

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE

February 8, 2012
1:03 p.m.

MEMBERS PRESENT

Representative Carl Gatto, Chair
Representative Steve Thompson, Vice Chair
Representative Wes Keller
Representative Bob Lynn
Representative Lance Pruitt
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 253

"An Act classifying certain substances as schedule IIA controlled substances; and providing for an effective date."

- MOVED CSHB 253(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 255

"An Act prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle."

- HEARD & HELD

HOUSE BILL NO. 299

"An Act allowing appropriations to the civil legal services fund from court filing fees."

- BILL HELD OVER TO 2/10/12

HOUSE BILL NO. 303

"An Act relating to suspended imposition of sentence for certain criminal offences."

- BILL HELD OVER TO 2/10/12

PREVIOUS COMMITTEE ACTION

BILL: HB 253

SHORT TITLE: CATHINONE BATH SALTS

SPONSOR(S): REPRESENTATIVE(S) STOLTZE, THOMPSON, MILLETT,
PRUITT, TUCK

01/17/12 (H) PREFILE RELEASED 1/6/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) JUD, FIN
02/08/12 (H) JUD AT 1:00 PM CAPITOL 120

BILL: HB 255

SHORT TITLE: READING OR TYPING MESSAGE WHILE DRIVING

SPONSOR(S): REPRESENTATIVE(S) GARA, THOMAS, GATTO, P.WILSON,
GRUENBERG, TUCK

01/17/12 (H) PREFILE RELEASED 1/6/12
01/17/12 (H) READ THE FIRST TIME - REFERRALS
01/17/12 (H) TRA, JUD, FIN
01/26/12 (H) TRA AT 1:00 PM CAPITOL 17
01/26/12 (H) Moved Out of Committee
01/26/12 (H) MINUTE(TRA)
01/27/12 (H) TRA RPT 5DP
01/27/12 (H) DP: FEIGE, PRUITT, PETERSEN, GRUENBERG,
P.WILSON
02/08/12 (H) JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BILL STOLTZE
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments as one of HB 253's joint
prime sponsors.

CHRISTINE MARASIGAN, Staff
Senator Kevin Meyer
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Assisted with the presentation of HB 253 on
behalf of Senator Meyer, one of the joint prime sponsors of
SB 140, the Senate companion bill.

ANNE CARPENETI, Assistant Attorney General
Legal Services Section
Criminal Division

Department of Law (DOL)
Juneau, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 253.

ORIN DYM, Forensic Laboratory Supervisor
Scientific Crime Detection Laboratory ("Crime Lab")
Office of the Commissioner
Department of Public Safety (DPS)
Anchorage, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 253.

RODNEY DIAL, Lieutenant, Deputy Commander
A Detachment
Division of Alaska State Troopers
Department of Public Safety (DPS)
Ketchikan, Alaska

POSITION STATEMENT: Responded to questions during discussion of HB 253; during discussion of HB 255, testified in support, provided comments, and responded to questions.

MICHAEL COOPER, M.D., Deputy State Epidemiologist
Section of Epidemiology
Division of Public Health
Department of Health and Social Services (DHSS)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 253.

QUINLAN STEINER, Director
Central Office
Public Defender Agency (PDA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 253; responded to questions during discussion of HB 255.

RICHARD ALLEN, Director
Anchorage Office
Office of Public Advocacy (OPA)
Department of Administration (DOA)
Anchorage, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 253; provided comments during discussion of HB 255.

REPRESENTATIVE LES GARA

Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 255 as one of its joint prime sponsors.

MARK S. HALL, Chief
Anchorage Fire Department
Municipality of Anchorage (MOA)
Anchorage, Alaska

POSITION STATEMENT: Testified in support of HB 255.

BOB GRIFFITHS, Chief
Cordova Police Department
City of Cordova;
Executive Director
Alaska Association of Chiefs of Police, Inc. (AACOP)
Cordova, Alaska

POSITION STATEMENT: Testified in support of HB 255.

