



HOUSE JUDICIARY

906 P.2d 1365

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(Cite as: 906 P.2d 1365)

for exercise of its enforcement power." 470 U.S. at 834, 105 S.Ct. at 1657. The *Heckler* Court thus found *Dunlop* "consistent with a general presumption of unreviewability of decisions not to enforce." *Id.*

In *Simpson v. District of Columbia Office of Human Rights*, 597 A.2d 392 (D.C.1991), the court held that prosecutorial discretion was not an obstacle to review:

In the present case, however, OHR was not purporting to exercise "prosecutorial discretion," nor did it reject Ms. Simpson's complaint on the ground that it lacked resources for enforcement. Rather, OHR found that there was no probable cause to believe that the Human Rights Act had been violated. Whether right or wrong, that determination was not one of the kind to which the doctrine embraced by the District can reasonably be applied. We conclude the OHR's determination is subject to judicial review.

Id. at 398-99. As Meyer correctly argues, the statute now before us provides no reason to dismiss a case other than a lack of substantial evidence.

ADF & G and the Commission argue that the Commission staff and executive director have wide discretion to determine whether an allegation of discrimination is supported by substantial evidence. ADF & G makes the following argument:

*1374 Whether a violation has occurred, whether the Commission's resources are best spent on one violation or another, whether the Commission is likely to succeed if it acts, whether the particular enforcement action requested best fits the Commission's overall policies, and whether the Commission has enough resources to undertake the action at all are issues that the Commission, and not the courts, should decide.

The Commission also argues that these "discretionary issues" are "policy reasons" why this court should find the decision of the Commission staff or executive director to be unreviewable:

The Commission must have discretion to decide whether to prosecute. The Commission has an important policy interest in the results of each of its investigations because of its role in developing the body of civil rights law in Alaska and because

of its statutory obligation to enforce Alaska's civil rights laws. The Commission must employ its limited resources in the most effective manner possible in order to meet these obligations.

The Commission further argues that it will become nothing more than a "complaint taking agency" if it cannot exercise prosecutorial discretion in deciding whether a claim is supported by substantial evidence.

These arguments strongly support judicial review of staff or executive director determinations that there is no substantial evidence. These passages indicate, as the Commission confirmed during oral argument, that the staff or executive director, contrary to statutory mandate, is closing cases not for lack of evidence of discrimination but to control budget and docket. We are sympathetic to the Commission's claim of lack of resources. We recognize that it might be highly desirable for the Commission staff to have the power to administratively dismiss cases which have individual merit but no widespread impact. However, if the Commission wants its staff to have this discretionary authority, it must be obtained from the legislature, not the judiciary. We cannot import these social, political, and economic concerns into the clear scheme of the existing statute.

An opportunity for judicial review is also necessary because the federal EEOC may, and in some circumstances must, accord substantial weight to findings made by state authorities. 42 U.S.C. § 2000e-5(b); *Kremer v. Chemical Constr. Corp.*, 456 U.S. 461, 470 n. 8, 474-75, 102 S.Ct. 1883, 1892 n. 8, 1893-94, 72 L.Ed.2d 262 (1982); *Cottrell v. Newspaper Agency Corp.*, 590 F.2d 836, 838 (10th Cir.1979). [FN11] Furthermore, such findings may affect workers' perceptions of potential employers and vice versa. [FN12] Finally, as noted above, Alaska's anti-discrimination statutory scheme is a mandate to seek out and eradicate discrimination in employment, and did not simply create a complaint-taking agency. *Hotel, Motel, Restaurant, Constr. Camp Employees & Bartenders Union Local 879 v. Thomas*, 551 P.2d 942, 945 (Alaska 1976). A human rights

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complainant in Alaska has the statutory right to expect that his or her claim will be decided on the merits, not pre-determined by budgetary constraints.

FN11. The EEOC may not consider a claim until a state agency having jurisdiction over employment discrimination has been given at least sixty days to resolve the matter. 42 U.S.C. § 2000e-5(c).

FN12. Thus, if the complaint was valid, a finding of no substantial evidence may give a "false negative" signal to persons seeking positions with that employer. It may also place the unsuccessful complainant in a bad light when he or she seeks employment elsewhere.

B. The Finding of No Substantial Evidence

[11][12] Under Alaska and federal law, a court generally applies a three-part test in determining whether discriminatory treatment has occurred. *Texas Dep't of Community Affairs v Burdine*, 450 U.S. 248, 253-56, 101 S.Ct. 1089, 1093-95, 67 L.Ed.2d 207 (1981); *Thomas v. Anchorage Telephone Utility*, 741 P.2d 618, 622 (Alaska 1987). In the first stage, the employee claiming discrimination must introduce evidence raising an inference of employer discriminatory intent. [FN13] Once the employee has established *1375 this prima facie case of disparate treatment, the burden rests with the employer to articulate a legitimate, non-discriminatory reason, supported by evidence, for the treatment. *Burdine*, 450 U.S. at 254-55, 101 S.Ct. at 1094; *Thomas*, 741 P.2d at 623-24. If the employer establishes a legitimate reason for its actions, the burden shifts back to the employee to persuade the court that discriminatory reasons more likely motivated the employer. Usually the employee satisfies this burden by showing that the employer's explanation is pretextual. *Burdine*, 450 U.S. at 256, 101 S.Ct. at 1095; *Thomas*, 741 P.2d at 622.

FN13. This inference is usually accomplished by establishing a prima facie case using the four-part test articulated in

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973) (prima facie case established by showing: (1) complainant belongs to a racial minority; (2) complainant applied for and was qualified for a job for which employer was seeking applicants; (3) despite qualifications, complainant was rejected; and (4) after rejection, the position remained open and employer continued to seek applications from similarly qualified persons). However, the *McDonnell Douglas* test is not the only means by which a claimant may raise an inference of discrimination. *Haroldson v. Omni Enterprises, Inc.*, 901 P.2d 426 (Alaska 1995). *Strand v. Petersburg Pub. Schools*, 659 P.2d 1218, 1222 n. 7 (Alaska 1983) (citing *McDonnell Douglas Corp.*, 411 U.S. at 802 n. 13, 93 S.Ct. at 1824 n. 13).

In determining that there was no substantial evidence at the investigative stage, the Commission staff and executive director applied the three-part *Burdine/Thomas* test, concluding that ADF & G had rebutted Meyer's prima facie case of discrimination and that Meyer had failed to show that ADF & G's proffered reasons were pretextual. In the first case-closing decision, the Commission's investigator stated:

According to the principles of discrimination law, complainant must first establish a *prima facie* case, that is, a set of facts which raises an inference of sex discrimination, before respondent can be required to justify its actions....

Evidence showed that complainant has established a *prima facie* case.... Once complainant has established a prima facie case, the burden shifts to respondent to provide a legitimate non-discriminatory reason for denying complainant the employment extensions.

The investigator concluded:

I therefore determine that ... respondent's defenses to complainant's *prima facie* case are legitimate and nondiscriminatory and that complainant has failed to rebut respondent's legitimate nondiscriminatory reasons.

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The decision upon reconsideration affirmed this determination.

[13] It was an error of law for the staff or executive director to resolve at the investigative stage the legitimacy of ADF & G's non-discriminatory reasons and Meyer's success in rebutting those reasons. By offering objective evidence of facts which established a prima facie case of discrimination and which raised a genuine dispute about ADF & G's explanation of its decisions, Meyer established substantial evidence of discrimination under AS 18.80.110 sufficient to warrant a hearing under AS 18.80.120. [FN14] Although *1376 ADF & G asserted non-discriminatory reasons for offering job extensions and increased responsibility to male employees rather than Meyer, the ADF & G evidence discussed by the Commission staff was insufficient to demonstrate that Meyer's claims were completely lacking in merit, or that a fact finder would be compelled to find for ADF & G. [FN15] Consequently, the staff and executive director could not determine whether discrimination had occurred without resolving the factual disputes between the two parties. These disputes could not be resolved without a hearing.

FN14. The determination that Meyer established a prima facie case was clearly correct. As stated by the Commission's investigator:

Evidence showed that complainant is a member of a protected class; that respondent denied her extensions/job assignments in her employment as [FBI] on four separate occasions during 1985 and 1986; and that respondent awarded the extensions/assignments to male FBI's.... Investigation showed that complainant was qualified for these extended assignments.

Further, Meyer raised a genuine dispute regarding ADF & G's employment decisions. ADF & G argued that the male employees it chose for work extensions were the most qualified for the positions they were given. Meyer offered evidence

that at least some of the male employees chosen were not more qualified, that her writing skills were superior to the male applicants chosen to complete written projects, and that if male fish biologists had greater job capabilities, it was a result of a supervisor's consistent efforts to enhance the qualifications of male biologists while making no corresponding effort to enhance the job skills of female biologists.

Meyer alleged that recipients of "unstructured positions" were always male and always more likely to be promoted or receive extensions. There was evidence that Supervisor Dave Nelson decided who assumed the duty of census creel clerk and who would be put in the "unstructured position." Shortly after the Commission closed Meyer's case the second time, a male FBI who had previously been in the unstructured position was promoted to FBII.

Nelson denied that there was a pattern of "grooming" male fish biologists for promotion.

FN15. Further, even without the benefit of discovery, Meyer offered evidence that could support findings that ADF & G's explanations were pretextual. For example, as of 1987, there were four women in the Division, all of whom were FBI's, and sixty-two males, holding positions of FBI through FBIV; in comparison, there had been a significantly higher percentage of women in the applicant pool of ADF & G registers for FBI and FBII positions than was reflected by the number of women holding those positions. This court has held that once a prima facie case of discrimination is established, statistical evidence of a discriminatory pattern "is to be viewed as evidence that the non-discriminatory justification given by the defendant is in fact a pretext." *Brown v. Wood*, 575 P.2d 760, 770 (Alaska 1978).

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Moreover, the skills which Nelson stated the male FBI's exhibit, such as using tools, were not listed in the job description for fish biologists. Rather, these skills were listed in the job description for fish technicians, a different and less advanced position.

[14] The burden required to compel a hearing is less than the burden required to prevail on the merits at the hearing's conclusion. This distinction is appropriate because of the structural differences between the unilateral investigation conducted by Commission investigators and formal adversarial proceedings before the full Commission. Unlike an adversarial proceeding in which a party has the opportunity to rebut the other's proffered evidence, an investigation by an administrative agency "represents a unilateral inquiry into the facts which are in the possession of the employee and the employer." 10 Marlin M. Volz et al., *West's Federal Practice Manual* § 15,919, at 488 (2d ed. 1970). Thus, at the investigative stage, neither party may conduct discovery. 6 Alaska Administrative Code 30.320(c) (1995). Without access to discovery, in many cases it would be difficult or impossible for a complainant to prove that an employer's proffered reasons are pretextual. Consequently, a staff or executive director finding of no substantial evidence cannot be based on the fact that a complainant "failed" to meet the three-part *Eurdine/Thomas* test at the investigative stage. Nor should the staff or executive director attempt to determine at the investigative stage whether the non-discriminatory reasons proffered by the employer are legitimate. The Commission cannot adequately resolve factual disputes if the parties have not been given the opportunity to conduct discovery or cross-examine opposing witnesses.

Other courts have generally not examined what showing must be made to warrant a hearing under similar anti-discrimination statutory programs. However, another jurisdiction which has considered this issue has reached a similar conclusion. New Jersey has defined probable cause (the functional equivalent of "substantial evidence" as that phrase

is used in AS 18.80.110) as a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious [person] in the belief that the law is being violated." *Sprague v. Glassboro State College*, 161 N.J.Super. 218, 391 A.2d 558, 561 (1978) (quoting *People v. Marshall*, 13 N.Y.2d 28, 241 N.Y.S.2d 417, 420, 191 N.E.2d 798, 801 (1963)). In expounding on this definition, another court subsequently stated:

Much the same way as in the administration of criminal justice and probable cause for Fourth Amendment purposes, a proceeding to determine the existence of probable cause [in the discrimination context] is not an adjudication on the merits. Rather, it is an initial threshold procedure to determine whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits. The quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.... *When deciding probable cause, the Director was not permitted "1377 to resolve disputed facts. The Director was not concerned with whether the information collected during the investigation was true or false-only whether it was reasonable to accept it as true and if so whether it justified consideration on the merits. A common sense, practical and nontechnical standard is required for the probable cause determination.*

Frank v. Ivy Club, 228 N.J.Super. 40, 548 A.2d 1142, 1150 (App.Div.1988) (citations omitted) (emphasis added), *rev'd on other grounds*, 120 N.J. 73, 576 A.2d 241 (1990), *cert. denied*, 498 U.S. 1073, 111 S.Ct. 799, 112 L.Ed.2d 860 (1991). See also *New York State Div. for Youth v. State Human Rights Appeal Bd.*, 83 A.D.2d 972, 442 N.Y.S.2d 813, 814 (1981) (where there is no full investigation with opportunity for confrontation, the complaint must lack merit as a matter of law in order for division to dismiss complaint).

[15] As noted above, the Commission staff determined that Meyer established a prima facie case of discrimination. This determination was correct. ADF & G does not claim that it was error to determine that Meyer established a prima facie

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case of discrimination. Instead ADF & G argues that substantial evidence under AS 44.62.570 supported the decision to close Meyer's case and that the superior court erred in reweighing the evidence considered by the staff and director. The deferential standard of review on which ADF & G relies has no bearing in this case, because the staff and executive director incorrectly applied the *Burdine/Thomas* test at the investigative stage and the Commission never conducted the hearing mandated by statute. This error was one of law, to which we apply our independent judgment. See *supra*, note 3. [FN16]

FN16. The parties dispute the proper standard of review to be applied to a staff or executive director factual determination of no substantial evidence under AS 18.80.110. Because we hold the error was one of law, it is unnecessary to resolve this issue in this case.

IV. CONCLUSION

The decision to close Meyer's case is judicially reviewable. We AFFIRM the superior court's decision and REMAND to the superior court for the purpose of remanding this case to the Commission with directions to proceed with Meyer's complaint in accordance with AS 18.80.110-.120.

