SB
406

COMMITTEE REPORT

SENATE

FURTHER:

Date _____

Mr. President

The Committee on _____ considered _____

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[ ] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING DO PASS	MEMBERS HAVING OTHER RECOMMENDATIONS

Chairman

Chairman recommendation

BILL SHEFFIELD, GOVERNOR

REPLY TO:

☐ OFFICE OF THE CHIEF PROSECUTOR
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

☐ OFFICE OF SPECIAL PROSECUTIONS AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

DEPARTMENT OF LAW

CRIMINAL DIVISION

March 2, 1984

The Honorable Joe P. Josephson
Alaska State Senate
Pouch V
Juneau, AK 99811

RE: SB 406 - Discriminatory Harassment

Dear Senator Josephson:

At your request we have drafted the attached proposed committee substitute for SB 406, an act relating to discriminatory harassment. The draft bill contains all of the concepts which you indicated to us were needed:

(1) a civil right of action for certain discriminatory conduct, with a $10,000 maximum on punitive damages;

(2) a new crime, at a class A felony level, for discriminatory assaults resulting in serious physical injury;

(3) directions to a sentencing court to treat discriminatory conduct as an aggravated crime, even in cases not involving presumptive sentences; and

(4) directions to the administrative director of the court system to prepare an annual report on cases involving discriminatory conduct.

In addition, you said that you and your staff would draft appropriate language for legislative intent, which we believe should probably be placed in new AS 12.55.160(a).

Although we have assisted your office in drafting this proposed bill, we still believe as a policy matter that if the problem of discriminatory conduct in Alaska is not adequately addressed in current law and warrants legislative action, then discriminatorily-motivated crimes deserve some mandatory period of imprisonment.

Very truly,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: Dean J. Guaneli
Dean J. Guaneli
Assistant Attorney General

Municipality of Anchorage

POUCH 6-650
ANCHORAGE, ALASKA 99502-0650
(907) 264-4342
(TTY) 279-4725

TONY KNOWLES,
MAYOR

EQUAL RIGHTS COMMISSION
620 East 10th Avenue

February 22, 1984

Senate Judiciary Committee
Attention: Senator Bill Ray, Chair
Pouch V
Juneau, Alaska 99811

Re: Senate Bill #406: "An Act Relating To Discriminatory Harassment"

Dear Senator Ray:

On January 19, 1984, Mr. Mitchel Schapira, Chairman, Anchorage Anti Defamation League Council met with the Anchorage Equal Rights Commission (AERC) to solicit support to advance legislation to ban and penalize racial and religious harassment in the State of Alaska. Following Mr. Schapira's presentation and a discussion with other persons in attendance, the following motion was introduced and passed unanimously:

> Motion 01/84-1: "That the commission resolve to support efforts to advance legislation to ban and penalize racial and religious harassment in the State of Alaska"

(see attachment: page 3, Minutes of January 19, 1984).

As is clear from the discussion and the subsequent motion, it was the intent of the commission to support the concept of proposed legislation which would have the effect of banning racial and religious harassment. Senate Bill #406 would address the concerns of the commission, and is supported by motion 01/84-1.

If I can be of any assistance, please feel free to contact me.

Sincerely,

Paul L. Connerty
Executive Director

Attachment

The Chair recognized the following persons in attendance:

A. Mitchel Schapira, Chairman, Anchorage Anti-Defamation League Council.
B. John Alexander,, Manager, MOA Labor Relations.
C. Caprice Borg and Ava Brenneman, seniors at West High School, observing as part of class project.
D. Bob Hughes, Department of Justice, Community Relations Services, Seattle, WA.
E. Janet Bradley, Ex. Director, ASCHR

V. APPEARANCE REQUESTS:

Mitchel Schapira, Chairman, Anchorage ADL Council spoke regarding proposed State legislation banning racial and religious harassment. Mr. Schapira explained that the Anti-Defamation League is over fifty (50) years of age and committed to the cause of Civil Rights and equality of the races. Particularily, better relations between the races. One of the goals of the Pacific NW Region of ADL is to seek the passage of legislation in all states in their region addressing the problem of ethnic harassment. There was considerable conversation regarding the threat of outside influences invading Alaska regarding the organization of various groups with definite intent toward malcious harassment regarding race and religion.

Schapira spoke briefly about the September ('83) Forum and the need for effective legislative action concerning a malicious harassment statute in Alaska. He further stated that a bill is being prepared in Juneau to be introduced by Senator Josephson.

