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Kenai Judge Throws Out Texting-While-Driving Case

December 22, 2011 | By Matthew Simon | Channel 2 News

KENAI, Alaska — A Kenai judge says the 2008 law intended to make texting-while-driving illegal is not enforceable.

The [state's screen device law](#) does not include the word "text." Lawmakers say by not mentioning texting in the part of the bill allowing people to talk on phones means it is an implied illegal action.

However, on Dec. 1 Magistrate Jennifer Wells cited the lack of the word texting as the specific reason for tossing out the case against a man charged with texting-while-driving.



"Whether the 25th Legislature did, indeed, intend the statute to prohibit texting, or whether the statute has gotten the reputation because legislators and law enforcement wish this were true, is perhaps irrelevant," Wells writes. "From the court's perspective, because A.S. 28.35.161 creates misdemeanor and felony penalties, it is particularly important that the statute be clear."

"And we all thought that included texting," says Rep. Les Gara, D-Anchorage. "We intended for that to include texting."

If a state appeal of Wells ruling fails, Gara plans on making a proposal.

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"Probably the smartest thing to do is, and the quickest way to fix this for the legislature, is find a criminal bill that's about to pass. Add an amendment to it that clarifies that we meant for texting to be illegal while you're driving."

The amendment, Gara says, would have language specifying all typing while driving is illegal.

For Rep. Mike Doogan, D-Anchorage, that is not good enough.

"All of the evidence we have is letting people talk on the cell phone while driving is a bad idea, Doogan says.

Like the National Transportation Safety Board, Doogan wants an all out ban on drivers using cell phones. His bill, and others like it, have stalled in Juneau.

"The first time there is a four car pileup that kills a bunch of people, that bill's going to pass," Doogan says. "But do I think it's going to pass before that, not really."

Gara says he is just trying to remove politics from the process by focusing on what lawmakers intended to originally accomplish.

"We should not allow people to text while they're driving," Gara says. "That leads to death. That leads to serious injury."

Anchorage Police Spokesperson Marleen Lammers says the department has only issued 10 screen violation tickets for this year.

Department of Law lawyers disagree with the Kenai judge. According to Gara their lawyers say they still intend to continue prosecuting cases, and most state courts will continue to hear them.

House Finance Co-Chair Bill Stolze, R-Chugiak, was one of the few lawmakers who voted against this law back in 2008.

"I voted that way because the law failed to keep up with changing technology," Stolze says. "I don't know if his (Gara) proposal is well thought out because we haven't been effective at trying to define technology."

House Speaker Mike Chenault, R-Nikiski, agrees with Gara, saying the law was intended to stop texting-while-driving and should be revised if there is any lingering confusion.

"I can see that happening, if there's a question in the law," Chenault says. "Rep. Gara's solution would work."

However, when it comes to other cell phone bills stalling in the legislature, Chenault says there are already existing laws protecting drivers.

“We don’t need a law outlawing all cell phone use,” Chenault says.



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