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END OF DOCUMENT

Conceptual amendment #2 - WITHDRAWN

to HCS 813.132(SA)

by Rep Gara

Define "discriminatory practice" to include
conduct of one (or more) occurrences.

AMENDMENT #4 - WITHDRAWN

OFFERED IN THE HOUSE

BY: REPRESENTATIVE GARA

TO: HCS SB132(STA)

Page 4, lines 15-19

Delete all material.

SB

134



Alaska State Legislature

Senator Con Bunde
Senate District P

Vice Chair: Senate Finance Committee
Chair: Senate Labor & Commerce Committee
Sponsor Statement for SB 134

"An Act relating to a pilot project to review and investigate certain complaints from victims of sexual assault in the first degree or sexual abuse of a minor in the first degree concerning actions of justice agencies."

SB 134 expands the Office of Victims' Rights (OVR) investigation and advocate rights and responsibilities. Currently, if a victim of sexual abuse or assault is unsatisfied with the speed or thoroughness of their investigation, he or she has no real recourse or options for seeking additional help.

SB 134 allows OVR to intercede on behalf of the victim if necessary in cases involving unclassified sexual assault or sexual abuse investigations. This legislation provides OVR with the same rights and responsibilities while handling these cases as they do with their current court cases. In SB 134, the attorneys with OVR are charged with determining if there has been negligence in the reported investigations and assisting the victim if so. Given the Office of Victims' Rights' current responsibilities, SB 134 is a natural extension in providing Alaskans with the greatest victim protection services possible. This legislation is a pilot program, set to end in September 2008. At this point, the Legislature along with OVR will determine if the investigation rights are necessary or if they should be expanded.

According to the Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR), *Alaska has the highest per capita rate of reported rapes*. In 2003, our 600 reported rapes equaled a rate of 92.5 rapes per 100,000 inhabitants. Michigan, ranking as the second highest state, had 54.1 reported rapes per 100,000 inhabitants. To summarize, Alaska's per capita rape rate is nearly 71% greater than that of the next highest state.

However, Alaska's rate of arrest is almost *half* the national average. On a national average, 28 arrests are made for every 100 reported rapes. In Alaska, 17 arrests are made for every 100 reported rapes (2003 UCR). Nationwide, it is calculated that a sex offender will go to prison for only 6 out of every 100 sexual assaults—per capita, convictions in Alaska are most likely less common.

Under current practices, crime victims and the public at large have no direct method to question the practices of police investigations or conduct. In larger municipalities, a victim may file a complaint; however, in most cases, all proceedings with the complaint are kept private within the police department and the victim has no formal recourse or resolution. In smaller, rural areas, there is no department in which to file the complaint. Often times, there are only one or two peace officers in the area. This truly leaves the victim without recourse. This bill provides crime victims a place to bring complaints regarding an officer's conduct and assures the public that officers are held accountable for unclassified sexual assault and sexual abuse investigations.

I urge your support of SB 134.



Alaska State Legislature

Senate Majority Web: www.akrepublicans.org

Sponsor: Senator Con Bunde
Current Version: CSSB 134 (JUD)
Contact: Lauren Rice, 465-4843

Fact Sheet for: Senate Bill 134

Short Title: POLICE INVESTIGATION STANDARDS/ARRESTS

Summary:

- Establishes a pilot program within the office of victim's rights to review cases in which the victim of first degree sexual assault or sexual abuse of a minor complains that the investigation has not been timely or thorough.
- Begins the pilot program Sept. 1, 2006 and ends it August 31, 2008.
- Gives the victim's advocate the jurisdiction to investigate the complaint and assist with contacting the justice agencies.
- Requires the victim's advocate to consult with, and report to the justice agencies.
- Gives the victim advocate the privileges and immunities set out in AS 24.65.190 and 24.65.200.
- Makes it a misdemeanor punishable by a fine of up to \$1,000 to hinder, or refuse to comply with, the victim's advocate in connection with this program.
- Requires the office of victim's rights to report its conclusions concerning complaints investigated under the program to the legislature by Sept. 30, 2008.

Benefits:

- Provides crime victims a place to bring complaints regarding an officer's conduct and assures the public that officers are held accountable.

Background:

- Currently, if a victim of sexual abuse or assault is unsatisfied with the speed or thoroughness of an investigation, he or she has no real recourse or options for seeking additional help. SB 134 allows the office of victim's rights (OVR) to intercede on behalf of the victim if necessary in cases involving unclassified sexual assault or sexual abuse investigations, and gives the office the same rights and responsibilities while handling these cases as it has with current court cases. Attorneys with OVR are charged with determining if there has been negligence in the reported investigations and assisting the victim if so.

Alaska's per capita rape rate is nearly 71% greater than that of the next highest state. However, Alaska's rate of arrest is almost half the national average. In larger municipalities, a victim may file a complaint; however, in most cases, all proceedings with the complaint are kept private within the police department and the victim has no formal recourse or resolution. In smaller, rural areas, there is no department in which to file the complaint. Often times, there are only one or two peace officers in the area.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 134(STA)
(S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to arrest; relating to investigation standards for police officers conducting criminal..." RDU: CRIMINAL
Sponsor: Senator Buntle Component: Criminal Justice Litigation
Requester: Senate State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 1 of the bill requires that arrests be made if a police officer hears a suspect make admissions. If this is interpreted to mean an immediate arrest, which is the interpretation given to a comparable provision in current law, that would cause significant legal problems for the prosecution which could be expected to increase the costs for the Department of Law. In discussions with the staff of the sponsor, it was not the intent, however, that an immediate arrest be made, and based on that interpretation this provision will have no fiscal impact on the department.

Prepared by: Kathryn Daughnetee, Director
Division: Administrative Services Division
Approved by: K. Daughnetee for Scott Jordstrand, Acting Attorney General
Agency: Department of Law

Phone: 465-3673
Date/Time: 3/17/05 9:07 AM
Date: 3/17/2005

FISCAL NOTE # 1

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 134(STA)

ANALYSIS CONTINUATION

Section 2 of the bill requires written investigative standards to be adopted by the Alaska Police Standards Council. This provision has the potential to make it easier for criminal defense attorneys at trial to accuse the police of incomplete investigations, as a way of arguing that reasonable doubt exists. This line of cross-examination is not so easily established today, and could complicate prosecutions by shifting the focus of the trial from the defendant's conduct to whether or not the police followed every investigative standard. This provision alone, however, is not expected to create a fiscal impact on the department.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSSB 134(STA)
 (S) Publish Date: 4/8/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act relating to arrest, relating to investigation standards for police officers conducting criminal..." RDU: Alaska State Troopers
 Component: AST Detachments
 Sponsor: Senator Bunde
 Requester: Senate State Affairs Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Passage of this bill will have an indeterminate, but significant fiscal impact on the Department of Public Safety and local law enforcement agencies.

The bill creates a mandatory arrest provision, and requires the Alaska Police Standards Council (APSC) adopt a set of minimum standard regulations for conducting criminal investigations. It also requires APSC to investigate complaints that police officers violated the criminal investigation standards and determine if the officers certification should be suspended, revoked, or if they may require additional training.

The mandatory arrest provision creates a significant burden on police agencies, the district attorney's office, corrections and the courts.

Prepared by: Lieutenant Todd Sharp Phone 465-3223
 Division: Alaska State Troopers Date/Time 3/17/05 2:27 PM
 Approved by: Commissioner William Tandeske Date 3/17/2005
 Agency: Department of Public Safety

FISCAL NOTE # 2

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 134(STA)

ANALYSIS CONTINUATION

The arrest of every single suspect who has made an admission to a police officer, or who the police officer has heard (on a recording) make an admission, will create huge monetary, investigative, and logistical problems for law enforcement. If this bill passes, arrests for criminal offenses would increase, but the quality of investigations would most likely decrease unless adequate funding was provided and the mandatory arrest provision was modified to allow some flexibility for the varied circumstances encountered during the investigation process.

Police will have to interrupt their investigations to effect arrests of suspects. It is usually impractical to just stop an investigation so an arrest can be made. Therefore, we'll be obligated to bring a court services officer or additional trooper to the scene to transport the prisoner.

Arrests of suspects early in an investigation will force other aspects of investigations to be completed in a hurry. An arrest triggers criminal rule 45, which requires the defendant be brought to trial within 120 days of the arrest. Even if cases can be successfully completed under such time constraints, it will require additional troopers or investigators be brought to bear in the event that there are witnesses or co-defendants that need to be interviewed. Making an arrest in some cases "tips off" co-defendants. Investigators would need to hustle to get the co-defendants interviewed before they could formulate or change their stories.

The bill doesn't differentiate between misdemeanor and felony offenses. Troopers and other peace officers frequently avoid making arrests for misdemeanors. Depending on the severity of the offense, and on the availability of law enforcement resources; an individual might not get arrested for driving with a suspended operator's license. The same situation applies with persons who admit that they have shoplifted or committed a minor assault. If law enforcement officers are required to make arrests for every offense they obtain admissions for, we will have incalculable reductions in efficiency and increases in prisoner transport costs.

In western Alaska specifically, police frequently avoid making arrests for minor offenses or for non-violent felony crimes. The provisions of this bill will also include village police officers and village public safety officers. The costs for emergency jail guards and prisoner transports will increase dramatically. This is due to the fact that Alaska State Troopers frequently ask those officers not to make arrests if the timing is difficult, if transportation is awkward, or if investigations need to be more fully developed. If the troopers are required to facilitate transportation and to investigate cases without regard to severity, major amounts of overtime will become necessary. It is easy to see that we could have "trooper A" working a misdemeanor case due to the mandatory arrest provision, and "trooper B" winds up having to be called in on overtime because the on-duty trooper is involved with the minor crime.

There will also be costs associated with rushing defendants to arraignments, accelerated time frames for preliminary hearings, grand jury and bail hearings.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSSB 134(STA)
 (S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Deot. Affected: Public Safety
 Title: *An Act relating to arrest; relating to RDU: Alaska Police Standards Council
investigation standards for police officers...* Component: Alaska Police Standards Council
 Sponsor: Senator Bunde
 Requester: Senate State Affairs Component No.: 519

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation will dramatically increase the workload and expand the duties and responsibilities of the Alaska Police Standards Council (APSC) under the Department of Public Safety (DPS). Although the fiscal impact will be significant, it is not yet possible to determine how many new positions might be necessary to carry out the mandate as set forth in section two of this bill.

Provisions of this bill calls for a mandatory arrest when a peace officer finds reasonable cause that a crime has been committed and the individual to be arrested has made an admission of guilt to the peace officer or that officer has listened to a recording of that admission.

Prepared by: Acting Executive Director Jim Meehan
 Division: Alaska Police Standards Council
 Approved by: Commissioner William Tandeske
 Agency: Department of Public Safety

Phone: 269-7408
 Date/Time: 3/17/05 2:21 PM
 Date: 3/17/2005

FISCAL NOTE # 3

STATE OF ALASKA
2005 LEGISLATIVE SESSION

BILL NO. CSSB 134(STA)

ANALYSIS CONTINUATION

Section 2 of this legislation directs APSC to adopt regulations setting minimum standards for police officers for conducting criminal investigations. This includes standards for crime scenes, interview process, collections of evidence, arrest decisions, incident reports, follow-up investigations and response, crime victim safety and support, and a standard for the actual delivery of results of the investigation to the prosecutor.

By using the word "shall" in sections 1 and 2 versus the permissive "may," the conclusion was drawn that the sponsor intended that no exceptions will be allowed under these newly created additions to existing statute.

In addition, APSC shall adopt a standard for investigating complaints that a police officer has violated the standards as adopted in section 2 of the bill. If APSC finds that an officer has violated those standards, they may then suspend or revoke a certificate issued or to require the officer to obtain additional training.

Section 3 was necessary to properly codify existing statute because of the addition of the newly created subsection in section 2 of this bill.

Each criminal case is unique and fluid in nature and often requires a wide range of investigative techniques to be employed by the law enforcement official. If officials have to abide by a written set of standards while conducting a criminal investigation, they could potentially miss something pertinent to a particular case because it wasn't in the prescribed matrix as set forth by APSC.

Due to heavy case loads at many police agencies across the state, quick decisions often have to be made as to how many assets can be put into any particular criminal case. Setting standards to be followed in all similarly classified cases might put an undue demand on often scarce resources. It could force agencies to use these precious resources where they might be better utilized elsewhere.

There are literally tens of thousands of crimes committed in Alaska each year that are investigated by the police. If only a fraction of a percent of those cases resulted in matters that APSC must review under the bill's mandate to "investigate complaints that a police officer has violated the standards adopted in (1) of this subsection," it would be far beyond the capabilities of current staffing.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSSB 134(STA)
 (S) Publish Date: 4/6/05

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to arrest;... RDU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Senator Bunde
 Requester Senate State Affairs Component No. 1031

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends the Code of Criminal Procedure to require peace officers to make an arrest when there is reasonable cause to believe a crime has been committed and the person to be arrested has admitted committing the crime either to an officer or in a recording. The Public Defender Agency's operations will be fiscally impacted because mandatory arrests will result in more criminal charges being prosecuted, thereby increasing the number of cases handled by the Agency. It is not possible to predict with any accuracy, however, the number of new cases assigned to the Agency, that will be generated as a result of these mandatory arrests, therefore an indeterminate note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 3/15/05 1:51 PM
 Approved by: Milee Tibbles, Deputy Commissioner Date 3/15/2005
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 5
 Bill Version: CSSB 134(JUD)
 (S) Publish Date: 4/12/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to investigator standards for RDU CRIMINAL
police officers conducting certain criminal investigations..." Component Criminal Justice Litigation
 Sponsor Senator Bunde
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

POSITIONS	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill requires the police standards council to set minimum standards for police officers in the conduct of investigation of sexual offenses.

 Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughnetee, Director Phone: 465-3673
 Division: Administrative Services Division Date/Time: 4/11/06 7:42 AM
 Approved by: Kathryn Daughnetee for David Marquez, Attorney General Date: 4/11/2006
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 6
 Bill Version: CSSB 134(JUD)
 (S) Publish Date: 4/12/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title: "An Act relating to investigation standar. for police officers conducting certain criminal investigations..." RDU: Alaska State Troopers
 Component: AST Detachments
 Sponsor: Senator Bunde
 Requester: Senate Judiciary Committee Component No.: 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2005) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Passage of this bill will not have a fiscal impact on the Division of the Alaska State Troopers (AST) within the Department of Public Safety.

This committee substitute requires the Alaska Police Standards Council (APSC) to adopt regulations setting minimum standards for conducting criminal investigations. It also requires APSC to investigate complaints that police officers violated the criminal investigation standards and determines if the officers certification should be suspended, revoked, or if they may require additional training.

Prepared by: Lieutenant Jim Helgoe Phone 907-269-4532
 Division: Alaska State Troopers Date/Time 4/11/06 4:40 PM
 Approved by: Commissioner William Tandeske Date 4/11/2006
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 7
 Bill Version: CSSB 134 (JUD)
 (S) Publish Date: 4/12/06

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An act relating to arrest;... RLU Legal and Advocacy Service
 Component Public Defender Agency
 Sponsor Sen. Bunde
 Requester S(Fin) Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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 (FY2006) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill requires the Alaska Police Standards Council to adopt regulations setting standards for police officers conducting investigations. This bill does not affect Agency operations.

Prepared by: Quinlan Steiner, Director Phone 907.334.4414
 Division Public Defender Agency Date/Time 04.12.06 1:20 p.m.
 Approved by: Mike Tibbles, Deputy Commissioner Date _____
 Agency Administration

Sample of Statewide Protocols for Responding to Sexual Assault Crimes

State	Document	Agency	Collaborators	Authority	Notes
Alaska	Alaska Statewide Protocols For Sexual Assault Response Teams	Dept. of Public Safety and the Alaska Network on Domestic Violence and Sexual Assault	State Troopers, public health workers, victim's advocates, chiefs of police, and representatives of district attorney's offices and sexual assault response teams	Powers of the Department of Public Safety	SART teams are established to 1) meet the immediate needs of the victim with crisis intervention and support services; 2) provide a joint, effective, sensitive approach to victims of sexual assault; 3) conduct an investigation of the crime; 4) document and preserve forensic evidence for prosecuting the perpetrator of the crime.
	www.andvsa.org/SARTProtocols.pdf				
Arizona	State Plan on Domestic and Sexual Violence	Commission to Prevent Violence Against Women	Governor's Commission, multiple agencies represented	Executive Order	The Commission's report offered fifty far reaching recommendations related to responding to sexual assault, including actions of criminal justice agencies.
	www.governor.state.az.us/cyf/womens/stateplan.htm				
Georgia	Sexual Assault Protocols (multiple)	Judicial Circuits (all)	Sheriff, District Attorney, Chiefs of Police, County Health Officers, Citizen Representative, Advocacy Groups, Health Care Professionals	Georgia Statutes 14.24.1-2 (SB 457 (2004))	State statute requires formation of local committees to develop protocols.
	www.legis.state.ga.us/legis/2003_04/versions/sb457_As_passed_Senate_3.htm				
Illinois	Model Guidelines and Sex Crimes Investigation Manual for Illinois Law Enforcement	Illinois Law Enforcement Training and Standards Board	Law enforcement, victim's advocates	Powers of the Standards Board	Comprehensive law enforcement response to sexual assault victims and subsequent investigatory procedures.
	www.ptb.state.il.us/publications/sexassault.pdf				

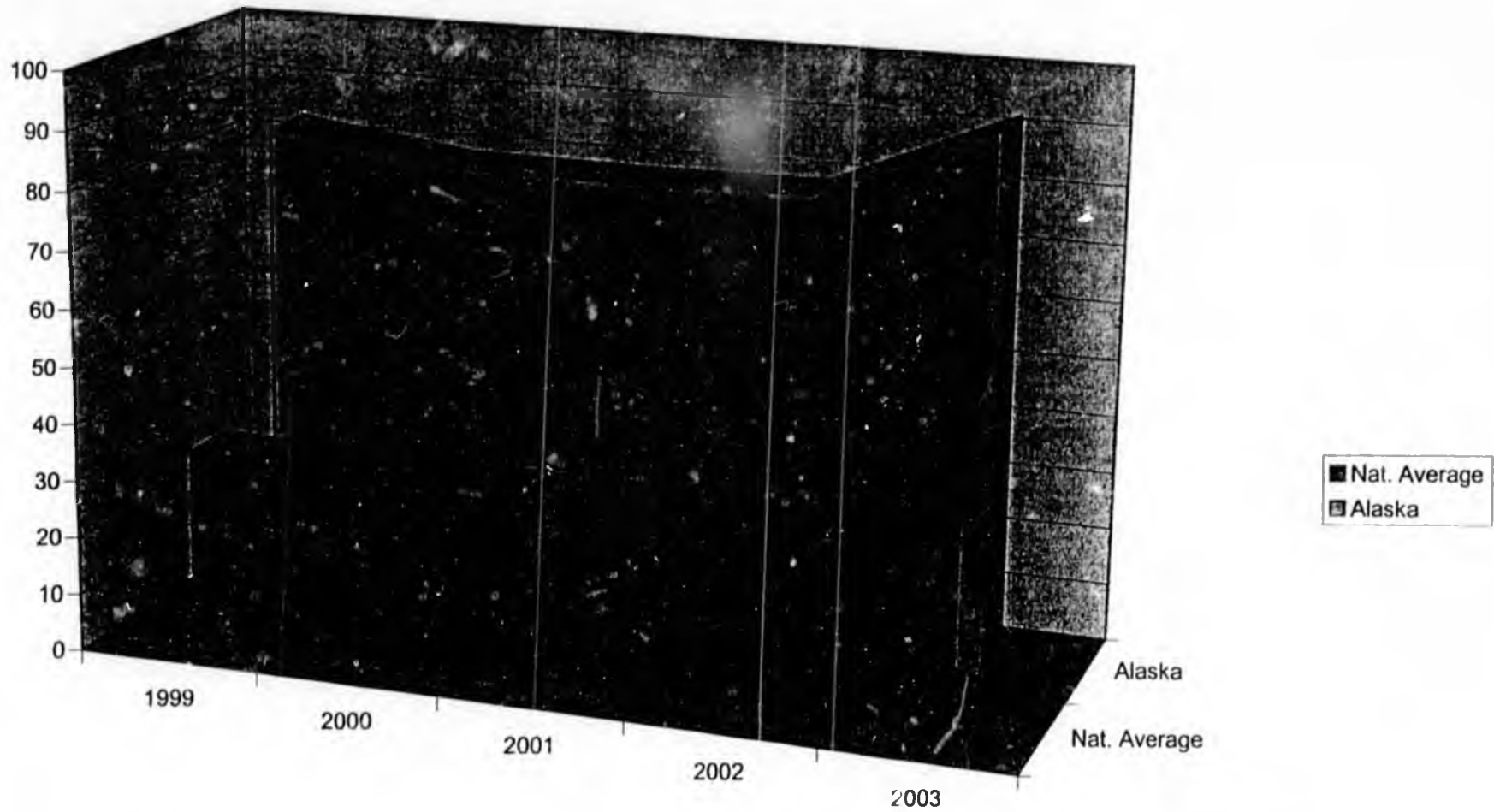
Sample of Statewide Protocols for Responding to Sexual Assault Crimes

State	Document	Agency	Collaborators	Authority	Notes
Michigan	Standard Recommended Procedures for the Emergency Treatment of Sexual Assault Victims	Michigan Sexual Assault Protocol Committee	Michigan Department of State Police and the Wayne County Prosecutor's Office with input from representatives of various agencies	Sec. 703 of Public Act 51 (2001)	Includes sections on initial law enforcement response, evidence collection, and treatment of victims, among others.
	www.courts.michigan.gov/mjl/resources/sabb/AppendixD.PDF				
New Jersey	Report Unavailable	Advisory Council Against Sexual Violence	Forty members representing a variety of agencies	Executive Order	The Council was directed to investigate virtually every aspect of sexual assault laws and responses to victims and to return recommendations for improvements
	www.state.nj.us/infobank/circular/eom40.htm				
New York	Sexual Assault Reform Act (SARA)	State Assembly	Unknown	New York Laws 2000, Chapter 1	The Act directed implementation of 51 separate provisions, including the statewide protocols for Sexual Assault Forensic Examiners.
	www.health.state.ny.us/nysdoh/safa/2004/safestandards2004attachment07.pdf				
Ohio	Ohio Protocol For Sexual Assault Forensic and Medical Exams	Ohio Public Health Council	Attorney General's Office, Bureau of Criminal Identification and Investigation, Ohio Coalition On Sexual Assault, American Academy of Pediatrics, Ohio Committee on Child Abuse and Neglect, Ohio Chapter of the International Association of Forensic Nurses, and the Ohio Chapter of the American College of Emergency Physicians	Ohio Public Health Council, which is charged by the Ohio General Assembly to establish procedures for gathering evidence for victims of sexual offenses. (ORC section 2907.29)	Use of this protocol is a requirement of the Ohio Attorney General's office in order for hospitals to be eligible for reimbursement for costs of evidence collection from the Ohio Victims of Crime Compensation Fund.
	www.odh.state.oh.us/ODHPrograms/SADV/sadvprot.htm				

Sample of Statewide Protocols for Responding to Sexual Assault Crimes

State	Document	Agency	Collaborators	Authority	Notes
Oregon	Multiple, see website	Attorney General's Sexual Assault Task Force	Fifty representatives of law enforcement, public health, victim's advocates, legislature, and faith community	Powers of the Attorney General	The Task Force is ongoing, operating in a number of areas including drafting legislation.
Texas	Sexual Assault Prevention and Crisis Services Act	The Sexual Assault Prevention and Crisis Service, Attorney General	Unknown	Texas Code 420.001-031	Attorney General may distribute grants to promote community responses to sexual assault victims; directs the Crisis Service to develop evidence collection protocols.
<p>Notes: The states listed are those easily identified through an internet search using the terms "state sexual assault protocol." This table, therefore, should not be considered exhaustive of states that have developed statewide protocols for responding to crimes of sexual assault.</p>					

Forcible rapes per 100,000



	1999	2000	2001	2002	2003
■ Na. Average	34.16538462	33.42692308	32.62115385	34.08846154	33.68846154
■ Alaska	83.5	79.3	78.9	79.4	92.5

Forcible Rapes in Western States, 2003

State	Population	Forcible Rapes	Rapes per 100,000 Inhabitants
Alaska	648,618	600	92.5
New Mexico	1,874,614	937	50.0
Washington	6,131,445	2,864	46.7
Colorado	4,550,688	1,893	41.6
Nevada	2,241,154	874	39.0
Utah	2,351,467	892	37.9
Idaho	1,366,332	508	37.2
Oregon	3,559,596	1,218	34.2
Arizona	5,580,811	1,856	33.3
Hawaii	1,257,608	367	29.2
California	35,484,453	9,994	28.2
Montana	917,621	246	26.8

Source: Federal Bureau of Investigation, *Uniform Crime Report*, Table 5: "Crime in the United States, by State, 2003;" available online at www.fbi.gov/ucr/03cius.htm.

LEGISLATIVE RESEARCH REPORT

JANUARY 18, 2005



REPORT NUMBER 05.088

STANDARDIZATION OF SEXUAL ASSAULT INVESTIGATIONS

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

SEXUAL ASSAULT IN ALASKA.....	1
OTHER STATES' INVESTIGATORY PROCEDURES	2
STANDARDIZATION OF INVESTIGATIONS AT THE LOCAL LEVEL: SEXUAL ASSAULT RESPONSE TEAMS	3
SEXUAL ASSAULT RESPONSE TEAMS IN ALASKA.....	4
Limited Resources and SARTs: The Anchorage Police Department.....	4

You asked about states' laws on investigating sexual assaults. Specifically, you asked that we determine if other states have codified investigation standards and procedures for sexual assaults. You asked that we focus our research on laws setting standards for determining which cases must be investigated.

Our research found no states' laws that universally codify policies for determining which sexual assault cases must be investigated. Although the sensitive nature of sexual assault investigations may appear to provide circumstances in which mandatory investigation policies make sense, the U.S. Department of Justice, Office of Victims of Crime (OCV), discourages standardization of such procedures across legal jurisdictions. Instead, the OCV advocates local promulgation of policies and procedures that take into account the needs of communities and the availability of law enforcement and resources for victims.

SEXUAL ASSAULT IN ALASKA

According to the Federal Bureau of Investigation (FBI), Uniform Crime Report (UCR), Alaska holds the grim distinction of having the highest per capita rate of rape reported to law enforcement agencies.¹ In 2003, the 600 reported rapes in the state represented a rate of 92.5 rapes per 100,000 inhabitants. By comparison, Michigan, the state with the second highest rate,

¹ The UCR contains statistics on crimes as reported to the FBI by more than 17,000 law enforcement agencies covering about 93% of the total U.S. population. The 2003 UCR can be found online at www.fbi.gov/ucr/ucr.htm.

had 54.1 rapes per 100,000 inhabitants. In other words, Alaska's per capita rate of rape is nearly 71% greater than that of the next highest state. Sadly, other forms of sexual assault in the state are represented by similarly frightening statistics.

The damage caused to victims and society by sexual assaults is compounded by the fact that arrests for such offenses are relatively rare. The 2003 UCR shows that about 28 arrests are made for every 100 forcible rapes reported to law enforcement agencies in the U.S.² The arrest rate in Alaska was even lower at approximately 17 arrests for every 100 forcible rapes reported.³ Using Bureau of Justice statistic, the victim's advocacy group, the Rape, Abuse & Incest National Network (RAINN), calculates that an offender will go to prison for only 6 out of every 100 sexual assaults nationwide. Simply put, in the U.S. it is relatively rare for perpetrators of sexual assault to spend time in jail—such convictions may be even less common in Alaska.

