

**ALASKA STATE LEGISLATURE**  
**SENATE TRANSPORTATION STANDING COMMITTEE**

February 24, 2004

1:40 p.m.

**TAPE(S) 04-5, 6**

**MEMBERS PRESENT**

Senator John Cowdery, Co-Chair  
Senator Thomas Wagoner, Co-Chair  
Senator Gene Therriault  
Senator Georgianna Lincoln

**MEMBERS ABSENT**

Senator Donny Olson

**COMMITTEE CALENDAR**

SENATE BILL NO. 224

"An Act relating to lowering the legal level of intoxication for operating a motor vehicle, aircraft, or watercraft to .02 percent or the equivalent for persons under 21 years of age; relating to implied consent for purposes of determining consumption of alcohol; and providing for an effective date."

MOVED SB 224 OUT OF COMMITTEE

SENATE BILL NO. 298

"An Act repealing the ban on the use of off-road vehicles within five miles of the right- of-way of the James Dalton Highway."

HEARD AND HELD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 224

SHORT TITLE: MINORS DRIVING AFTER CONSUMING ALCOHOL

SPONSOR(s): SENATOR(s) COWDERY

05/14/03	(S)	READ THE FIRST TIME - REFERRALS
05/14/03	(S)	TRA, STA
05/17/03	(S)	TRA AT 11:00 AM BUTROVICH 205
05/17/03	(S)	Heard & Held
05/17/03	(S)	MINUTE(TRA)
02/24/04	(S)	TRA AT 1:30 PM CAPITOL 17

BILL: SB 298

SHORT TITLE: OFF-ROAD VEHICLE USE ON DALTON HIGHWAY

SPONSOR(S): SENATOR(S) SEEKINS

02/06/04 (S) READ THE FIRST TIME - REFERRALS  
02/06/04 (S) TRA, FIN  
02/24/04 (S) TRA AT 1:30 PM CAPITOL 17

**WITNESS REGISTER**

Ms. Chrystle Lowndes  
Staff to Senator Cowdery  
Alaska State Capitol  
Juneau, AK 99801-1182

**POSITION STATEMENT:** Commented on SB 224 for the sponsor.

Ms. Cindy Cashen  
Mother's Against Drunk Drivers (MADD)  
Juneau AK

**POSITION STATEMENT:** Supports SB 224.

Ms. Jessica Paris  
MADD Youth In Action Program  
Juneau AK

**POSITION STATEMENT:** Supports SB 224.

Mr. Ace Callaway  
Alaska Trappers Association  
Fairbanks AK

**POSITION STATEMENT:** Supports SB 298.

Dr. Brian Pearson, Biologist  
Department of Wildlife Management  
North Slope Borough  
Fairbanks AK

**POSITION STATEMENT:** Opposes SB 298.

Mr. Lee Olson  
Fairbanks AK

**POSITION STATEMENT:** Supports SB 298.

Mr. Dick Bishop  
Fairbanks AK

**POSITION STATEMENT:** Supports SB 298.

Mr. Raymond Paneak  
Anaktuvik Pass AK

**POSITION STATEMENT:** Opposes SB 298.

Mr. Matt Robus, Director  
Division of Wildlife Conservation  
Department of Fish & Game  
PO Box 25526  
Juneau, AK 99802-5226

**POSITION STATEMENT:** No position on SB 298.

**ACTION NARRATIVE**

**TAPE 04-5, SIDE A**

^#SB224

**SB 224-MINORS DRIVING AFTER CONSUMING ALCOHOL**

**CO-CHAIR THOMAS WAGONER** called the Senate Transportation Standing Committee meeting to order at 1:40 p.m. Present were Senators Lincoln, Co-Chair Cowdery and Co-Chair Wagoner. The first order of business to come before the committee was SB 224.

MS. CHRYSTLE LOWNDES, staff to Senator Cowdery, sponsor of SB 224, said the purpose of the bill is to lower the blood alcohol level (BAL) from .08 to .02 for driving under the influence (DUI) citations given to minors. Department of Motor Vehicles (DMV) data indicates that in 2003, almost 400 people under the age of 21 were pulled over for driving after consuming alcohol. Forty percent of them who had their licenses revoked had a .08 or higher BAL. Sixty percent had below a .08 BAL, but were still driving under the influence.

CO-CHAIR COWDERY asked if other states have a .02 BAL.

MS. LOWNDES replied that most other states with a zero tolerance law like Alaska's have this level. She elaborated that a .02 level allows for things like cough syrup, communal wine, mouth wash, etc.

SENATOR LINCOLN asked if drinking and driving is already illegal now.

MS. LOWNDES replied that the DUI statute, AS 25.35, says one is driving under the influence of alcohol, an inhalant or a controlled substance if the blood alcohol content is .08 or higher.