Janet Bradley, at Mr. Schapira's request, spoke regarding the last meeting of the Alaska State Commission for Human Rights which was addressed by Mr. Schapira via teleconferene. The ASCHR Commissioners unanimously endorsed the concept of the proposed legislation and she strongly urged the AERC to do the same.

A question and answer period followed.

Some of the concerns addressed related to Alaskan Native harassment taking place in the rural communities in Alaska. Also discussed was a portion of the Anti-Defamation League Model Statute that holds parents responsible for vandalism and conduct of their children.

Chair Kelly requested comments from Bob Hughes, Dept. of Justice. Mr. Hughes addressed the subject of development of organized "Hate Group" activity in the NW and the liklihood of Alaska being visited in the near future by delegates of these groups.

Chair Kelly requested that the Commission go on record supporting the concept of the proposed legislation banning racial and religious harassment. Commissioner Willard stated that the Commission should make a motion to that effect.

MOTION: 01/84-1 That the Commission resolve to support efforts to advance legislation to ban and penalize racial and religious harassment in the State of Alaska.

Maker of Motion: Commissioner Marks
Second: Commissioner Willard

ADOPTED: Unanimously

The next appearance request was John Alexander, Manager, MOA Labor Relations, to discuss the impact on employers of the Federal holiday honoring Martin Luther King, Jr.

Mr. Alexander explained, that as to the federal holiday, observance will depend on the employer. If the employer has a labor agreement of some type, it can probably be negotiated as one of the holidays. If it is declared a state holiday some businesses would observe the holiday while other businesses would operate as usual, perhaps with a skeleton crew. With municipal employees, the immediate impact would be upon the non-represented group. It would simply be written in the personnel rules and, if approved by the Assembly, declared a municipal holiday. It would also go into the labor contracts for negotiation.

There was considerable discussion as to what procedures needed to be followed to submit this proposition to the Assembly.

Chair Kelly asked Mr. Alexander what action the Commission could take to support a proposal. Mr. Alexander stated he might, at some time in the future want to call on the Commission for assistance and support.

Chair Kelly called for a five (5) minutes recess.

The meeting was called back to order at 8:32 P.M.

SB-406

DISCRIMINATORY HARASSMENT

(a) An individual commits the crime of discriminatory harassment if, with the intent to harass a person or group because of the race, color, religion, ancestry, or national origin of that person or group, the individual

(1) burns or desecrates a cross or other symbol representative of a particular race, color, religion, ancestry, or national origin, knowing it to be such a representative symbol, on private property without the permission of the property owner;

(2) places or displays a sign, mark, symbol, emblem, or other physical impression, including but not limited to a Nazi swastika on the private property of another without the permission of the property owner.

(b) Discriminatory harassment is a Class C Felony.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date:

REQUEST
Bill/Resolution No.: SB 406
Title: "An act relating to discriminating harassment."
Sponsor: Senator Josephson
Requestor: Sen. Judiciary
Date of Request: 3-12-84

FISCAL DETAIL
Agency Affected: Public Safety
Program Category Affected: Administration of Justice
BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Francis C. Allan F.C.A. mck
Phone: 269-5691
Division: Alaska State Troopers
Date: 03/05/84

Approved by Commissioner: Robert J. Sundberg
Date: 3/13/84
Agency: Public Safety

Distribution (by Agency preparing fiscal note):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

☑ AGENCY HEADQUARTERS
431 W. 7th AVENUE, SUITE 105
ANCHORAGE, ALASKA 99501
(907) 276-7474

☐ NORTHERN REGION
675 SEVENTH AVENUE, STA H
FAIRBANKS, ALASKA 99701
(907) 452-1561

☐ SOUTHCENTRAL REGION
431 W. 7th AVENUE, SUITE 101
ANCHORAGE, ALASKA 99501
(907) 274-4692

☐ SOUTHEASTERN REGION
POUCH AH
314 GOLDSTEIN BUILDING
JUNEAU, ALASKA 99811
(907) 465-3560

February 22, 1984

The Honorable Joe P. Josephson, Senator
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Josephson:

The Alaska State Commission for Human Rights is pleased to inform you of its unanimous endorsement of the concept of state legislation prohibiting acts of harassment and intimidation based on racial, religious, or ethnic motivation.

The Human Rights Commissioners unanimously passed a motion at their quarterly meeting of November 3 - 4, 1983 in Juneau reaffirming their earlier commitment of August 1981 to endorse such legislation. The Commission's Annual Report for 1983 recommends, pursuant to A.S. 18.80.150, that legislation of this sort is needed in Alaska and accordingly should be enacted.