OTHER STATES' INVESTIGATORY PROCEDURES

Our research found no states' laws that universally codify policies for determining which sexual assault cases must be investigated. A number of states require police officers to inform victims of their rights and the resources available to them.⁴ Some states mandate that certain agencies receiving public funds report cases of sexual assault involving persons under their care. These laws are generally directed at vulnerable populations such as senior citizens, children, or disabled persons. Such laws, however, mandate reporting of sexual assaults rather than the actions that law enforcement agencies take to investigate such reports. Where they are in place, statewide standards of investigation are most often the policies of a state's primary law enforcement agency—state patrols, bureaus of investigation, troopers, or state police, for instance. Beyond these organizations, investigatory policies and procedures are largely promulgated at the county, municipal, or local level.

Understandably, standardization of investigatory procedures is, on its face, an appealing approach. This is particularly true in sexual assault cases where, as the U.S. Department of Justice, Office of Victims of Crime (OVC) states, "in the investigation and prosecution of most sexual assault cases, the role of the victim is much more important than in other crimes since the victim is usually the sole witness to the crime" and often has crucial forensic evidence on his or her body. Further, the OVC indicates that the approach of first responders to sexual assault victims can "significantly affect whether the victims begin the road to recovery or suffer years of trauma and anguish."⁵ As such, the OVC considers it critical that first responders, who are often law enforcement officers, approach victims in a sympathetic yet systematic manner. Nonetheless, the OVC encourages policymakers to use caution when considering mandating investigatory policies across legal jurisdictions, as indicated by the following statement.

² In 2003, 93,433 forcible rapes were reported, for which 26,350 arrests were made. According to advocacy groups such as the Rape, Abuse & Incest National Network (RAINN), typical rapists commit seven offenses prior to being arrested. As a result, it is likely that, in a significant proportion of arrests, the offender has committed a number of the assaults reported to police. The perpetrators arrested may, therefore, may account for a larger proportion of assaults than the "arrests per 100 reported rapes" figures appear to suggest.

³ In 2003, 600 forcible rapes were reported in Alaska for which 103 arrests were made.

⁴ See, for example, Arizona Revised Statutes §13-4401—13-4439, which outlines Crime Victims' Rights in the state.

⁵ U.S. Department of Justice, Office of Victims of Crime, "First Response to Victims of Crime 2001," Section III; available online at www.ojp.usdoj.gov/ovc/publications/infocenters/firstrep/2001/vicsexasft.html.

The United States has numerous police and prosecutorial jurisdictions. No one protocol can be developed that fits the needs of all these jurisdictions. It might be feasible to develop special sex crimes investigation units in large law enforcement agencies or in large metropolitan areas, but in small jurisdictions, this may not be feasible. Likewise, large metropolitan areas have many law enforcement agencies as well as major medical centers, rape crisis centers, and other victim service agencies. Small law enforcement agencies are often located in towns or rural jurisdictions that lack ready access to medical centers and to victim services. Large agencies often have victim advocates, but small agencies rarely do.

Thus, the major issues in developing a protocol in large metropolitan areas or in large law enforcement agencies are likely to be quite different than those in rural areas and in small agencies. Although victims' needs are the same and the elements of effective investigation and prosecution are the same irrespective of the jurisdiction, the protocol itself should reflect the circumstances within different jurisdictions.⁶

STANDARDIZATION OF INVESTIGATIONS AT THE LOCAL LEVEL: SEXUAL ASSAULT RESPONSE TEAMS

Over the past two decades, communities nationwide have increasingly standardized their approaches to both supporting survivors of sexual assault and investigating sex crimes through the use of Sexual Assault Response Teams (SARTs). A SART is usually comprised of at least one representative from law enforcement, a community-based victim's advocacy group, and a sexual assault nurse examiner (SANE), who is trained specifically to, among other things, collect forensic evidence of the crime.⁷ Members of the team strive to employ a "victim-centered" approach to assisting survivors and investigating the crime by meeting the needs of the victim while ensuring all investigatory processes are completed.

As evidence supporting the positive outcomes related to the use of SARTs for both assault survivors and law enforcement has mounted, the programs have rapidly expanded from just a few communities in the mid-1980s to over 300 programs by 1999. Because SARTs allow law enforcement, victim's advocates, and forensic nurses to closely coordinate their activities, victims are better supported and investigations are more thorough and precise. The net result, according to the OVC, is faster, more complete recovery from the trauma of the assault for the victim and higher rates of successful prosecution for law enforcement. The OVC actively promotes SART programs and expects their numbers to expand rapidly in the coming years as more communities recognize their effectiveness.⁸

⁶ U.S. Department of Justice, Office of Victims of Crime, "National Victim Assistance Academy: Foundations in Victimology and Victims' Rights and Services," Chapter 10, 2002; available online at www.ojp.usdoj.gov/ovc/assist/nvaa2002/welcome.html.

⁷ SART and SANE are often used interchangeably to describe victim-centered, community-based, programs for responding to sexual assaults. For the purposes of this report, we use the acronym SART.

⁸ Kristin Little, "Sexual Assault Nurse Examiner (SANE) Programs: Improving the Community Response to Sexual Assault Victims," U.S. Department of Justice, Office of Victims of Crime, OVC Bulletin, April 2001. We include a copy of this publication as Attachment A.

Statewide SART programs, while still relatively rare, are becoming more common. A number of states—New Jersey and Texas, for example—are developing SART programs through the offices of the states' attorneys general. In addition, a number of statewide law enforcement agencies are adopting standards that include SART programs. The Alaska State Troopers, for example, have promulgated protocols for implementing SARTs statewide.⁹ Without doubt, however, locally based SART programs are still the most common.

SEXUAL ASSAULT RESPONSE TEAMS IN ALASKA

The U.S. Department of Justice, Sexual Assault Resource Center, identifies thirteen SART programs in the state of Alaska.¹⁰ Although such programs have been shown to be effective, their implementation depends largely on the same limited pool of resources, particularly with regard to funding, as other public safety agencies and programs. The involvement of community-based advocacy groups may provide a portion of the resources necessary, but public dollars generally remain a primary funding mechanism.

LIMITED RESOURCES AND SARTS: THE ANCHORAGE POLICE DEPARTMENT

The SART program in the Anchorage Police Department (APD) clearly illustrates the challenges of limited resources. In October 2003, the Anchorage Police Department published a "60-Day Management Report," which discussed a number of departmental problems. Among the findings of the report was that the Department's Special Victim's Unit (SVU), which investigates sexual assaults in the municipality, reviewed 374 cases. According to the APD, when such cases are reported, the victim is brought to the SART center where a nurse examiner collects evidence and the SVU detective conducts an interview in the presence of a community-based victim's advocate. The APD indicates that the system is an excellent one. Nonetheless, because of staffing shortages, 124 of the cases reviewed by the SVU—about one-third—were not assigned for further investigation. Even at this level of investigation, the APD estimates that its SVU staff worked approximately 2,200 hours of combined overtime in 2003.

Not surprisingly, the result of fewer investigations is fewer arrests: in 2003, the APD made about 14.75 arrests for every 100 rapes reported compared to the national rate of about 28 arrest per 100 reported rapes.¹¹ It appears that implementing standardized investigation procedures on a widespread basis may require the identification of additional resources.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

⁹ We include a copy of the Alaska Department of Public Safety's statewide SART protocols as Attachment B. In addition, we include a statewide guide for developing SARTs from Kentucky and a SART standards guide from San Diego county, as Attachment C. We believe both of these publications are good examples of approaches to forming SARTs.

¹⁰ At least one SART program is currently in place in each of the following communities: Anchorage, Bethel, Dillingham, Fairbanks, Homer, Kodiak, Nome, Palmer, Sitka, Soldotna, Surrey, and Wasilla. It is unclear the degree to which each of these programs follows the Department of Public Safety's protocols or other SART models. We include a listing of these programs and contact information for each as Attachment D.

¹¹ We include a copy of relevant excerpts of the "APD 60-Day Management Report" and relevant crime statistics as Attachment E. Further crime statistics from the APD are available online at www.muni.org/apd1/stats.cfm.

Attachment B

Alaska Department of Public Safety, Alaska Statewide Protocols for Sexual
Assault Teams

ALASKA STATEWIDE PROTOCOLS FOR SEXUAL ASSAULT RESPONSE TEAMS

I. Purpose:

These protocols are designed to provide standardized structure for the development, training, and implementation of sexual assault response teams throughout the state of Alaska.

II. Introduction:

The Sexual Assault Response Team (SART) is a multi-disciplinary team developed to improve services to victims of sexual assault. The team is comprised of advocates from the local victim service center, law enforcement officers, and specially trained health care professionals. These team members provide a coordinated, efficient, and supportive response to victims. The benefit of the SART is the ability to provide a full range of comprehensive services to victims who have made the decision to report a sexual assault. This occurs by providing immediate crisis intervention, team interviews, forensic examination, and follow-up as needed. This coordinated response leads to a bond between the victim and the advocate, enables law enforcement to receive a foundation of facts regarding the case, and provides for forensic evidence for prosecution of the sexual offender.

SART teams are established to:

- A. Meet the immediate needs of the victim with crisis intervention and support services.
- B. Provide a joint, effective, sensitive approach to victims of sexual assault.
- C. Conduct an investigation of the crime.
- D. Document and preserve forensic evidence for prosecuting the perpetrator of the crime.

NOTE: Communities that will incorporate their child sexual abuse response protocols with their local sexual assault response team should reference the Alaska Interdepartmental Child Abuse Agreement. This document is available from: The Alaska Children's Cabinet, P.O. Box 112100, Juneau, AK, 99811; phone 907-465-4870, fax 907-465-8638.

III. Steering Committee:

The purpose of the steering committee is to create a structure that provides for initial and ongoing management of the response team. This serves as the structure for addressing any concerns that may arise as the SART progresses. Each SART should have a steering committee comprised of a representative of the following disciplines: local victim advocacy, law enforcement, and health care. The steering committee should develop a method of quality control that may include team meetings or some other problem-solving process. Membership of this group should also include all law enforcement entities in the area, a representative of the District Attorney's office, and others from the community that work as members of a coordinated response to sexual assault cases.

IV. Team Structure:

A. Members

Protocols must clearly identify members of the response team. Members should include:

1. A victim advocate
2. A law enforcement officer
3. A health care professional

B. Roles of Team Members:

1. Advocate:

Advocates provide support to the victim, answer any questions the victim may have, and inform the victim of the process for the interview and examination. The advocate does not participate in the gathering of evidence, fact-finding, or the investigation of the assault. Rather, their focus is placed on insuring that the victim is supported throughout the process. As advocates often provide individual and group support for months and sometimes years to come, the initial bond that develops between advocate and victim is critical. Advocates do not provide an opinion on the merits of the case or participate in conducting the interview, and generally will not testify in court.

2. Law Enforcement:

Law enforcement's role is to investigate and report the facts of the case. Law enforcement will be responsible for the immediate safety needs of the victim; interviewing the victim; investigation of the crime; identifying, arresting, and/or referring charges on the suspect; arranging for forensic examination of the suspect when necessary, writing a report, participating in court proceedings, and all other duties normally associated with investigative and law enforcement functions.

3. Health Care Professional:

The health care professional's role is to provide the health care component of the SART. They perform the physical assessment of the sexual assault victim; collect, document, and preserve forensic evidence; provide information and referral to the victim on health care matters; document the examination in the medical record; and present expert testimony in court.

V. Training Recommendations:

Cross training of the roles and responsibilities of each team component is strongly recommended in order to maintain the multi-disciplinary approach and insure its success. This shall include:

A. Advocate training includes:

1. An overview of the forensic interview, law enforcement investigation, forensic examination, and the legal process as related to sexual assault
2. Observation of a sexual assault trial

3. Supporting preceptorship needs of other team members

B. Law Enforcement training includes:

1. An overview of the forensic examination and victim advocacy process.
2. Sexual assault investigation
3. Interviewing techniques
4. Supporting preceptorship needs of other team members

C. Health Care Professional training includes:

1. The minimum requirements as recommended by the Forensic Nursing Association of Alaska Standards of Practice.
2. Supporting preceptorship needs of other team members.

VI. Overall Structure:

This section of the protocol should include:

A. Facility Location:

1. Identify facility that will be used for the forensic examination and interviews
2. Specifications regarding physical layout of the designated area to insure:
 - a) Treatment priority given to victim
 - b) Privacy for victim
 - c) Safety of victim
3. Identify the contact person at the facility
4. Clear procedures for initiating and implementing call-out response
5. Insure location maintains all necessary supplies for the examination

B. Health Care Professionals

1. Completed didactic training and preceptorship for health care professional prior to performing examinations as the primary health care professional
2. Documentation of valid medical/nursing license in the state of Alaska

C. Law Enforcement

1. Identify law enforcement entity that will be responsible for each location
2. Identify the contact person at law enforcement agency
3. The officer will, when possible, complete training as outlined in protocols prior to responding to a SART call

D. Victim Advocacy

1. Identify the contact person at the victim advocacy agency
2. The advocate will, when possible, complete training as outlined in protocols prior to responding to a SART call

E. Debriefing

1. It is strongly recommended that team members develop a process for debriefing each case.

VII. Service Availability

Identify service parameters, which should include:

- A. Hours of operation
- B. Contact person for each of the service areas
- C. Procedures for outlying areas to access the team
- D. Ages served
- E. Military or other regional considerations
- F. Geographic areas
- G. Procedures for examinations of victims
 - 1. To be provided by a health care professional
 - 2. Timeline
 - 3. Chain of evidence
 - 4. Standing orders
- H. Procedures for examinations for perpetrators:
 - 1. To be provided by law enforcement or health care professional
 - 2. Location of perpetrator examination
 - 3. Chain of evidence

VIII. Call-Out Procedures:

Procedures must be created to insure a smooth and effective call-out response. The procedures must:

- A. Clearly identify procedure for activating a response
- B. Identify contact person for each component of SART
- C. Identify appropriate timeline for call-out response

IX. Forensic Examination Consent Form:

This section of the protocols must address:

- A. Consent for examination, evidence, and photographic evidence release
- B. Consent for communication between team members
- C. Consent forms must clearly define waiver of privacy

X. Interview Process:

Guidelines should address the following:

- A. That medical priorities, victim needs, and safety considerations take precedence over the forensic interview and forensic examination
- B. That all efforts have been made to have all team members present for the interview
- C. That whenever possible, the victim should be given the opportunity to speak with a victim advocate prior to the start of the interview, to explain:
 - 1. The victim's rights regarding the interview and examination
 - 2. The process and structure of the interview and the examination
 - 3. The process of any audio/video taping that will occur

XI. Payment of Services:

This section of the protocols should include:

- A. Procedure to ensure that victims will not be charged for forensic examinations either directly or through insurance billing
- B. Procedure for covering costs of injuries or medical needs other than those of the forensic examination.