SENATOR LINCOLN asked if anyone opposes the bill.

MS. LOWNDES replied that she has heard of no strong objections. The Department of Public Safety (DPS) has voiced a little concern over harshly treating under-age people.

SENATOR LINCOLN said although she wasn't opposed to the bill, she thought DPS and the Division of Corrections should have fiscal notes.

SENATOR THERRIAULT resounded Senator Lincoln's concern about cost and added that revoking a license drives up the cost of administration, because that action gets appealed often. He suggested instituting a different penalty with a lower cost to the state.

CO-CHAIR WAGONER asked how many under-age drinkers who were not driving had been found in vehicles.

MS. LOWNDES replied that minors under the influence in a car would receive a minor consuming. The driver might receive a contributing to the delinquency of a minor citation depending on the situation.

MS. CINDY CASHEN, Mother's Against Drunk Drivers (MADD), said that MADD advocates a .02 BAL for those under 21 who drive. A minor operating a vehicle after consuming (MOVAC) is a misdemeanor like jaywalking or littering. She strongly felt that someone who has been drinking and driving a two-ton vehicle should not be considered the same as jaywalking.

Society expects accountability for a crime (jail time); it wants the offender to remember not to do it again (license revocation and vehicle impoundment); it also wants them to receive alcohol treatment. "MOVACs are not effective in reaching these goals." Kids just keep racking up the MOVACs. They are tomorrow's high-risk drivers, because their BALs typically go higher every time they are stopped. There is no reason to seek treatment with a MOVAC; a DUI has credit.

MS. CASHEN said research has shown that drivers between 15 and 20 years old are more often involved in alcohol-related crashes than any other comparable age group. The peak for fatal crashes occurs at age 21.

She related that Alaska Youth Risk data shows the number of people who drove a vehicle when drinking one or more times preceding the survey was 12.3 percent in 1995; in 2003 it was

11.3 percent. The Lower 48 has a statistic of 13.3 percent. A DUI would provide those youth with a big incentive to get into treatment to not have their driver's license revoked.

SENATOR LINCOLN said she supported the bill, but reiterated her concern about mandating stiffer penalties without providing adequate funding for the supporting agencies. Alcohol treatment funding, for instance, was reduced for adults last year and this penalty would only add to the need for more funding. She asked how many crashes occurred in Alaska that involved people under 21 years of age and how many were actually inebriated.

MS. CASHEN replied that 18 teenagers who were driving drunk were lost between 1995 and 2001.

CO-CHAIR COWDERY asked what the committee thought about exempting active military people from this law.

MS. CASHEN replied, "Absolutely not."

CO-CHAIR COWDERY asked her MADD's position on designated drivers among youth.

MS. CASHEN replied that MADD does not support designated drivers among youth. "We have zero tolerance. That's it. We will not even consider it. We do not consider designated drivers because that opens the door.... Just don't do it. It's not worth it."

CO-CHAIR COWDERY asked how an under-age drinker in a car who is not driving would be impacted.

MS. CASHEN replied that peace officers must have probable cause to pull over a driver and reasonable doubt to see if the passengers are consuming.

CO-CHAIR COWDERY asked if juvenile penalties should carry over to adult status if a person is almost 21.

MS. CASHEN replied that growing older does not affect the fact that one chose to break the law and should have to deal with the consequences.

SENATOR LINCOLN pointed out that juveniles are not put into adult facilities and that female offenders are not going to be housed in the same facility as male offenders and the treatment centers cost a lot whether they are in Alaska or somewhere else. She reiterated her serious concern about an unfunded mandate.

DMV has advised the committee that just because there's a law doesn't mean the DUI numbers are going to drop, because the enforcement component won't be increased.

MS. CASHEN said MADD agrees with her. "We need treatment; we need accessible treatment. If we don't have accessible treatment, then one of the parts of the puzzle falls apart...."

CO-CHAIR WAGONER asked emphatically and rhetorically, "When do we start holding parents accountable, too?"

MS. JESSICA PARIS, MADD Youth In Action Program, related how teens had done surveys at the High School about alcohol laws. People seemed to know least that it's illegal for people under 21 to have a BAL that's over .00. About 50 percent of the people thought the BAL was about .08.

Kids understand what a DUI is; the simpler the language, the simpler the concept is to educate the people. She pointed out that an adult's license is suspended for three months for DUI, but suspended for only two months for a second MOVAC. So changing the law would make it more consistent.

MS. PARIS said she preferred language for a MOVAC being changed to any blood in the system because it would be easier for juveniles to understand.

SENATOR THERRIAULT urged Finance committee members to look for the hidden expenses in this bill and to find ways to cover it. He moved to pass SB 224 from committee with attached fiscal notes and individual recommendations. There were no objections and it was so ordered.