PATRICIA GRISWOLD
Delta Junction, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 255.

REPRESENTATIVE BOB HERRON
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided comments during discussion of HB 255.

ALBERT JUDSON
Juneau, Alaska

POSITION STATEMENT: Testified in favor of HB 255.

ACTION NARRATIVE

[1:03:11 PM](#)

CHAIR CARL GATTO called the House Judiciary Standing Committee meeting to order at 1:03 p.m. Representatives Gatto, Holmes, Keller, Pruitt, and Thompson were present at the call to order. Representatives Gruenberg and Lynn arrived as the meeting was in progress.

HB 253 - CATHINONE BATH SALTS

[Contains brief mention of SB 140, the Senate companion bill, and testimony from staff of one of its joint prime sponsors.]

[1:03:44 PM](#)

CHAIR GATTO announced that the first order of business would be HOUSE BILL NO. 253. "An Act classifying certain substances as schedule IIA controlled substances; and providing for an effective date." [Included in members' packets was a proposed committee substitute (CS) for HB 253, Version 27-LS1131\M, Luckhaupt, 2/3/12.]

[1:03:57 PM](#)

REPRESENTATIVE BILL STOLTZE, Alaska State Legislature, speaking as one of HB 253's joint prime sponsors, mentioned that [the synthetic cathinones which HB 253 is proposing to add to Alaska's list of schedule IIA controlled substances] are sometimes referred to as bath salts, relayed that there are very severe consequences associated with their use as mind-altering substances, and indicated that there is a Senate companion bill.

CHAIR GATTO noted that that Senate companion bill is SB 140, sponsored [jointly by Senators Meyer, Geisel, and Olson].

[1:07:03 PM](#)

REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 253, Version 27-LS1131\M, Luckhaupt, 2/3/12, as the working document.

REPRESENTATIVE GRUENBERG objected for the purpose of discussion.

[1:08:25 PM](#)

CHRISTINE MARASIGAN, Staff, Senator Kevin Meyer, Alaska State Legislature, on behalf of Senator Meyer, one of the joint prime sponsors of SB 140, the Senate companion bill, explained that the drafter had noticed that one of the compounds which HB 253 is proposing to add to the list of schedule IIA controlled substances was already included in Alaska's list of schedule IA controlled substances, and so Version M makes conforming changes - deleting that compound from the list of schedule IA controlled substances via Section 2, and providing [a more chemically-descriptive] reference to that compound in Section 1's proposed AS 11.71.150(e)(12). The supervisor of Alaska's Scientific Crime Detection Laboratory, she relayed, has confirmed that it's

the same compound [regardless that the various references to that compound are worded differently]. Moving that compound as Version M is proposing to do makes sense given that the list of schedule IA controlled substances addresses opiates, whereas the list of schedule IIA controlled substances would [with passage of the bill] address other cathinones.

REPRESENTATIVE GRUENBERG removed his objection to the motion to adopt Version M as the working document.

CHAIR GATTO relayed that Version M was before the committee.

[1:14:32 PM](#)

ANNE CARPENETI, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law (DOL), in response to questions, concurred that Version M's reference to that compound - sometimes called methcathinone - is more complete, and that that compound is being moved to the list of schedule IIA controlled substances because it's chemically similar to the other cathinones being added by the bill and to [other schedule IIA controlled substances - such as] methamphetamine; and explained that in Alaska, controlled substances are categorized according to the level of danger they pose or might pose to the public as determined by the legislature, with schedule IA containing what the legislature considers to be the most dangerous of substances. Moving the aforementioned compound as Version M is proposing to do will have an impact for purposes of sentencing, she surmised, because which of the various controlled-substance crimes and their penalties might apply in any given case is dependent upon which schedule a particular drug/compound is listed under [and on the amount and behavior/activities involved].

REPRESENTATIVE HOLMES surmised that the question before the committee is which schedule of controlled substances should the compounds referenced in the bill be added to.

