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# DPS TRAINING BULLETIN

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LEGAL BULLETIN NO. 115  
September 21, 1987

DUTY TO TAKE PERSONS INCAPACITATED  
BY ALCOHOL INTO PROTECTIVE CUSTODY

Reference: Thomas Busby  
v.  
Municipality of  
Anchorage, et al.

Alaska Supreme Court  
Opinion No. 3214  
P.2d  
August 21, 1987

FACTS:

A police officer saw Busby walking about two feet into the traffic lane of a public street. The officer stopped Busby, moved him to the side of the road, talked with him and determined he was intoxicated. Warrant checks were ran with negative results. The officer left Busby. Shortly thereafter, he was struck by a car and suffered injuries as a result. Busby brought suit against the Municipality and the officer, alleging negligence and/or recklessness in failing to take him into protective custody.

Busby alleges the officer was required to take him into custody under the Alaska Statutes. "AS 47.37.170 provides in part:

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

. . . . .

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

. . . . .

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

. . . .

(j) For purposes of (b) of this section, 'incapacitated by alcohol' means a person who, as the result of consumption of alcohol, is rendered unconscious or has judgement or physical mobility so impaired that the person cannot readily recognize or escape conditions of apparent or imminent danger to personal health or safety."

ISSUE:

Do police have a duty to take persons who are incapacitated by alcohol in a public place into protective custody?

HELD: Yes.

REASONING:

1. A statute enunciates the appropriate duty when it is found that (a) the plaintiff--Busby--is within the class protected by the statute, (b) the harm/injury which occurred was of the type which the statute was intended to protect against, (c) the statute prescribes specific conduct rather than merely a general or abstract duty of care, (d) the defendant was a party charged with observing the statute, (e) the defendant can be fairly charged with being aware of the applicability of the statute, and (f) the statute is not so outdated or arbitrary as to make inequitable the statute's adoption as the standard of care.

2. AS 47.37.170 (b) articulates an appropriate standard of care that the municipality has an affirmative duty to take persons incapacitated by alcohol in a public place into protective custody and transport them to an appropriate treatment facility.

NOTES:

This case represents a number of cases nationwide where law-enforcement agencies and individual officers are subjects of law suits for acts of omission--their failure to perform their duty.

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Add this case to Section Q on Page 14 of your "Contents" and to Q-2 of "Text". File Legal Bulletin No. 115 numerically under Section R of the manual.