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^#SB298

#### **SB 298-OFF-ROAD VEHICLE USE ON DALTON HIGHWAY**

CO-CHAIR WAGONER announced SB 298 to be up for consideration.

SENATOR RALPH SEEKINS, sponsor, referencing his sponsor statement, said the state's statutes prevail over Bureau of Land Management (BLM) statutes, when they more restrictive. The Dalton Highway was opened to public use during the Hickel administration and now, 10 years later, it is time to allow public use of the lands on either side of it. There is no reason

not to it is done safely and with care for the environment. SB 298 asks that the statute be totally repealed.

CO-CHAIR WAGONER asked if the five-mile prohibition was for recreation and hunting only.

SENATOR SEEKINS replied it was for any purpose whatsoever, but it does not apply to off-road vehicles necessary for oil and gas exploration, development, production or transportation, or to a person who holds a mining claim in the vicinity of the highway who must use land within five miles of right-of way to gain access to it - or if you start on one side of the corridor, you can drive through it to get to the other side, but you can't start in the middle to get to either side.

MR. ACE CALLAWAY, Alaska Trappers Association, supported Senator Seekins' description of his dilemma as a trapper. A number of other trappers have been affected; one has a 275-mile long trap line with cabins that he has run for almost 15 years. There is no way he could run that line with on-foot access - and he can't afford the cost of removing the cabins.

**TAPE 04-5, SIDE B**

MR. CALLAWAY explained that he is a disabled veteran and his only access to his 250-mile trap line is by snowmobile. One solution is to do away with the statute and another would be for the state to make vehicle access points through the corridor. He favored deleting the statute.

DR. BRIAN PEARSON, biologist, Department of Wildlife Management, Fairbanks North Star Borough, opposed SB 298 for several reasons. Removing the five-mile corridor along the Dalton Highway would increase hunting and trapping pressure and harassment of wildlife on the North Slope.

This is important for several reasons. First, if you're going to increase the competition between subsistence hunters and sport hunters and this increase in hunting pressure will likely result in a change in regulation that would effect the ability of subsistence hunters to harvest an adequate number of animals to support themselves and their community.

Second, and perhaps as important, the Central Arctic herd has served as a good study herd toward the impacts of oil development on caribou on the North

Slope. An increase in hunting will certainly change our ability to investigate the impacts of oil development on wildlife.

Finally, biologically, caribou likely cannot withstand the increases in combined disturbance from both industry and harvest pressures. Virtually all the caribou herds in the state that can be accessed by roads. Managers have had to impose pretty stringent management efforts to maintain those herds in a viable population. Secondly, removing the corridor is certainly going to cause damage to the tundra from all-terrain vehicles. The North Slope north of the Brooks Range is certainly underlain by permafrost. There are numerous examples that the damage caused by ATVs is long-term....

DR. PEARSON said there is only one state trooper on the North Slope and law enforcement would be a real issue. The oil industry would have security issues that are closely linked with law enforcement.

SENATOR THERRIAULT said many of the same arguments were made when the road was opened up and asked if any studies showed its detrimental effects yet.

DR. PEARSON replied that hunters had increased in number along the corridor; caribou had been found with arrows in them from an increase in archery hunters there.

CO-CHAIR COWDERY reasoned if the law didn't exist, enforcement would not be needed. He didn't think the additional all-terrain vehicle traffic would cause much damage.

DR. PEARSON differed saying that different communities are proactive in the efforts they take to protect the tundra. An increase in traffic from the state opening up the Dalton Highway corridor would certainly increase the amount of damage to the tundra. Tundra damage has been documented numerous times.

SENATOR THERRIAULT asked if he would support establishing a minimum snow cover.

DR. PEARSON replied that would certainly mitigate the effects on the tundra, but that doesn't discount his other concerns about an increase in hunting pressure.

MR. LEE OLSON, Fairbanks, said he is also a disabled veteran and he supports SB 298 because it would help give him access to hunting.

SENATOR LINCOLN asked him what game he hunts. He replied caribou.

MR. DICK BISHOP, Fairbanks, supported SB 298. It's time to recognize that the potential affects on lands and waters can be regulated under other statutes.

SENATOR THERRIAULT asked him for examples of other statutes and regulations that could be used to mitigate the impacts of increased access.

MR. BISHOP said the Board of Game and the Division of Sport Fisheries (DSF) could use their regulations and the Department of Natural Resources (DNR) has land management authority over state lands.

MR. RAYMOND PANEAK, Anaktuvik Pass hunter, opposed SB 298 because the added hunting competition would have detrimental affects on the caribou herds and their wintering grounds. He was also concerned about ATVs destroying the tundra.

SENATOR LINCOLN asked him to explain how opening the corridor would affect his village.