[1:19:22 PM](#)

ORIN DYM, Forensic Laboratory Supervisor, Scientific Crime Detection Laboratory ("Crime Lab"), Office of the Commissioner, Department of Public Safety (DPS), in response to questions, relayed that methcathinone was first developed around 1957 as an appetite-suppressant weight-loss drug, but was "pulled" due to its adverse side effects; that methcathinone can be thought of as methamphetamine because chemically they are extremely

closely-related materials that can be easily manipulated to form new compounds/drugs, and they have similar effects on a person; and that Version M provides for a very thorough list of known [cathinones].

REPRESENTATIVE LYNN asked whether the presence of cathinones in someone's system can be detected via chemical testing.

MR. DYM - mentioning that such biological samples are sent outside the state for analysis - said that currently there are protocols for detecting methcathinone, cathinone, and methylenedioxypropylamphetamine, and that technology, though perhaps a bit behind, is advancing in terms of being able to test for the other compounds. For purposes of possession crimes, however, the Crime Lab is able to identify the substances themselves in their bulk form.

1:26:24 PM

RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), in response to questions, explained that when law enforcement officers suspect that a person is under the influence of an intoxicating substance, the standard protocol is to conduct a series of field sobriety tests, and if the person fails those, and interviews with the person indicate that he/she is under the influence of something, then law enforcement officers can make an arrest and obtain a search warrant for a [biological] sample to send off for testing. Furthermore, some law enforcement officers qualify as being what he termed, "drug-recognition experts," who could be brought in, in certain situations, and law enforcement officers in the Matanuska-Susitna (Mat-Su) valley, for example, have recently been experiencing quite a few incidents involving cathinone abuse, and so now have more experience in identifying people under the influence of such compounds; the effects on a person are like those of methamphetamine but far more pronounced: more paranoia, more delusions, more hallucinations, et cetera. However, because it is often the case that someone stopped for impaired driving will be under the influence of multiple intoxicating substances, law enforcement officers simply look for general signs of impairment, rather than trying to determine what particular substance the driver's behavior could be attributed to. In conclusion, he predicted that with cooperation from the Crime Lab, law enforcement officers are going to be able to address many of the issues related to enforcement.

REPRESENTATIVE STOLTZE mentioned that when samples are sent outside for analysis, it is simply because doing so is much less expensive than conducting such analyses in house.

CHAIR GATTO posited that the specificity of Version M's list of cathinones will make it difficult for people to subvert the law simply by changing the chemical composition of a particular cathinone.

1:31:37 PM

MICHAEL COOPER, M.D., Deputy State Epidemiologist, Section of Epidemiology, Division of Public Health, Department of Health and Social Services (DHSS), explained that synthetic cathinones are the active compounds found in pre-packaged powders - usually made overseas, and found in local stores and over the Internet - that are deceptively labeled as bath salts or plant food or pond-water cleaner, and, in order to avoid regulation, usually state on the packaging that the product is not for human consumption. One study, he relayed, found that intravenous use is the most common form of consumption, though snorting, smoking, and rectal administration are pretty common as well. Cathinone, derived from an East African shrub called Khat, is included in the federal list of schedule I controlled substances, and is easily altered to avoid regulation. Cathinones are essentially like methamphetamines, increasing certain neurotransmitter levels in the brain, creating an adrenaline rush and a sense of euphoria, and increasing arousal and alertness; their effects are very similar to those of amphetamines, cocaine, and ecstasy; and they are often called fake cocaine or legal cocaine. However, in addition to the "desired" effects, he relayed, there is a host of unpredictable, dangerous, and undesirable effects, including agitation, aggression, hallucinations, paranoia, and seizures. There are also widespread reports across the country attributing violent crimes, suicides, homicides, and other bizarre behavior to the use of cathinones.

