on the list of crimes for which victims may receive compensation from the Violent Crimes Compensation Board (VCCB). CSHB 350 (State Affairs) simply adds arson to the list of crimes for which victims may receive compensation.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 350
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to adding personal inju RDU Violent Crimes Compensation. Board
and property damage from arson. Component Violent Crimes Compensation. Board
 Sponsor Representatives Gatto, Gruenberg
 Requester House State Affairs Committee Component No. 2694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()						
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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 PFD Criminal Fund						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

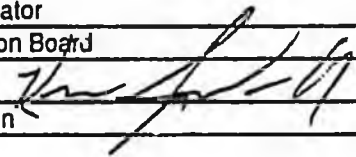
Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 350 would add arson as a compensable crime and property damage as a compensable loss under AS 18.67. Only the most serious of arson cases (first degree) would be eligible for consideration by the Violent Crimes Compensation Board. These cases would compete with other eligible applicants for available grant payments.

Prepared by: Susan L. Browne, Administrator
 Division: Violent Crimes Compensation Board
 Approved by: Commissioner Mike Miller 
 Agency: Department of Administration

Phone 465-3040
 Date/Time 1/16/04 4:03 PM
 Date 1/16/2004

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110230
JUNEAU, ALASKA 99811-0230
PHONE: (907) 465-3040
TOLL FREE: 1-800-764-3040
FAX: (907) 465-2379

January 21, 2004

Representative Bruce Weyhrauch, Chair, House State Affairs
Representative Jim Holm, Vice-Chair, House State Affairs
Representative John Coghill, House State Affairs
Representative Bob Lynn, House State Affairs
Representative Paul Seaton, House State Affairs
Representative Ethan Berkowitz, House State Affairs
Representative Max Gruenberg, House State Affairs - Co-sponsor HB350
Representative Carl Gatto - Co-sponsor HB350
Alaska State Legislature
State Capitol
Juneau, Alaska

RE: HB350
Adding arson to AS 18.67

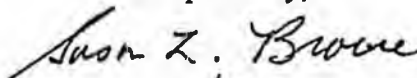
Dear Honorable Chair Weyhrauch, Honorable Vice-Chair Holm, Honorable Members of the House State Affairs Committee, and Honorable Representative Gatto:

The Violent Crimes Compensation Board (Board) appreciates the opportunity to lend its support for HB350. The toll violent crime takes on innocent victims in Alaska is immense. HB350 would add arson as a compensable crime by the Board. Only the most serious arson cases would be eligible for consideration.

While these cases would compete with other eligible applicants for awards out of the Board's limited funds, there is little doubt arson victims suffer extreme losses. I urge you to support this bill and applaud your efforts on behalf of Alaskan crime victims.

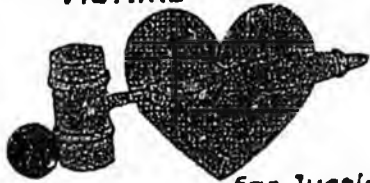
I am available to discuss this with you and will do my best to be available to you while this bill is in your committee. I can be reached at work in Valdez at 907-834-6480 and at home in Valdez at 907-835-2329.

Respectfully,



for
Gerard Godfrey
Chair

VICTIMS



for Justice

1057 W. Fireweed Lane, Suite • Anchorage, AK 99503

(907) 278-0977 1-888-835-1213 • Fax: (907)258-0740 • e-mail: vfj@alaskalife.net

A United Way Agency

January 20, 2004

To Whom It May Concern:

Regarding: letter in support of CSHB 350 (State Affairs)

Arson is a serious crime and not at all uncommon in the State of Alaska. Victims of arson can be left with many scars, both physical and mental. The trauma can be devastating as with any serious crime. The financial demands can be overwhelming. Too often these victims are without any support or resources. Victims for Justice would like to offer our support for CSHB 350 (State Affairs). If you have any further question please do not hesitate to give me a call at 907-278-0986.

Donna Garner,
Executive Director
Victims for Justice, Inc.

* RECEIVED VIA EMAIL