The Commission staff's efforts in support of such legislation intensified during the last eight months during which time it organized and facilitated numerous meetings of an informal and diverse task force of Anchorage-based community organizations, including the Alaska Black Caucus, Anchorage Native Caucus, National Association for the Advancement of Colored People (NAACP), League of United Latin American Citizens (LULAC), Alaska-Korean Human Rights Committee, Anti-Defamation League of B'nai B'rith, Congregation Beth Shalom, Cook Inlet Native Association, and other interested groups. Representatives from the Anchorage Equal Rights Commission, Anchorage Police Department, the Alaska State Troopers, and the Community Relations Service of the U.S. Department of Justice also attended task force meetings on a regular basis.

The Commission staff will be pleased to provide any further information in its possession that may be desired in order to facilitate passage of legislation concerning this critically important matter. Thank you for your attention and concern.

Sincerely,

Janet L. Bradley

Janet L. Bradley
Executive Director

01-A36LH

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

P.O. BOX 100405 • ANCHORAGE, ALASKA 99510

DECEMBER 1983 NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE/ANCHORAGE BRANCH EXECUTIVE BOARD SESSION

RESOLUTION

RATIONAL: The National Association for the Advancement of Colored People, our country's largest and oldest civil rights organization founded on the principles of equality and justice for all people, the NAACP has sustained its commitment to end racial discrimination and harassment in every aspect of American life.

TITLE: RACIAL/ETHNIC/RELIGIOUS HARASSMENT AND INTIMIDATION

WHEREAS, Alaska civic and religious leaders have mounted a campaign for legislation banning and peanalizing racial, ethnic, and religious harassment in our state, the efforts deserve support of our enforcement agencies and elected officials, and

WHEREAS, a "Model Statute" drafted by the Anti-Defimation League aims to impose the community's sanction against unacceptable behavior, vandalism, intimidation, and the like, directed against ethnic or religious groups, individuals or property, it offers civic remedies to victims of such crimes and makes parents liable for the act of minors,

NOW THEREFORE BE IT RESOLVED:

The Anchorage Branch of the N.A.A.C.P. gives it's full support to this campaign and efforts and emplores our Governor, our legislature and enforcement agencies to endorse/support legislation that ban and peanalize racial, ethnic, and religious harassment and intimidation.

Signed:

Antonia Harrison
President
Anchorage Branch/NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

STATE OF ALASKA

HUMAN RIGHTS COMMISSION

BILL SHEFFIELD, GOVERNOR

☑ AGENCY HEADQUARTERS
431 W. 7th AVENUE, SUITE 105
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Sincerely,

Janet L. Bradley

Janet L. Bradley
Executive Director

01-A36LH

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

P.O. BOX 100405 • ANCHORAGE, ALASKA 99510

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Antonia Harrison
President
Anchorage Branch/NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

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Maker of Motion: Commissioner Marks
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Chair Kelly called for a five (5) minutes recess.

The meeting was called back to order at 8:32 P.M.

Hein
2/23/84

Original sponsor: Josephson

intentional infliction of emotional harm

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 406 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to discriminatory harassment."

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

* Section 1. AS 09.55 is amended by adding a new section to read:

ARTICLE 8. DISCRIMINATORY HARASSMENT.

Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A person may maintain an action for discriminatory harassment against another person, or against the parent or legal guardian of a minor, who commits an act that constitutes a crime under AS 11.41.260 or 11.41.270.

(b) The court may award punitive damages in an amount not more than $10,000 to a prevailing plaintiff in an action brought under this section. Any award of ~~punitive~~ damages against the parent ~~or~~ or legal guardian of a minor shall be predicated on the conduct of the parent or legal guardian ~~or and not on the conduct of the minor~~

* Sec. 2. AS 11.41 is amended by adding new sections to read: (class A I day)

Sec. 11.41.260. DISCRIMINATORY HARASSMENT IN THE FIRST DEGREE. (a) A person commits the crime of discriminatory harassment in the first degree if, with the intent to intimidate or harass another person because of the other person's race, color, religion, ancestry, or national origin, the person mental or physical handicap

(1) causes serious physical injury to any person;

Second Degree

(2) by words or other conduct places any person in fear of imminent serious physical injury;

(3) intentionally or recklessly damages property of another person in an amount of $50 or more; or

(4) enters or remains unlawfully

(A) on land with intent to commit a crime on the land;

or

(B) in a dwelling.