DR. COOPER said that according to his limited research, most experts are classifying the abuse of "bath salts" as being more dangerous than the abuse of synthetic cannabinoids, though both are dangerous. The typical patient under the influence of cathinone can be agitated, aggressive, require substantial restraints, hallucinate, exhibit bizarre behavior, have elevated heart rate, blood pressure, and temperature, and can be a real danger to himself/herself and everyone else around.

Furthermore, a recent article in a medical journal indicates that another side effect of cathinone use is a life-threatening skin infection - a necrotizing fasciitis - at injection sites; in one case, amputation of the arm and a mastectomy were required to address just such an infection.

[1:35:45 PM](#)

DR. COOPER - confirming that chemical testing of biological samples for the presence of cathinones is currently done at an outside laboratory - indicated that although the science behind such testing is rapidly evolving, there are still a lot of unknowns about it, and, in each individual case, also about other things such as which particular compound was taken, how much was taken, and how long after dosing might testing still reveal a compound's presence. There is no antidote or specific treatment for someone suffering the effects of cathinones. Such a person can be monitored, though, and any observed secondary side effects can be treated. Usually the effects of cathinone use are short-lived - lasting anywhere between four to eight hours - but there have also been reports of very long-term psychiatric side effects occurring. After their initial development, cathinone compounds fell out of favor because of their high abuse and addiction potentials, but they've recently become popular as mind-altering substances. For example, in 2010, poison control centers received only about 300 calls related to cathinone use, whereas in 2011, they received over 6,000 such calls.

DR. COOPER said that as a result of cathinones' widespread use and increasing popularity, their addictive potential, and an increase in the number of reports of crimes related to cathinone use, "about over" 30 states thus far have enacted legislation banning the sale and possession of certain synthetic cathinones, with a couple of those states having specifically addressed in their legislation the issue of potential future variations. Furthermore, the federal Drug Enforcement Agency (DEA) has used its authority to temporarily [ban] certain synthetic cathinones while it formulates a long-term policy. Synthetic cathinones are being used in Alaska, he assured the committee, adding that the Section of Epidemiology has published a bulletin documenting case reports of patients under the influence of cathinones, and he's heard from his colleagues working in Alaska's clinics and emergency rooms that they've also been encountering people under the influence of cathinones, and thus far this year, Alaska's poison control center has received 15 calls related to cathinone use.

DR. COOPER, in conclusion, said that the Division of Public Health considers the abuse of synthetic cathinones to be a growing problem [because] such products are poorly regulated, are widely available, may contain a variety of chemicals, are hard to detect, are psychoactive, and, by all accounts, are gaining in popularity.

1:40:02 PM

QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), reminded members that which schedule a particular controlled substance is placed under has a fairly significant impact on the PDA [because its workload is dependent upon whether a particular case involves a felony crime or a misdemeanor crime]. If, for example, a particular drug is listed as a schedule IIA controlled substance, then possessing only a small amount [might] be a felony, whereas if that same drug is instead listed as a schedule IIIA controlled substance, then possessing only a small amount [might instead] be a misdemeanor, and the difference between a felony and a misdemeanor is fairly significant in terms of penalties for the perpetrator and case-processing costs.

MS. CARPENETI - providing just a few examples of particular behavior that could constitute particular controlled-substance crimes, [and thereby indicating that which crime and subsequent penalty might be charged and applied in any given case depends upon the type and amount of drug/compound involved, and the behavior/activities involved] - relayed that for the crimes of misconduct involving a controlled substance, a first degree crime is an unclassified felony under AS 11.71.010; a second degree crime is a class A felony under AS 11.71.020; a third degree crime is a class B felony under AS 11.71.030; [a fourth degree crime is a class C felony under AS 11.71.040;] a fifth degree crime is a class A misdemeanor under AS 11.71.050; and a sixth degree crime is a class B misdemeanor under AS 11.71.060. In response to a question, she noted that both methamphetamine and cocaine [which have effects similar to those of the cathinones listed in HB 253] are currently listed as schedule IIA controlled substances.

