**15.01 False Imprisonment – Other than False Arrest**

In this case, the plaintiff (name) claims that the defendant (name) improperly interfered with the plaintiff's right to be free from confinement.

In order for the plaintiff to establish this claim, you must decide that the following four things are more likely true than not true:

(1) The defendant did something or said something which resulted in the plaintiff being confined; and

(2) The defendant acted with the intend to keep the plaintiff confined; and

(3) The plaintiff knew of the confinement [or was seriously harmed by the confinement]; and

(4) The plaintiff did not [consent] [and/or say anything or do anything to cause the defendant reasonably to believe the plaintiff consented] to being confined.

I will now explain to you some of the words I just used.

# Use Note

This instruction should be used in false imprisonment cases other than those involving arrest. For arrest cases, use Instructions 15.03 – 15.05. This instruction must be followed by Instruction 15.02A and 15.02C.

# Comment

Alaska case law recognizes the tort of false imprisonment. Malvo v. J.C. Penney Co., Inc., 512 P.2d 575 (Alaska 1973); City of Nome v. Ailak, 570 P.2d 162 (Alaska 1977). In neither case did the Alaska Supreme Court detail the elements of the tort, although there is nothing to suggest that Alaska would depart from the established traditional rules. This instruction is based on Restatement (Second) of Torts § 35-45A (1965). See also, Prosser, Torts § 11 (1971).

Restatement (Second) of Torts § 42 requires the plaintiff know of the confinement or be harmed by it. There is little case law on whether a person may recover where the person is harmed by but does not know of the confinement. The “harmful” language is bracketed to suggest caution should such a case arise.

The Alaska Supreme Court has held that false arrest is one method of effectuating a false imprisonment and that a plaintiff may not recover under both claims. City of Nome, 570 P.2d at 168.

In City of Nome, 570 P.2d at 169-70, the court recognized that the consent of the plaintiff to the confinement would bar recovery. The Alaska court has not clearly stated who bears the burden of proof on the issue of consent. The Restatement provides that for invasions of personal security, as distinguished from property interests, the plaintiff must show the absence of consent. Restatement (Second) of Torts § 10.

In arrest cases, the primary issue is whether there is an arrest. Once an arrest is made, the voluntary submission to the custody of the defendant will not defeat a false arrest claim if probable cause is lacking. This result is suggested in City of Nome, 570 P.2d at 170.

The borderline between consent which bars recovery and consent resulting from duress which does not is not easily drawn in false imprisonment cases. In the absence of Alaska law, no attempt is made to propose an instruction for this issue. It should be noted, however, that if the confinement is accomplished by state or local officials, unless they have a warrant they almost certainly will have to show consent to justify their actions. See generally Schneckloth v. Bustamonte, 412 U.S. 218 (1973).