MR. PANEAK responded that subsistence hunters and trappers would be adversely affected. "We're going to have problems."

SENATOR LINCOLN asked Mr. Paneak if he was speaking for all the people of Anaktuvik Pass.

MR. PANEAK replied that he is speaking for his village, Nuiqsut and all the villages in his area. They use the same caribou herd.

MR. MATT ROBUS, Director, Division of Wildlife Conservation, Alaska Department of Fish and Game (ADF&G), said he wasn't taking a position on this bill at this time, but he wanted to present some wildlife considerations for the committee's information.

Foremost of these would be management of the Central Arctic caribou herd. At present that herd can sustain a maximum allowable harvest of about 1,500 animals

annually. If the taking of the ORV vehicle restrictions were to stimulate a very large increase in hunting effort, we could be in the position where the Board of Game would have to consider using season and bag limit restrictions or some other mechanism to restrict hunting pressure to be at an allowable level. If that became restrictive of subsistence opportunity, you could see either the state or the federal subsistence process start to distinguish between which hunters could participate in that hunt.... We have some similar considerations for Dall Sheep and musk ox seasons along the Haul Road because those populations cannot sustain large increases in the hunting pressure from where they are at presently.

MR. ROBUS said the Board of Game has used other tools and one of those is a regulation that is currently in effect for a Dalton Highway management area that goes from the Yukon River north to Dead Horse. That regulation, which was promulgated under the state's wildlife management statutes, AS 16.05.255, would remain in effect even if this statute were repealed. As presently written, that regulation tightly controls the use of any motorized vehicle with exceptions for hunting and does not restrict it at all for trapping.

Use of motorized vehicles to assist trapping is within bounds under our regulation. However, hunting is restricted to bow and arrow within five miles of the highway and motorized vehicles are not allowed to be used unless they are airplanes, boats or a licensed highway vehicle on a publicly maintained road. Those can be adjusted one way or the other by the Board of Game, but those are the type of management restrictions that have been put into place by the board to mediate the amount of hunting that occurs in that part of the state. That's for biological reasons. If that does stay in affect, I want to point out that that would only restrict hunting and would not restrict the use of off-road vehicles (ORVs) for other purposes for anything from mining to berry picking, I suppose. So, we could still have some effects from repealing this statute in terms of harassment of game.

He pointed out that the regulatory system along the Dalton Highway is very tangled and urged caution in undoing everything, because it could lead to using regulations to cure impacts that would be more painful to live with than what there is now.

SENATOR LINCOLN said she thought more law enforcement would be needed because of the harassment and killing of animals that might already be in scarce supply. She asked how many troopers were in the area now and how many would be needed.

MR. ROBUS replied that the Bureau of Wildlife Enforcement is recruiting for a position to be filled in Coldfoot. Typically, one trooper has been in that post. "I think it's safe to say that if you have more hunting activity and more hunting pressure or other forms of interaction with wildlife, you would also have more enforcement need."

SENATOR SEEKINS asked if he found a negative impact on moose herds from the use of all terrain vehicles in the Talkeetna area.

MR. ROBUS replied that issue is debated and he didn't have any documented effects. Some people think there are fewer places for game to take refuge in Unit 13. His point is that vehicle restriction is a management tool that is used by the board that would have to go to another tool if game herds were negatively impacted. Of all the uses that might occur, he couldn't speculate on how much activity would be related to hunting, but probably a lot.

SENATOR SEEKINS pointed out that that area is so remote, that people have to be wealthy enough to fly in to access it. It seems to him that there shouldn't be exclusive access to lands in the state of Alaska.

SENATOR LINCOLN said she is very familiar with the road since she uses it a lot in the summer.

There hasn't been a place that I have pulled over that I haven't seen oil drums and oil cans and garbage cans and diapers. There is an immense amount of garbage on that highway. During moose hunting season I think I counted almost 400 trailers that were parked by the bridge up there. We have put out fires on both sides of the river from people who were careless.... I would expect if that corridor were opened - and public safety is a real concern - enforcement is a real concern. There just isn't the enforcement up there now to accommodate the traffic that's there....

**TAPE 04-6, SIDE A**

SENATOR LINCOLN said she would like to think that the good citizens of the state of Alaska would leave that area the same way it was when they arrived, but she can attest that that is not the case.

SENATOR SEEKINS said he travels the Haul Road, too, and knows that hundreds of trucks travel it every week and he thought their use should be accommodated.

Just to say that because someone else in the past may have not been sensitive to how they got rid of oil cans or anything else, in my opinion, is not reason to limit the people of the state of Alaska to have access to millions of acres of lands and to be able to use those lands responsibly. I think we can accommodate both uses....

CO-CHAIR WAGONER said there would be an additional hearing on this bill and closed today's hearing. He adjourned the meeting at 3:25 p.m.

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