1:44:55 PM

RICHARD ALLEN, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), said he

would echo Mr. Steiner's comments, indicating that those comments were also pertinent with regard to the OPA. Regardless that everyone might agree that cathinones should be outlawed and shouldn't be available for legal sale in stores, as they currently are, the more often that drugs/compounds get added to the more dangerous controlled-substances' schedules, the longer the sentences become for possession of even just small amounts, which in turn increases incarceration costs. He opined, though, that importing or distributing large quantities of cathinones ought to be a high-level felony crime.

CHAIR GATTO, after ascertaining that no one else wished testify, closed public testimony on HB 253.

REPRESENTATIVE HOLMES characterized the bill's proposed placement of the enumerated cathinones into Alaska's list of schedule IIA controlled substances as appropriate - cathinones are dangerous drugs and should be treated that way.

REPRESENTATIVE GRUENBERG expressed appreciation for the bill.

REPRESENTATIVE THOMPSON surmised that there would be more such legislation in the future as manufacturers continue to develop new compounds.

[1:51:59 PM](#)

REPRESENTATIVE THOMPSON moved to report the proposed CS for HB 253, Version 27-LS1131\M, Luckhaupt, 2/3/12, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 253(JUD) was reported from the House Judiciary Standing Committee.

The committee took an at-ease from 1:52 p.m. to 1:57 p.m.

HB 255 - READING OR TYPING MESSAGE WHILE DRIVING

[1:57:14 PM](#)

CHAIR GATTO announced that the final order of business would be HOUSE BILL NO. 255, "An Act prohibiting the driver of a motor vehicle from reading or typing a text message or other nonvoice message or communication on a cellular telephone, computer, or personal data assistant while driving a motor vehicle." [Included in members' packets was a proposed committee substitute (CS) for HB 255, Version 27-LS1165\D, Gardner, 2/2/12.]

CHAIR GATTO mentioned that members' packets contain forthcoming amendments.

1:57:56 PM

REPRESENTATIVE THOMPSON moved to adopt the proposed committee substitute (CS) for HB 255, Version 27-LS1165\D, Gardner, 2/2/12, as the working document. There being no objection, Version D was before the committee.

1:58:26 PM

REPRESENTATIVE LES GARA, Alaska State Legislature, speaking as one of the bill's joint prime sponsors, explained that HB 255 was engendered by a recent court decision that the state's current statute prohibiting the use of screen devices while driving does not cover the behavior of "texting" while driving regardless that many members of the legislature thought that it did. He said he anticipates that this issue will eventually be addressed by the Alaska Supreme Court, but meanwhile, HB 255 would clarify the legislature's intention that texting while driving be illegal. Statistics indicate that people who text while driving are 20 times more likely to get into an accident than those who don't text while driving. Also, if one "texts" a "normal-sized" text message while driving, one can drive the length of a football field before being done - the length of a football field full of potential victims. Other states - 35 of them - have already banned texting while driving.

REPRESENTATIVE GARA indicated that in Alaska, there have already been severe and even fatal accidents attributed to texting while driving. Texting while driving is dangerous. A person who texts while driving is not paying attention to what he/she ought to be paying attention to while driving a 2,000 pound vehicle, and this can result in somebody being killed. One of the main reasons for making it illegal to text while driving is to start educating people with regard to how fatal texting while driving can be, similar to what occurred with regard to educating people about the dangers of drunk driving. Because a lot of people view texting as just a social phenomenon, it must be reinforced that it can be a fatal phenomenon - a person texting while driving can kill someone. A recently-conducted poll indicates that over a third of people text while driving, illustrating the need for an outright ban on texting while driving. Attempting to prosecute someone for this behavior under the state's existing distracted-driving or negligent-driving laws, however,

simply won't work, he predicted, because in such cases, there must be a unanimous jury verdict, and it is unlikely at this point in time that jurors who themselves text while driving will see anything wrong with such behavior.