(b) Discriminatory harassment in the ~~first~~ second degree is a class C felony.

Sec. 11.41.270. DISCRIMINATORY HARASSMENT IN THE ~~SECOND~~ THIRD DEGREE. (a) A person commits the crime of discriminatory harassment in the second degree if, with the intent to intimidate or harass another person because of the other person's race, color, religion, ancestry, or national origin, the person

(1) causes physical injury to any person;

(2) by words or other conduct places any person in fear of imminent physical injury;

(3) intentionally or recklessly damages property of another person in an amount less than $50;

(4) enters or remains unlawfully

(A) in or upon premises; or

(B) in a propelled vehicle;

(5) insults, taunts, or challenges another person in a manner likely to provoke an immediate violent response;

(6) telephones another and fails to terminate the connection with intent to impair the ability of that person to place or receive telephone calls;

(7) makes repeated telephone calls at extremely inconvenient hours;

(8) makes an anonymous or obscene telephone call or a telephone call that threatens physical injury; or

(9) subjects another person to offensive physical contact.

(b) Discriminatory harassment in the ~~second~~ third degree is a class A misdemeanor.

* Sec. 3. AS 34.50.020 is amended by adding a new subsection to read:

(c) This section does not apply to an action brought under AS 09.55.650.

Hein
4/10/84 ✓

Original sponsor: Josephson

IN THE SENATE BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 406 (Judiciary) Hein

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to discriminatory conduct."

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

* Section 1. AS 09.55 is amended by adding a new section to read:

ARTICLE 8. DISCRIMINATORY HARASSMENT.

Sec. 09.55.650. DISCRIMINATORY HARASSMENT ACTION. (a) A civil action for discriminatory harassment may be maintained against a person, or against the parent or legal guardian of a minor, who, without the right to do so or a reasonable ground to believe a right to do so exists, commits an act intended to ~~intimidate,~~ harass~~,~~ or injure another person because of the race, color, religion, ancestry, or national origin of that person.

(b) The court may award actual and punitive damages to a prevailing plaintiff in an action brought under this section. a

* Sec. 2. AS 11.41 is amended by adding a new section to read:

Sec. 11.41.260. DISCRIMINATORY HARASSMENT. (a) An individual commits the crime of discriminatory harassment if, with the intent to ~~intimidate or~~ to harass a person or group because of the race, color, religion, ancestry, or national origin of that person or group, the individual

(1) burns a cross on private property without the permission of the property owner; or

(2) places or displays a Nazi swastika on private property without the permission of the property owner.

(b) Discriminatory harassment is a class C felony.

* Sec. 3. AS 12.55.155(c) is amended to read:

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense <u>under</u> [PURSUANT TO] an agreement that <u>the defendant</u> [HE] either pay or be paid for the

commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of [HIS] income;

(18) the offense was a crime specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction;

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, religion [CREED], ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance.

* Sec. 4. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.160. DISCRIMINATORY CONDUCT. (a) If a defendant is not subject to presumptive sentencing under AS 12.55.125(c), (d)(1), (d)(2), (d)(3), (e)(1), (e)(2), (e)(3), or (i), but the court finds by clear and convincing evidence that the defendant knowingly directed the conduct constituting the offense at a victim because of the victim's race, sex, color, religion, ancestry, or national origin, the court

shall impose a sentence that reflects extreme community condemnation of the conduct, reaffirms nondiscriminatory societal norms, and clearly indicates the aggravated nature of the offense.

~~(b) If a defendant is sentenced under (a) of this section, imposition of sentence may not be suspended under AS 12.55.085.~~

(c) As part of a sentence imposed under (a) of this section, and in addition to a condition of probation imposed under AS 12.55.100, the court ~~shall~~ may order the defendant to participate in a work program or counseling designed to ~~redirect~~ change the defendant's ~~attitudes and beliefs about~~ understanding of persons of a different race, sex, color, religion, ancestry, or national origin.

(d) The administrative director of the Alaska Court System shall prepare an annual report to the Alaska Human Rights Commission concerning cases involving convictions under AS 11.41.260, cases involving sentences imposed under (a) of this section, and cases in which a court has found the existence of the aggravating factor under AS 12.55.155(c)(22). The report shall include the number of cases, the types of crimes involved, the sentences imposed, and the geographical distribution of the cases.

* Sec. 5. AS 34.50.020 is amended by adding a new subsection to read:

(c) This section does not apply to an action brought under AS 09.55.650.

"enhance the defendant's understanding of"