XII. Violent Crimes Compensation:

This section of the protocols should include the following:

- A. That law enforcement is to provide notice of Violent Crimes Compensation
- B. That the advocate can provide assistance in completing forms, and provide contact numbers and referrals for additional information

XIII. Examination:

This section of the protocols must include:

- A. Specific procedures outlining the steps for forensic examination
- B. Procedures for follow-up care and referral
- C. Standing orders

XIV. Confidentiality:

This section of the protocols should address the following:

- A. That forensic examination records will be maintained in a separate and secure location
- B. A procedure for processing subpoenas, search warrants, and court orders
- C. Disclosure of the information that is required by law

NOTE: Advocates are generally excluded from disclosing information.

XV. Chain of evidence:

This section of the protocols must include:

- A. Procedure for forensic examiners and law enforcement to insure chain of evidence is maintained.

XVI. Timeline for Examinations

This section of the should address the following:

- A. It is strongly recommended that the forensic exam be completed as soon as possible.
- B. Suitability for a forensic examination should be decided on a case by case basis.



Assessing Justice System Response to Violence Against Women : A Tool for Law Enforcement, Prosecution and the Courts to Use in Developing Effective Responses

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Notes

A product of the *Promising Practices Initiative* of the STOP Violence Against Women Grants Technical Assistance Project.

The goal of the Technical Assistance Project is to strengthen the criminal justice system's response to victims of sexual assault, domestic violence and stalking. The project is a collaboration of the Battered Women's Justice Project and the National Resource Center on Domestic Violence, a project of the

Pennsylvania Coalition Against Domestic Violence.

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Introduction

For many of us, the adage, "there is no place like home" conjures up images of warm, comfortable, family scenes. For millions of women in the United States, however, this phrase has a very different meaning. For these women, home is a place of intimidation, fear, and violence. **Domestic violence continues to be the leading cause of injury to women. In fact, women are at greatest risk of becoming a victim of violent crime in their own homes.** The violence is not just debilitating -- the injuries can be deadly. *According to the 1995 FBI's Uniform Crime Reporting system (URC), 26 percent of female homicides are perpetrated by husbands, ex-husbands, or boyfriends (for those cases in which the victim-offender relationship is known).*

Even if she is free of physical or sexual abuse in an intimate relationship, a woman faces the risk of being sexually assaulted by an acquaintance or stranger. **Sexual assault is acknowledged to be the most under-reported violent crime on which national statistics are kept.** Even so, *the redesigned 1992-1993 National Crime Victimization Survey (NCVS) estimated approximately 500,000 women are the victims of some form of rape or sexual assault each year. In 75 percent of the cases, the victim knows the offender.*

Stalking is another violent crime that plagues many women. Only recently has the justice system and the public recognized stalking as a distinct and serious crime, rather than an antecedent to other crimes. Beyond highly publicized cases involving celebrities and political leaders, there is still little understanding of stalking as a crime, and few people acknowledge it as one that affects "ordinary" people. **In contrast to these highly publicized cases, the majority of stalkers know their victims, and much stalking occurs within the context of domestic violence, particularly when victims try to leave their batterers.** *A survey, jointly sponsored by the National Institute of Justice and the Centers for Disease Control and Prevention, concluded that one out of every twelve American women has been stalked sometime during her life.*

Perpetrators of domestic violence, sexual assault and stalking discriminate against no one. Women of all ages, races, cultural and social backgrounds are victims of these violent crimes¹. The impact of these crimes extends to families, the workplace, and all of our communities.

Over the last two decades, dramatic changes have occurred in the public response to violence against women. Prior to the mid-1980's, the failure of the justice system to take these crimes seriously reinforced the escalating, recurring and often lethal nature of domestic violence and stalking. In this regard, the law - and those responsible for upholding the law - reflected society's tolerance of intimate violence, its prejudices against victims of violence against women, and its ignorance of the complexities of the issues implicit in these crimes.

In the mid-1970's, survivors and advocates gave voice to women who had previously been silent. The battered women's and anti-rape movements demanded additional legal protections and a full range of services for victims. By the late 1970's, a limited number of jurisdictions had initiated legal reforms. Some states passed new civil and criminal laws giving greater protection to victims and enforcing penalties on perpetrators. Criminal justice agencies, some funded under the Law Enforcement Assistance Agency ("LEAA") Family Violence Program, trained personnel, developed innovative policies, and modified jobs to comply with the new laws.

As research began to document the relationship between violence at home and violence in our society as a whole, the criminal justice system looked for ways to stop violence against women. Ongoing advocacy by women's agencies representing battered women and sexual assault victims helped communities understand an effective response requires systematic and coordinated change, involving both justice agencies and community providers.

While an increasing number of jurisdictions have undertaken initiatives in recent years to respond to sexual assault and domestic violence, the efforts are sporadic. Laws protecting victims and holding offenders accountable vary, limited numbers of criminal justice personnel are trained to enforce the law, and only some communities have embraced a coordinated response to reduce violence against women with clear strategies for intervention.

The Violence Against Women Act

In 1994, Congress passed and President Clinton signed the landmark Violence Against Women Act (VAWA) to enhance the ability of States and Territories (hereinafter "States") to respond to violence against women. The legislation was designed to begin to close existing gaps and commit the Federal Government to an aggressive response to this epidemic. The VAWA creates new Federal laws, expands existing programs and establishes several new grant programs.

One of the grant programs was established as a formula grant program, designated STOP (Services, Training, Officers, and Prosecutors). The STOP program is administered by the Violence Against Women Grants Office (VAWGO), Office of Justice Programs (OJP), U.S. Department of Justice. These grants "assist States, Indian tribal governments, and units of local government to develop and strengthen effective law enforcement and prosecution strategies to combat violence against women, and to develop and strengthen victim services in cases involving violent crimes against women."

The VAWA defines violence against women as sexual assault, stalking, and domestic violence. It outlines seven specific purpose areas that can be funded with STOP dollars. It also requires states to allocate funds in 25 percent allotments in at least three categories (victim services, law enforcement and prosecution).

Understanding the importance of building a coordinated community response, the Act mandates each State develop a plan to implement the STOP program. The VAWA recognizes the key role community-based advocates have and must continue to play in developing effective strategies to stop violence against women. The Act stipulates each State must "consult and coordinate with nonprofit, non-governmental victim service programs, including sexual assault and domestic violence victim services programs."

The Promising Practices Initiative

In 1997, VAWGO, in cooperation with the STOP Violence Against Women Grants Technical

Assistance Project (STOP T.A. Project), launched an initiative to identify and develop promising practices. This initiative is geared to help communities respond to the challenge of stopping violence against women. Thus far, expert panels have been convened to identify key issues and practices, a national survey of hundreds of practitioners was conducted, names and descriptions of over five hundred programs have been submitted, and in-depth interviews have been conducted.

In the spring of 1998, VAWGO will publish a comprehensive manual to help states and their sub-grantees draw on the most promising practices in their fields as they undertake implementation of the VAWA.

The manual will contain chapters on victim safety planning and practices responding to violence against women from the perspective of law enforcement, prosecution, the courts, and victim services. It will also offer a chapter on practices aimed at building coordinated responses to violence against women. Practice descriptions will identify a problem, explain how the practice addresses the problem, briefly describe the components that make the practice work, and propose an action plan to put the practice in place. The descriptions will highlight the barriers under-served populations confront when using the justice system and offer strategies to overcome these barriers.

Practices or specific elements of a practice will be illustrated by program examples. These programs will attest to the usefulness of the practices in saving lives, reducing violence, promoting victim recovery, and holding offenders accountable for their crimes.

In anticipation of the publication of the first volume, VAWGO is releasing the following assessment tool for jurisdictions to use in developing effective responses by law enforcement, prosecution, and the courts. The response checklists are not intended to be exhaustive; rather, they highlight some of the key elements of practices that will be fully explored in the manual.

Interspersed throughout the checklists are boxes defining the principles that undergird and enhance all of the proposed practices. The principles speak to the underlying values that should direct the design and implementation of any strategy to improve a community's response to victims of domestic violence, sexual assault and stalking. The values include: promoting the safety of women and their families; providing assistance to women to regain control and autonomy in their lives; and holding offenders accountable. These guiding principles of practice will form the foundation of the manual and are woven into the elements of the response checklists.

The checklists are accompanied by selected programs that have successfully incorporated some of the elements of the responses, often utilizing innovative, and potentially replicable strategies. The STOP T.A. Project office has copies of materials that are referred to in the program descriptions and will make them available upon request.

An additional section on the civil justice system response to domestic violence is also included, highlighting on legal representation programs for battered women and law school initiatives.

Readers who wish to comment on the checklists or recommend other practices or programs are encouraged to contact the STOP T.A. Project. Their office can be reached by phone (800-256-5883 or 202-265-0967 in the District of Columbia metropolitan area), fax (202-265-0579), or e-mail (STOPGrants_TA_Projects@csgi.com).

Unique Nature of Violent Crimes Against Women

The majority of violent crimes against women are committed against intimate or known partners. These non-stranger crimes differ significantly from stranger assaults in that the violence perpetrated against the same victim often continues and escalates over time.

In all instances of criminal behavior, the justice system seeks to apprehend and sanction the offender. In domestic violence related cases, the justice system must also take steps to prevent further abuse to the known victim, protect that victim, and connect her with community services which enhance her safety and well-being. The intervention by the justice system may be ongoing and change over time.

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Agency Response Checklists and Program Examples

The following checklists describe the basic roles of law enforcement, prosecution and the courts in responding to violence against women. They also show where agencies coordinate and collaborate with other justice system agencies and community-based advocacy programs.

Review the following lists, checking off responses your jurisdiction performs with success. Make note of gaps in your current response to violence against women.

Also review the selected programs, which illustrate elements of agency responses and often utilize innovative and replicable strategies.

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Interventions Grounded in an Understanding of Violence Against Women

Justice system personnel and community-based victim service providers can work together to develop and espouse shared beliefs about violence against women to guide policies and interventions. Shared beliefs should include:

1. Violence against women is a serious crime, requiring the justice system and community's attention.
2. No form of violence against women is acceptable behavior. Justice personnel must debunk the myths that overtly and covertly support violence against women, and replace them with facts about these crimes, the perpetrators and the victims.
3. Victim safety and welfare, as well as the safety of her children and other family members, is the paramount goal of justice system intervention.
4. Early intervention in violence against women cases, coupled with meaningful penalties and sanctions for offenders, can save lives and prevent further violence.
5. Responding to battered, sexually assaulted and stalked women from traditionally under-served populations requires multi-cultural services and multi-lingual capacity. Jurisdictions must strive to understand the unique problems faced by these victims and work with them to identify solutions.
6. Batterers, sex offenders and stalkers use violence to achieve and maintain control over their

victims.

7. Victims are not responsible for their perpetrator's violent and controlling acts, nor do they have the power to change the perpetrator's attitudes or behavior.
8. Victims are in the best position to judge the danger the perpetrator poses to them and to make their own decisions about their safety. Practitioners have the responsibility to assist victims in this decision-making process by providing information about their options and available community resources.
9. The justice system must recognize the high risk of danger battered women and their families face when the decision is made to leave an abusive relationship. In many instances, domestic violence victims stay in the abusive relationship. The victim must be supported in her decisions, whether or not she decides to participate in the justice system.

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Law Enforcement Response to Violence Against Women

Law enforcement represents the entry point to the criminal justice system for a substantial number of victims and perpetrators. Agency training, policies and protocols can support consistent and effective police intervention in both misdemeanor and felony offenses, while connecting victims with community services and support.

Proactive and aggressive police response can deter further violence and ultimately save lives. Increasingly, law enforcement agencies are promoting early intervention in domestic violence and stalking cases to protect victims before more injuries occur. Officers are being trained to thoroughly investigate sexual assault cases, while being sensitive to the vulnerabilities of victims. Timely and responsive law enforcement intervention can increase victim safety, enhance investigations, and facilitate successful prosecution.

The following checklist describes the basic role of law enforcement in responding to violence against women. It also shows where law enforcement agencies coordinate and collaborate with other justice system agencies and community-based advocacy programs.

Review the following list, checking off responses your agency performs with success.

Make note of gaps in your current response to violence against women.

Law enforcement intervention includes the following elements:

- Dispatcher Response
- Initial Officer Response
- Follow-up Investigator Response
- Supervisor Response
- Data Collection and Communication
- Management Response

Dispatcher Response

Address victim safety:

Determine the facts and whether the victim is in danger or in need of emergency medical attention.

If the victim is in danger or needs emergency medical attention, provide her with crisis intervention services and dispatch an ambulance, if necessary.

Identify the crime as violence against women and give priority rating.

Obtain information from the victim: name, address and phone, suspect's use of weapons, and whether the suspect is present (if not present, obtain description of the suspect).

Promptly dispatch a patrol officer and backup unit, as necessary.

Keep the victim on the phone until the responding officer arrives.