REPRESENTATIVE GARA posited that HB 255 has been drafted broadly enough to address possible future forms of [text-capable] technology. Simply rewriting Alaska's distracted-driving law to address the behavior of texting while driving would result in the behavior being a mere violation rather than a crime, and simply adding the word, "texting" to the state's existing prohibition against using a screen device while driving, as the court has suggested the legislature do, won't suffice because the term, "texting" doesn't cover all the forms of technology that [either already, or might in the future,] enable a person to type and/or read text. It is for this latter reason, he relayed, that many legislators think that the court was wrong in its aforementioned decision. Again, HB 255 is intended to clarify for the court that texting, or using other technology for that purpose, is improper while driving a moving vehicle.

[2:04:38 PM](#)

REPRESENTATIVE GARA explained that [Version D's proposed AS 28.35.161(a)(2) in part] specifies that a crime is committed if a person, while driving a moving vehicle, reads or types a text message or other "non-voice" message or communication. In other words, he elaborated, no texting, no "facebooking," no "tweeting," no typing on a "laptop" computer - "we don't want you typing while you're driving, we don't want you reading a text message while you're driving, we don't want you reading a computer screen while you're driving, we don't want you reading a facebook message while you're driving." To get into a car "knowing you're going to engage in this dangerous conduct" is almost premeditated behavior, he opined. Under the bill, if one types on or reads a screen device while driving, it would be a [class A] misdemeanor; however, if one engages in that behavior and causes physical injury to another person, causes serious physical injury to another person, or causes the death of another person, it would be [a class C felony, a class B felony, or a class A felony, respectively].

REPRESENTATIVE GARA mentioned that existing AS 28.35.161 provides for the aforementioned differing penalties, and that HB 255 would not change that. The behavior addressed by the bill is dangerous - a person shouldn't be shocked when he/she runs into someone while texting. This means, he relayed, any

sort of typing or reading, whether on/from a cellular telephone ("cell phone"), a laptop, an "iPad", or whatever new technology that comes along which lets a person view messages or type them. He assured the committee that under both existing law and the bill, the vehicle must be moving in order for the crime to be committed; this stipulation will ensure that the behavior, when conducted in a stationary vehicle, isn't criminalized. He offered his belief that as currently written, HB 255 is going to address 90 percent of the perceived problem.

2:07:17 PM

REPRESENTATIVE GARA explained that [Version D's proposed 28.35.161(d)] would provide an additional exemption for the viewing of authorized screen devices by law enforcement personnel or other emergency responders when such persons reasonably believe that the information on such devices is necessary to respond to health, safety, or criminal matters; existing AS 28.35.161(d) currently provides an exemption for devices/equipment installed in emergency vehicles, which are defined as police, fire, and emergency medical service vehicles. Subsection (d)'s proposed language, he indicated, covers "wireless" technology, and has met with the approval of law enforcement personnel, emergency responders, the Department of Law (DOL), and Legislative Legal and Research Services. In conclusion, he offered his belief that HB 255 would protect people from fatal accidents without compromising the efforts of the state's law enforcement and emergency response personnel, and that the aforementioned forthcoming amendments in members' packets seem consistent with the bill.

REPRESENTATIVE GARA, in response to questions and comments, said he thinks that existing law already makes texting while driving illegal; assured members that HB 255 does not address the behavior of talking on a cell phone, which includes "dialing" a phone number, that existing law - as a matter of public policy - already provides exemptions for [among other things] mapping and global positioning system (GPS) equipment, and dispatching equipment [used in certain industries], and that HB 255 is proposing to broaden only the existing exemption addressing law enforcement and emergency responders; and concurred that HB 255 only pertains to motor vehicles.

REPRESENTATIVE GRUENBERG, in response to questions and comments, noted that AS 28.90.990(a)(16) defines the term "motor vehicle" as a vehicle which is self-propelled except a vehicle moved by human or animal power.