Remind the sexual assault victim not to bathe or change her clothes.

Record the victim's excited utterances.

Obtain offender history and information on the likelihood of danger:

Use the agency database to provide the officer with any available criminal and civil history on the suspect.

Furnish the officer with information on offender dangerousness and specifics about the incident.

Initial Officer Response

Secure the crime scene:

Respond to the dispatch call in a timely manner, whether it is an immediate or a delayed report.

Evaluate the potential for violence and secure backup, if possible.

Take precautions to ensure officer safety.

Examine the area (e.g., listen for whether noises can be heard from within the residence, observe if lights are on in the residence or if windows are open, and look for evidence of children and the location of car).

Enter the premises in compliance with the laws of the state.

Immediately stop the violence and separate parties.

Determine if children are present. Assess and respond to their immediate needs.

Evaluate the scene (e.g., damage, alcohol/drug use, emergency mental health issues, or presence of other witnesses).

Record the victim and the suspect's locations upon arrival.

___ If denied access to the premises and forced entry is not appropriate, return to the scene on a frequent basis to observe any activity in open view.

Address victim safety and provide assistance at the crime scene. The following steps should be taken whether or not an arrest is made:

___ Assure the victim her safety is the priority.

___ Inquire into the victim's need for emergency medical attention and provide first aid, if needed.

___ Provide the victim with information on her rights, referrals to justice system agencies and community-based organizations, and assist with her immediate needs.

___ Ask questions in a supportive and matter-of-fact tone of voice. Be calm, direct and patient. Be clear you want to help her.

___ Let the victim know what her involvement in the investigative and court process entails.

___ Notify the local domestic violence or sexual assault program to provide the victim with immediate assistance at the crime scene or elsewhere.

___ If appropriate, encourage the victim to undergo a forensic medical exam and seek medical treatment.

___ Explain to the victim the importance of evidence collection and medical treatment. Inform her the cost of forensic examination is not her responsibility.

___ Arrange transportation to the designated medical facility for medical care and/or forensic exam, if necessary.

Investigate at the crime scene:

Interviewing the victim :

___ Conduct the victim interview in a private setting, away from the suspect and, if possible, other family members.

___ In the case of a sexual assault, or if there is need for emergency medical attention, conduct the interview after the victim has been treated (most likely at the medical facility).

___ Obtain preliminary information from the victim about the crime and specifics leading up to the abuse, whether there is a relationship between the victim and suspect, prior history of abuse, any court orders, use of weapons, or use of alcohol/drugs.

___ Record the victim's excited utterances and her emotional and physical condition.

___ Note her demeanor, body language and other nonverbal communication.

___ Document the victim's injuries and inquire about injuries that are not visible.

___ Obtain temporary addresses/phone information from the victim.

Identify and interview witnesses :

___ Identify witnesses and their relationship to the victim or the suspect (e.g., children or neighbors).

___ Note the witnesses' demeanor and collect written statements.

___ Interview children in a manner appropriate to their age, away from the suspect and the victim. Document any excited utterances, signs, injuries, or healing of abuse wounds.

Interview the suspect, if present :

___ Obtain rough preliminary information from the suspect (let him talk).

___ Record the suspect's excited utterances, his emotional and physical condition, and demeanor.

___ Note the suspect's injuries in detail.

___ Note any evidence of substance/chemical abuse.

Make an arrest decision:

___ Arrest the suspect if probable cause exists.

___ Where necessary, make a determination of who is the primary aggressor, considering a number of factors (e.g., relative size of the parties, history of abuse, likelihood of future injuries to either parties, and actions taken in self-defense).

___ Charge the suspect with all crimes arising from the incident.

___ Decide to arrest solely on state law, and not on other factors (e.g., speculation the victim will not go forward, the arrest may not lead to conviction, or the race, culture, sexual orientation, class, or profession of either party).

___ Arrange for the suspect's transport to a medical facility to collect physical evidence, if necessary.

___ If the suspect is not present, obtain descriptive information (e.g., his possible whereabouts, the time he left, his vehicle color, type, and license). Broadcast the information to locate and apprehend the suspect.

___ If the suspect is found, attempt to interview. If he cannot be found, apply for a warrant.

___ File a full report even in the case of no arrest, explaining the circumstances.

___ Explain to the victim the reasons for not arresting the suspect. Let both parties know the police take seriously crimes of violence against women.

Collect evidence at the crime scene:

___ Assess the crime scene for physical evidence (e.g, fingerprints, body fluids, footprints, and/ or disrupted objects).

___ Photograph and/or videotape the crime scene prior to touching, moving or disrupting potential evidence. Provide an indication of size or scale.

___ Conduct a nondestructive search for all physical evidence at the crime scene.

___ Collect, properly package and mark all evidence. Ensure all evidence is gathered before releasing the crime scene.

___ Diagram the crime scene and document findings.

___ Photograph the victim's injuries and alert her that subsequent bruising should also be photographed.

___ Photograph the suspect's injuries and take full body photographs.

___ Photograph children's injuries and demeanor.

___ Impound all weapons used.

___ Seize and ensure the 911 tape is preserved.

___ Transport items requiring analysis to the proper crime lab. Store the remaining items in a secure storage area to properly maintain chain of custody.

Facilitate the Forensic Evidence Collection Process:

___ Transport or arrange transportation for the victim to a designated medical facility for emergency care and/or forensic evidence collection, if appropriate.

___ Make sure the victim is seen promptly at the medical facility.

___ Make sure the victim has the support of a victim advocate, if desired.

___ Confirm that the attending nurse or physician has a standardized evidence collection kit.

___ Provide the attending nurse or physician with a brief account of incident.

___ Photograph the victim's injuries or arrange for same-sex medical personnel to do so.

___ Ensure all necessary physical evidence collection procedures are completed.

___ Confer with assisting medical personnel to obtain further information.

___ Request that the victim to sign a release of medical information form.

___ Make sure physical evidence is collected from the suspect, if in custody (in a different location from the victim). The consent of the suspect, a search warrant, or a court order is required to collect physical

evidence from the suspect. For suspect examination, brief medical personnel performing the exam. Provide general details of incident to help guide their collection of evidence.

___ Make arrangement to deliver evidence needing analysis to a designated crime lab, and/or store other evidence in a way that maintains the chain of custody.

Write an incident report:

___ Complete a written report, whether or not an arrest is made. If an arrest was not made, explain why.

___ Include diagrams of all injuries, reports of injuries that are not visible, as well as information noted above.

___ Report on previous incidents known to the officer or reported by the victim or other witnesses.

___ Provide the follow-up investigator with all related reports and documentation, access to stored crime scene evidence, and lab findings from the forensic evidence.

Follow-up Investigator Response

Address victim safety and support needs:

___ Stay in contact with the victim, obtaining information and updating case status.

___ On each contact, assess the likelihood of continued violence by the suspect to the victim and her family.

___ Assist the victim with safety planning. Revise police response as needed to offer optimal protection.

___ Work closely with a community-based advocate to support the victim through interviews and other investigation procedures.

___ Encourage the victim to call the police if the suspect violates any existing court orders.

Gather further information to support charges:

___ Consult with the responding officer (if different) and any officers who collected evidence.

___ Develop an investigative strategy.

___ Arrange for a subsequent interview with the victim if she was unable to proceed with a detailed interview following the incident, or if additional or clarifying information is needed.

___ Re-photograph the victim to document changes in the appearances of the injuries.

___ Encourage the victim to contact the investigator with any new information or evidence.

___ Provide the victim guidance, forms and assistance in documenting the suspect's actions, if appropriate (e.g., to establish a pattern in stalking cases).

___ Obtain statements from any witnesses not interviewed at the scene, identify additional witnesses (including "outcry" witnesses), and collect all pertinent information.

___ Ensure all evidence has been identified, collected, properly stored, and processed from the crime scene, the victim, children that were present, and the suspect.

___ Maintain contact with the crime lab to obtain results, and determine and respond to evidentiary issues.

___ Obtain further information on the suspect's criminal/civil histories and other relevant background.

Identify and apprehend the suspect, if not already arrested:

___ If the suspect was not at the crime scene and his identity is unknown, determine the most likely suspects. Obtain the victim's assistance in making a positive identification. Question the suspect once he is apprehended, using the appropriate investigative strategy.

___ If the suspect is known, attempt to find and interview him, if possible. Also consider other ways to initially contact/warn the suspect, if appropriate (e.g., send him a letter of warning in select stalking cases).

___ Arrest the suspect when probable cause is established.

Deliver the case to the prosecution office:

___ Discuss the case with the prosecution office and secure additional evidence as necessary.

___ Complete necessary reports and forms, and transfer information to the prosecutor's office.

___ Testify as requested throughout court hearings.

Develop a Victim-Centered Approach to Services and Programs

1. Make victim safety the top priority.
2. Respect the integrity and autonomy of each victim.
3. Maintain and protect victim confidentiality.
4. Regard survivor feedback as critical to improved justice response.

Supervisor Response:

___ Oversee officer compliance with agency policies and procedures related to violence against women.

___ Oversee officer compliance with inter-agency agreements related to violence against women.

___ Create forms and incentives to facilitate compliance with agency policies.

___ Problem-solve with officers on complex cases.

___ Assess whether police response meets goals of victim safety and offender accountability.

___ Determine the need for additional officer training or supervision.

Data Collection and Communications:

___ Designate and retrieve all case information.

___ Automate case loads to expedite access to information.

___ Track cases from first call forward, including case substantiation and follow through.

___ Integrate criminal and civil history of offenders into agency database.

Management Response:

Set tone through the development of protocols, practices, training and other mechanisms:

___ Establish protocols and practices grounded in an understanding of violence against women and embody values such as victim safety and confidentiality, respect for the autonomy of victims, and offender accountability.

___ Develop police procedures for handling violence against women committed by law enforcement and other justice system personnel.

___ Promote proactive intervention in all violence against women cases.

___ Allocate funds, resources and personnel to violence against women cases.

___ Support ongoing violence against women training for all new and veteran staff.

___ Build a staff that reflects the demographics of the community it serves.

___ Develop strategies to remove barriers facing under-served populations which prevent them from using the criminal justice system (e.g., translation of materials into relevant languages and 24-hour access to translation and interpreter services).

___ Develop a system to monitor policy compliance.

___ Revise policies and practices, as necessary.

Provide leadership in community initiatives to combat violence against women:

___ Ensure coordinated response and collaboration with other justice agencies and other relevant service providers. Develop inter-agency agreements as appropriate.

___ Participate in community task forces or other structures that respond to violence against women.

___ Recognize and support community-based advocacy programs as primary victim service providers.

___ Promote community education and zero tolerance for violence against women.

Sexual Assault Investigation Protocol

Det. Sgt. Dave Parker

DRAFT
2/25/05

Intake Phase

- Report Received:

- Dispatch Generated Report
- Advocacy Generated Report
- Office of Children's Services Generated Report
- School District Generated Report
- Officer/Detective Generated Report

- **SART Triage Decision** - Decision made by Supervisor of Special Victims Unit. All questions must be answered positively to proceed with the exam:

Did the sexual assault occur within the last 96 hours?

Was there penetration, the possibility of fluid evidence transfer and/or the possibility of documentable oral, genital or anal injuries?

Is the victim willing to cooperate with the SART interview and examination as well as the investigation?

- **Case Detective Assigned**
If case is to be actively worked.

Post-It Fax Note	7671	Date 2/25/05	# of pages 3
To	Loree Wickersham	From	APD
Co./Dept	San Berdo's	Co.	
Phone #		Phone #	
Fax #	907-465-3871	Fax #	(907) 786-8638

Evidence Gathering Phase

- SART Interview and examination

Interview conducted in the presence of an advocate, SANE nurse by the case detective.

Examination conducted by SANE nurse in presence of advocate with the patient's permission.

SART process completed with discharge instructions by SANE nurse, final detail clarification and investigation plan by detective all in the presence of the advocate.

- Suspect evidence collection.

If suspect is known to the victim:

Decision must be made as to whether a 'Glass' wire or an immediate in-custody interview and search warrant authorized suspect protocol kit will yield the most evidence.

If suspect is unknown to the victim. In custody or alerted to police

Investigation:

Immediate in-custody interview and search warrant authorized suspect protocol kit.

- Scene evidence collection.

Decision must be made as to whether the scene can be effectively processed by Patrol, if detective assistance is needed, or if the Major Crime Scene Team needs to process the scene.

Scenes are searched by authority of written consent to search if it is the victim's residence/vehicle and by authority of search warrant if it is the suspect's or other person's residence/vehicle. No warrant is necessary for scenes which are on public land or premises open to public.

Investigation Phase

- Obtain and serve "Glass" warrants

Decision must be made as to whether warrants will be served telephonically or face-to-face. Selection of time of service and place of service are considered.

- Additional physical evidence is identified and secured.

This is done by authority of search warrant if necessary.

- Arrange processing of Sex Assault Protocol Kits and other evidence seized at State Crime Lab.

- Witnesses are questioned.

If they are expected to be hostile, they can be questioned by authority of "Glass" warrant by victim or acquaintance prior to police contact.

- Suspect contacted and interviewed/interrogated.

Prosecution Phase

- Arrest:

If arrest is made on Probable Cause:

Case is compiled and presented along with Statement of Probable Cause is made to District Attorney immediately.

If arrest is made by Arrest Warrant:

Arrest Warrant is prepared, presented to the Court and placed in APSIN and/or served. Case is compiled and presented along with Arrest Warrant to District Attorney immediately.

If District Attorney is consulted prior to arrest decision:

Case is compiled and presented to District Attorney for review. District Attorney will prepare Charging Document for detective to present to the Court along with Arrest Warrant.

- Grand Jury hearing is arranged by the District Attorney.

Detective assists the District Attorney in locating and serving subpoenas to victim, witnesses.

Detective testifies in Grand Jury.

True Bill is issued by Grand Jury.

- Pretrial:

Case Detective works with District Attorney to address Defense motions.
Case Detective attends all hearings.
Case Detective provides District Attorney with all discovery requests.
Case Detective organizes and displays all evidence for District Attorney and Defense Attorney review.

- Trial:

Case Detective assists District Attorney through all phases of the trial.

Suzanne Mullen

From: Dean NV Westlake [d_westlake@hotmail.com]

Sent: Friday, July 01, 2005 1:51 PM

Subject: SB 134

Hey Folks,

What with Matt Owens working in Nome as a Police officer in years past, I thought you would be interested in this bill.

Senate Bill 134 can change policing practices and see to it there is professional oversight over all Police Officers in the State of Alaska, providing the respective city does not exclude itself from this provision.

Talking to my friends throughout rural Alaska, there is a common thread of concern regarding police (in)action. It would appear that an outside governing body would be the most appropriate action to address problems we have with Law Enforcement.

Basically, what this bill will do is make it possible for the Police Standards Council to step in to insure that the Police Officer is performing up to standards. At the bottom of the page SB134; *I-2, you will see

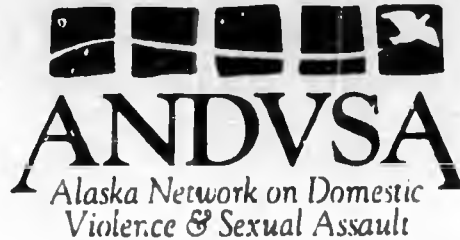
(1) delivering the results of the investigation to the prosecutor; (2) investigate standards adopted in (1) of this subsection and, if the council finds that an officer or revoke a certificate issued under AS 18.65.240 or require

If you want change folks; you will have to get the word out that we want Senate Bill 134 signed into law. I am urging you; my friends who want to make a difference, to contact your legislators to ask them for their support of this bill.

Hunt hard; shoot straight; share.

Nunathaaq

Juneau Office
130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org



Sitka Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907) 747-7547

April 13, 2006

The Honorable Senator Con Bunde
State Senate
Alaska State Capitol
Juneau, AK 99801-1182

Dear Senator Bunde:

The Alaska Network on Domestic Violence & Sexual Assault supports Senate Bill 134 – An act relating to a pilot project to review and investigate certain complaints from victims of sexual assault in the first degree or sexual abuse of a minor in the first degree concerning actions of justice agencies. We also fully support the Office of Victims' Rights reviewing and investigating those complaints. It is my hope that we will glean some very valuable data that may guide us in charting a trajectory that produces efficient and effective future legislation that better serves victims of sexual assault.

Thank you so much for putting this legislation forward. I look forward to continuing our working relationship on behalf of victims and survivors.

Please let me know how I may be of assistance to you.

Sincerely,

Peggy Brown
Executive Director

Member Programs

Anchorage AWAIC, AWRC, STAR Barrow AWIC Bethel TWC Cordova CFRC Dillingham SAFV Fairbanks IAC
Homer SPIII Juneau AWARE Kenai LeeShore Center Ketchikan WISH Kodiak KWRC Kotzebue MECC
Nome BSWG Palmer AFS Seward SCS Sitka SAFV Unalaska USAFV Valdez AVV

adn.com

Anchorage Daily News

Print Page

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Each of us has stake in seeking justice

By SUSAN SULLIVAN and MARY ANNE HENRY

(Published: April 25, 2006)

Alaska's rate for many violent crimes is among the highest in the nation. If you have not been a victim of a crime yourself, it's likely that you have a relative, friend or neighbor who has been.

Crime has a devastating impact on victims, survivors, neighborhoods and society. Crime continually threatens our individual and collective sense of safety and security.

Victims and witnesses look to our legal system for justice, but the aftermath of a violent crime can be the worst possible time to try to understand such a complex and perplexing structure. For too long, crime victims were essentially left out of the criminal justice system. Victims had no rights. They were excluded from proceedings; they were kept in the dark about the status of their cases and had no role to play in seeking justice.

The victims' rights movement gained national prominence when President Reagan declared the first National Crime Victims' Rights Week in 1981. Alaska has been at the forefront of that movement ever since.

Nonprofits such as Victims for Justice and Mothers Against Drunk Driving began assisting victims of violent crime in the early 1980s. The Alaska Legislature passed pioneering victims' rights legislation.

In 1994, Alaskans overwhelmingly voted to amend the Alaska Constitution, establishing a number of rights for crime victims. Those rights include:

- to be treated with dignity, respect and fairness during all phases of the criminal and juvenile justice process;
- to be protected from the accused through appropriate bail conditions;
- to be present at all criminal or juvenile proceedings where the accused has a right to be present;
- to have prompt disposition of the charges against the accused;
- to be heard at bail hearings, at sentencing and at any proceeding where the accused's release from custody is considered;
- to get restitution from the offender; and
- to be informed of the accused's escape or release from custody before or after conviction.

Despite these guarantees, victims often met resistance when they attempted to assert their rights. In 2001, the Alaska Legislature did what no other state had done by creating the Office of Victims

Rights. The agency is staffed by attorneys to provide legal representation to crime victims when their constitutionally protected rights are denied.

Today in Alaska, many private groups continue the important work of informing victims of their rights and offer a wide range of services. Prosecutors recognize that victims and witnesses are important to holding offenders accountable. The state Violent Crimes Compensation Board provides financial assistance to victims. Victim Information Notification Everyday (VINE) provides vital information to victims, such as when the offender in their case is released.

Each of these organizations has a unique and vital role to play in ensuring that crime victims are treated with respect, are recognized as key participants within our systems of justice and are afforded services to help them in the aftermath of crime.

Many challenges remain, however. There are still crime victims who are not informed of their rights, not engaged as active participants in our criminal-justice system, or whose court cases languish three and four years after the crime.

There are still crime victims who remain unaware of a variety of supportive services that can provide help, hope and healing in the aftermath of crime.

There are still crime victims who suffer immeasurable physical, emotional and financial losses, who still wait and wait to receive court-ordered restitution payments from their perpetrators.

Each of the nonprofit organizations who serve victims, every agency charged with seeking justice, and each of us in the community, have a stake in ensuring that victims' rights are vigorously defended and implemented. This week, as we acknowledge the 26th recognition since the first National Crime Victims' Week was observed, let's take to heart the 2006 theme "Strength in Unity," and join together to make Alaska's landmark rights for victims a reality.

If you, or someone you know, is a victim of crime, you can seek help. If you care about justice and safety, you can help by supporting victims' assistance agencies in the community.

Susan Sullivan is executive director of Victims for Justice. Mary Anne Henry is director of the Office of Victims Rights.

[Print Page](#)

[Close Window](#)

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SB

135

SENATE COMMITTEE REPORT First Committee of Referral

DATE: 3/8/05

FURTHER: Finance

Date of 5-Day Notice: _____
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered SENATE BILL NO. 135

SB 135 ASSAULT & CUSTODIAL INTERFERENCE

"An Act relating to the crimes of assault and custodial interference; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			X	
<i>[Signature]</i>				X
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>Ralph Decker</i>	✓			

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

OFFICE OF CHILDREN'S SERVICES

FRANK H. MURKOWSKI, GOVERNOR

P.O. BOX 110630
JUNEAU, ALASKA 99811-0630
PHONE: (907) 495-3170

April 6, 2005

Honorable Senator Ralph Seekins
Senate Judiciary Chair
State Capitol, Room 125
Juneau, AK 99801-1182

Re: SB 135

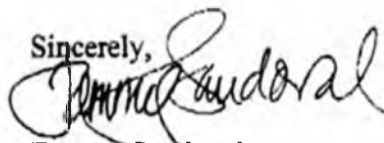
Dear Senator Seekins:

Thank you to you and Senate Judiciary Committee members for hearing Senate Bill 135.

While the intent of SB 135 primarily relates to the criminal code, it impacts child protective services as well. Specifically, section 2, C (2) establishes that a parent should not be able to violate a custody order on the grounds of suspected child abuse or neglect without reporting that abuse, neglect, or imminent physical danger to a social services agency. So this is to say, despite child custody disputes between parents, any concerns of child abuse or neglect must be reported immediately.

We support the passage of SB 135 and appreciate your work on this piece of legislation.

Sincerely,



Tammy Sandoval
Acting Deputy Commissioner

cc: Commissioner Joel Gilbertson



SENATOR FRED DYSON

SPONSOR STATEMENT (Prepared by the Department of Law)

SB 135—An Act relating to the crimes of assault and custodial interference; and providing for an effective date.

SB 135 is aimed to provide additional protection to Alaska's children, and was drafted by the Criminal Division of the Department of Law. The bill focuses on two crimes: assault and custodial interference.

Assault. Assault in the third degree concerns the reckless injury (of a young child) that *reasonably requires medical treatment*. The abuse that vulnerable infants and small children experience, however, is often difficult to accurately diagnose without extensive medical testing. In *Wells v. State*, 102 P.3d 972 (Alaska App. 2004), the Alaska court of appeals held that this diagnostic testing does not constitute "treatment." In that particular case, the emergency room doctor found "numerous bruises" on the head of a 9-month old infant, so they ordered a CT scan and blood tests. Two doctors testified that the bruises could not have been caused by the infant banging his own head on the crib because he could not have generated enough force. The defendant was convicted by a jury, and the court of appeals reversed.

SB 135 proposes to change "reasonably requires medical treatment" to "would cause a reasonable caregiver to seek medical attention from a health care professional in the form of diagnosis, treatment, or care." This change is consistent with other statutes, such as criminal nonsupport—a misdemeanor for failure to provide a child with necessary "medical attention" This phrase has been interpreted by Alaska courts as broader than mere "treatment," because "children may suffer injuries sufficiently threatening to require a medical examination, even if that examination ultimately discloses no need for treatment." *S.R.D. v. State*, 820 P.2d 1088, 1090-91 (Alaska App. 1991).

Custodial Interference. Parents who kidnap their children take them for long periods, and it is usually months before the children can be accounted for and the parents brought to justice. Often, the children are moved from place to place, kept out of public school, or had their legal names changed—to avoid being found. The kidnapper often defends his/her conduct by claiming that the child was not being cared for by the custodial parent, or was being abused, and therefore it was necessary to take the child. A "necessity" defense is allowed for many crimes (AS 11.81.320), but was not believed to be allowed in parental kidnapping cases until *Perrin v. State*, 66 P.3d 21 (Alaska App. 2003). Some boundaries to this defense are appropriate.

SB 135 proposes to recognize a limited "necessity" defense for parental kidnapping, but only if the parent holds the child for no longer than 24 hours, or the time necessary to contact authorities, whichever is shorter.

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

Sectional Analysis of SB 135 (Relating to the Crimes of Assault and Custodial Interference)

(Prepared by the Department of Law, March 11, 2005)

SB 135 addresses the crime of assault in the third degree and the affirmative defense of necessity in a prosecution for custodial interference.

Sec. 1: *Assault in the third degree:* AS 11.41.220(a)(1)(C)(i) prohibits a person 18 years of age or older from recklessly causing physical injury to a child under 10 years of age, if the injury reasonably requires medical treatment. This conduct is a class C felony. The bill would amend the statute so that it prohibits similar conduct injuring a child that causes a reasonable caregiver to seek medical care for the child, including medical diagnosis, treatment, or care. The bill addresses the recent decision in *Wells v. State*, 102 P.3d 972 (Alaska App. 2004). *Wells* reversed the conviction of a person for third degree assault who had caused multiple head injuries to an infant over a two-week period. The court reasoned that although the injuries required diagnostic procedures including a CT scan, they did not require procedures to treat the injuries after the diagnostic procedures, and thus the statute did not apply. The bill would clarify that medical procedures for treating, diagnosing, or caring for the child are sufficient for application of this section of the third degree assault statute.

Sec. 2: *Affirmative defense of necessity in a prosecution for custodial interference:* AS 11.41.330 (Custodial Interference in the Second Degree), a class A misdemeanor, prohibits taking a child (or incompetent person) from a lawful custodian with the intent to keep the child for a protracted period. Recently, persons prosecuted for this offense have raised the defense of necessity, claiming that they had to take the child from the other person--often the other parent, and in violation of a custody order--because of potential harm to the child. The bill would amend AS 11.41.330, to make the affirmative defense of necessity unavailable if the unlawful period exceeded the shorter of 24 hours or the time necessary to report to a peace officer or social service agency that the child has been abused or neglected or is in imminent physical danger. The amendment would also by reference apply to custodial interference in the first degree under AS 11.41.320, that makes it a class C felony to commit custodial interference and take the child outside the state or keep the child outside the state. This section is proposed to address the decision in *Perrin v. State*, 66 P.3d 21 (Alaska App. 2003).

Sec. 3: *Effective date:* This section establishes an effective date of July 1, 2005.

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 135
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Assault and Custodial Interference BRU Alaska Court System
 Component Trial Courts
 Sponsor Senator Dyson
 Requester _____ Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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 SB 135.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 433-4750
 Division: Alaska Court System Date/Time 4/1/05 8:21 AM
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 4/1/2005
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB135-LAW-CDCO-4-5-1
 () Publish Date: _____

Revision Date/Time (Note if correction) _____ Dept. Affected: LAW
 Title "An act relating to the crimes of assault and RDU CRIMINAL
custodial interference..." Component Criminal Justice Litigation
 Sponsor: Senator Dyson
 Requester Senate Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 - Regulatory Cost Charge						
TOTAL						

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 11.41.220(a) (Offenses Against the Person - Assault in the third degree) by adding clarifying language regarding medical treatment when a child under the age of 10 years is assaulted by someone 18 years of age or older. It also amends AS 11.41.340 (Custodial Interference in the second degree) by further limiting instances of where a person may claim the defense of necessity.

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

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division Administrative Services Division Date/Time 4/5/05 3:39 PM
 Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 4/5/2005
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: SB 135
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An Act relating to the crimes of RDU: Legal and Advocacy Services
assault and custodial interference. Component: Public Defender Agency
 Sponsor: Senator Dyson
 Requester: Senate Judiciary Component No.: 1031

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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						
-----------------------------	--	--	--	--	--	--

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

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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

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

ANALYSIS: (Attach a separate page if necessary)
 This bill should have minimal fiscal impact on the operations of the Public Defender Agency. The Agency does not expect to handle a significant number of offenses covered under this proposed legislation.

Prepared by: Linda K. Wilson, Deputy Director Phone: (907)334-4416
 Division: Public Defender Agency Date/Time: 4/4/05 8:54 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date: 4/4/2005
 Agency: Department of Administration

SB

137

24-LS0739U
Kurtz
5/4/05

HOUSE CS FOR SENATE BILL NO. 137()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

1 **"An Act providing that an institution providing accommodations exempt from the**
2 **provisions of the Uniform Residential Landlord and Tenant Act may evict tenants**
3 **without resorting to court proceedings under AS 09.45.060 - 09.45.160."**

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

5 *** Section 1. AS 09.45.070 is amended by adding a new subsection to read:**

6 (c) Nothing in AS 09.45.060 - 09.45.160 shall be interpreted to require an
7 institution providing a residence that is exempted by AS 34.03.330(b)(1) from the
8 provisions of AS 34.03 to institute a court action to recover possession of that
9 residence.

137
SBT ~~137~~

Case

Amendment

Insert at p. 1 line 7,

replace "a residence" with

"a student residence at ~~the~~

educational institution"

SB137

Agency No. 04-02890 the Trial Courts
STATE OF ALASKA, FOURTH DISTRICT

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

JUN 22 2004

Clerk of the Trial Courts
By _____ Deputy

STATE OF ALASKA,

Plaintiff

MISDEMEANOR
COMPLAINT

vs.

Francis Gerald Bragg

Defendant

CASE NO. 4FA-S04-2140 CR

Criminal Trespass in the Second Degree

ID: 7126651 DOB: 12-15-1966

ATN: 106996374

AS 11.46.330(a)

CERTIFICATION RES: UNKNOWN

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

THE COMPLAINANT STATES that on or about the 22nd day of June, 2004 at or near Fairbanks, in the Fourth Judicial District, State of Alaska, the above-named Defendant did unlawfully

(X) Commit the offense of Criminal Trespass in the Second Degree, when he/she entered or remained unlawfully;

(X) in or upon premises; or
AS 11.46.330(a)(1)

() in a propelled vehicle.
AS 11.46.330(a)(2)

Francis BRAGG is trespassed from all UAF Residential Facilities, to include his former residence, 754 A Hess Village. BRAGG recieved numerous trespass warnings from various UAF Officials, who are granted the Authority to issue Trespasses. BRAGG was given one last warning on 6-22-2004, to leave the premises/property of UAF Residential Facility 754 A Hess Village or he would be arrested for Criminal Trespassing. BRAGG refused to leave the property and he was arrested.

PC- A UAF staff person reported that a trespassed person (BRAGG) was in 754 A Hess Village.

All of which is a Class B Misdemeanor being contrary to and in violation of AS 11.46.330(a) and against the peace and dignity of the State of Alaska.



[Handwritten Signature]
SIGNATURE OF COMPLAINANT

I certify, under penalty of perjury, the foregoing is true.

SUBSCRIBED AND SWORN TO before me this 22 day of JUNE 2004

[Handwritten Signature]
Notary Public for Alaska

9/12/2004
My Commission Expires:

Screen for VRA Certification

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

<input checked="" type="checkbox"/> State of Alaska,)
<input type="checkbox"/>)
)
Plaintiff,)
)
vs.)
)
Francis G. Bragg,)
)
Defendant.)
DOB: 12-15-66)
_____)	
CASE NUMBER: 4FA-S04-2140 CR)

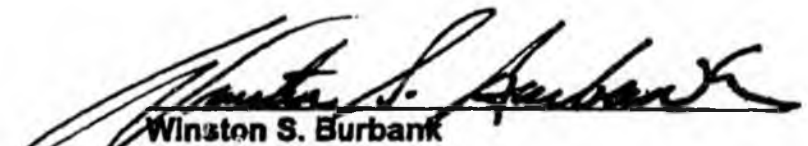
ORDER OF DISMISSAL

Defendant's ID#: 7126651 ATN: 106996374 Date of Offense: 6-22-04
Crime Charged: Criminal Trespass II
Statute/Ordinance/Regulation: AS 11.46.330(a)

IT IS ORDERED that this case is dismissed pursuant to:
 Rule 43(a) - Dismissal by Prosecuting Attorney
 Rule 43(b) - Dismissal by Court
 Rule 43(c) - Dismissal in Furtherance of Justice
 Other: for the following reason(s):

IT IS FURTHER ORDERED that the defendant be released from custody, any bond executed on behalf of the defendant be exonerated, and any cash or other security posted as bail be refunded to the depositories.

Sept 9, 2004
Date


Winston S. Burbank
District Court Judge

I certify that on 9-13-04
a copy of this order was sent to: DA, PD, DPS,
Clerk: SM FCC, NEWS

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 FRANCIS BRAGG,)
)
 Defendant)

FILED in the Trial Court
State of Alaska Fourth District
AUG 30 2004

By _____ Deputy

Case No.: No. 4FA-S04-2140 CR

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT

Introduction

The Defendant, Francis Bragg, hereinafter referred to as "Bragg", has filed a Motion to Dismiss the Complaint that has been filed against him in the above referenced matter. The Plaintiff, State of Alaska, hereinafter referred to as "State", has filed its opposition to Bragg's motion. An evidentiary hearing occurred before the Court on August 9, 2004. At the conclusion of the evidentiary hearing, the Court requested supplemental briefing from the parties. Pursuant to the briefing of the parties and the evidentiary hearing the Court is granting Bragg's motion to dismiss the State's complaint for criminal trespass for the reasons set forth below.

Facts of the case

A summary of the facts is that Bragg is a student at the University of Alaska Fairbanks, hereinafter referred to

"University". Bragg has signed two housing agreements with the University and that he and his family resides on the University premises. Bragg has been assigned an apartment to live in which is located within the complex known as Hess Village.

The University alleges that Bragg has breached and violated his housing agreement. These complaints are, but not limited to, the following:

- 1) A shouting match between Bragg and another resident, that took place in February 2004 regarding a survey that Bragg was distributing within the Hess Village, that at least one resident did not want to fill out;
- 2) Noise complaint from a neighbor within Hess Village;
- 3) Rough play with children on the Hess Village Basketball court (including picking up several of the boys and grabbing and swinging one of the boys by the arm);
- 4) A report of Bragg's children wandering through Hess Village unsupervised, while Bragg was asleep;
- 5) Another noise complaint from a neighbor;
- 6) Noise complaint regarding a party Bragg had for his daughter and her friends in the Hess Community Center (noise continued until 1:00 a.m.);
- 7) Noise complaint regarding Bragg yelling at his family inside and outside the apartment beginning at 7 o'clock in the morning;
- 8) Bragg sleeping in the 24-hour study area after he had been trespassed from housing;
- 9) Bragg on June 16, 2004 was verbally abusive to Director of Residence Life, Kevin Huddy, when Huddy responded to a neighbor's complaints about a party and loud music that continued into the early morning hours. Bragg became aggressive and stated the complaints were "bullshit" and that Huddy was an "asshole". The following day Bragg was summarily trespassed from the University housing areas.

On or about June 22, 2004 Bragg was arrested at his apartment for violating the criminal trespass notification that he had been given on June 17th.

Case analysis

In the present case Bragg has been charged with the crime of Criminal Trespass in the second degree. A person commits the crime of criminal trespass if the person enters or remains unlawfully upon the premises.¹

Bragg entered into a lease agreement with the University on or about April 12, 2004. The lease agreement was for apartment 762C, located within the Hess Village complex. Bragg was occupying the aforementioned premises at all times which are pertinent to the above captioned case. In short, Bragg had the absolute right to occupy the premises pursuant to the lease agreement.

On June 17, 2004 Bragg was issued his notification of trespass, following his meeting with Mr. Huddy. The primary issue for the Court to consider is may the University charge Bragg with trespass for occupying premises that he was leasing from the University. Bragg had the legal right to be on his premises pursuant to the leasing contract that the University had executed with Bragg. Therefore, Bragg, having a legal right

¹ AS 11.46.330(a)(1).

to occupy his apartment pursuant to his legally binding contract, how could he have unlawfully entered upon and unlawfully remained upon those premises?

The Court finds that by looking at Bragg's conduct in a light most favorable to the University, which conduct has been set forth above, that Bragg has probably breached his contract or rental agreement with the University. Therefore the University may terminate the agreement and by the terms of the agreement may have Bragg and his family evicted and removed from the premises. In the event that Bragg would not voluntarily remove himself from the premises the University could then file an action for Forcible Entry and Detainer (FED) and procure a Writ of Assistance to have Bragg forcibly removed from the premises.²

The University, rather than terminating the lease agreement and filing a FED, summarily trespasses Bragg for his conduct that has been summarized above, the day following his meeting with Mr. Huddy wherein Bragg called Mr. Huddy an "asshole". It is interesting to note that Bragg was only trespassed from his leased apartment. Bragg was not trespassed from Mr. Huddy's office or some other part of the University. It is also of interest that the summarized misconduct of Bragg is non-criminal

² AS 09.45.060.

and is typical of the type of conduct that is normally present in Landlord/Tenant disputes. The Court finds that the issuance of the trespass notice to Bragg is essentially a defacto eviction, which improperly subjects Bragg to criminal ramifications.

The State and the University make the rather specious argument that the issuance of the trespass notice is similar to the issuance of a protective order pertaining to a situation involving domestic violence. The analogy that the University and the State are presenting is not valid. A protective order is issued only after the person has filed a petition with the Court and only after a judicial officer has found that the other party has committed an act of domestic violence and that a protective order is necessary to avoid future acts of domestic violence. Furthermore, the ex parte protective order is issued only for a limited period of time. In the present case a notice of criminal trespass was issued by Mr. Huddy the day following the confrontation between Bragg and Mr. Huddy, which conduct was non-criminal.

Bragg had a legal right to occupy the premises pursuant to his lease agreement with the University. The University has the right to terminate the lease agreement for good cause and to having Bragg evicted from the premises. Until the time that the contract has been terminated and Bragg has been evicted from the

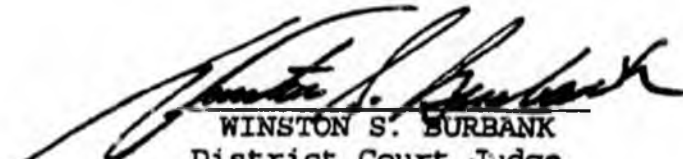
premises he has the lawful right to be present within his apartment unit and may not be criminally trespassed for legally occupying his apartment dwelling unit.

Conclusion

In conclusion the Court finds that Bragg has a legal right to occupy his apartment pursuant to the lease agreement. Because Bragg has a legal right to occupy those premises, he may not be legally trespassed from those premises. Therefore, Bragg's motion is granted and the Complaint against Bragg charging him with Criminal Trespass in the second degree is hereby dismissed.

Dated at Fairbanks, Alaska this 26th day of August 2004.

I certify that on 8-30-04
copies of this form were sent to DA, PD
CLERK: SH


WINSTON S. BURBANK
District Court Judge

Session:
State Capitol – Room 125
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-5241 Fax
(800) 336-7383 Toll Free




Interim:
119 N. Cushman Street – Suite 201
Fairbanks, Alaska 99701
(907) 456-8161
Senator.Ralph.Seekins@legis.state.ak.us

Alaska State Legislature
Senator Ralph Seekins
District D

Chair: Senate Judiciary Committee
Vice Chair: Senate Labor and Commerce Committee; Member: Senate Resources Committee
Senate Special Committee on World Trade and State/Federal Relations

Date: April 30, 2005

To: Representative Lesil McGuire
Chairman of House Judiciary Committee

From: Senator Ralph Seekins 
Senate District D

RE: SB 137 Hearing Request

I would like to request that the House Judiciary hear Senate Bill 137 "*An Act providing that the University of Alaska may evict a tenant from student housing that is exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060-09.45.160*" at it's earliest convenience. If you have any questions please see the attached information packet or contact my office and speak with Joe Michel ext 2327. Thank you for your time.

ALASKA STATE SENATE

Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2327
(907) 465-1241 Fax



Interim:
119 N. Cushman, Suite 201
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Senator Ralph Seekins
District D

Senate Bill 137 Sponsor Statement

“An Act providing that the University of Alaska may evict a tenant from student housing that is exempt from the provisions of the Uniform Residential Landlord and Tenant Act may evict tenants without resorting to court proceedings under AS 09.45.060-09.45.160”

Currently the University of Alaska has ability to evict problem students out of University residences. This is cited under *Alaska Statute 14.40.240* “*Power of president to suspend and expel students*”. This ability is also acknowledged in *Alaska Statute 34.03.330(b)* which is part of the Alaska Uniform Residential Land Lord and Tenant Act (URLTA). This section was adopted in to URLTA in 1974.

A recent lower court decision has contradicted these statutes. This reinterpretation of the law forces the University to obtain a court order to remove a student from University student housing. Thousands of dollars of public funds and numerous hours have been spent litigating with students who have succeeded in convincing the court that they cannot be removed from student housing without a court order.

The eviction process of the University of Alaska is detailed and extensive. A review and appeal process is in place to insure a student’s rights with regards to evictions from student housing. Yet even a student expelled from school, can insist on remaining in student housing until a court order is obtained removing this former student.

Alaska Statute 34.03.330(b)(1) exempts certain types of institutions from the Uniform Residential Landlord and Tenant Act. Public service institutional entities such as hospitals, schools, nursing homes, educational establishments, church housing, and counseling centers are not compatible with the heightened protections designed for residential renters under ULTA.

Senate Bill 137 adds a new section under, *Alaska Statute 09.45.070* “*Actions relating to real property*”. It clarifies that the University of Alaska is an institution listed under, *AS 34.03.330* and is not required to obtain a court action to recover possession of a residence that is used for student housing.