[2:18:53 PM](#)

REPRESENTATIVE GARA, in response to other questions, explained that the bill is not specific with regard to where a motor vehicle is being driven when the proscribed behavior takes place. If a person runs into someone while texting, for example, it should be a crime regardless of where it happens, whether on a public roadway, on private property, or in a parking lot. He acknowledged, though, that one would first have to be caught doing the proscribed behavior, and thus enforcement of HB 255's provisions could be difficult. Regardless, the bill should be passed because it's going to act as a deterrent, he predicted, sending the message that texting while driving is dangerous.

REPRESENTATIVE GARA, in response to further questions, reiterated that the state's existing ban on texting while driving isn't always being enforced because of court interpretations, and that until the Alaska Supreme Court has a chance to rule on the issue - which could take some time yet - HB 255 would clarify [for the court and the public] that the behavior of texting while driving is illegal. To merely wait until the Alaska Supreme Court has a chance to rule on the issue could result in lives being lost during the intervening time.

CHAIR GATTO expressed a preference for having the issue addressed sooner via passage of HB 255, rather than later as a result of waiting for a possible favorable ruling by the Alaska Supreme Court.

[2:25:34 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 1, labeled 27-LS1165\D.1, Gardner, 2/7/12, which read:

Page 1, lines 6 - 12:

Delete all material and insert:

"* Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

STATEMENT OF PURPOSE. The purpose of this Act is to conform and clarify that the use of a cellular telephone, computer, personal data assistant, or any other similar means for texting or communicating in a manner prohibited by AS 28.35.161 has been illegal since AS 28.35.161 was enacted and that the

December 1, 2011, magistrate's decision in State v. Adams, 3KN-11-719 CR, is legally incorrect."

REPRESENTATIVE HOLMES objected for the purpose of discussion.

REPRESENTATIVE GRUENBERG explained that the existing law prohibiting the use of screen devices while driving was intended to cover the behavior of texting while driving, and that its language was intentionally left broad on that point in order to address the fact that [texting technology] is rapidly advancing; and indicated that Amendment 1's proposed change to the bill's statement of purpose - found in Section 1 of Version D - would better clarify the point that the court has incorrectly interpreted existing law as not applying to texting. It wouldn't have made any sense, he opined, to have prohibited the act of watching a screen device while driving without also prohibiting the act of typing on a screen device while driving - one can't do either and still drive properly - and to have done so would have led to an absurd result, he asserted, and the court, in State v. Adams, neglected to recognize that legal point. He also offered his understanding that when the court reviews this issue further, it would be giving additional weight to the fact that the legislature had taken specific steps - via passage of HB 255 - to clarify existing law.

REPRESENTATIVE HOLMES removed her objection to the motion to adopt Amendment 1.

CHAIR GATTO, in response to a question, explained that the drafter has recommended that it would be better to include in the proposed statement of purpose both the specific case and the assertion that an incorrect decision was made in that case.

REPRESENTATIVE GRUENBERG offered his belief that the phrasing used in Amendment 1 is proper - containing the correct terms of art - and would simply clarify that the legislature believes that a legal error was made in that court decision.

CHAIR GATTO announced that Amendment 1 was adopted.

[2:34:40 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 2, labeled 27-LS1165\D.4, Gardner, 2/8/12, which read:

Page 2, line 11, following "driving":

Insert "or takes an affirmative act to access such data"

REPRESENTATIVE HOLMES objected.

REPRESENTATIVE GRUENBERG predicted that Amendment 2 would make it easier to prosecute someone for the behavior of reading or typing a text message while driving.

REPRESENTATIVE GARA, offering his belief that it's already implied under the bill's existing language, said "we don't want you fiddling around with your cell phone, while you're driving and moving, to access your text messages," and surmised that Amendment 2 would simply clarify that point further.

REPRESENTATIVE HOLMES said that she objects to Amendment 2, both because of its proposed placement and use of the word, "or", seeming to indicate that one could either be driving or taking an affirmative action in order for the bill to apply, and because its language is overbroad and ambiguous, remaining unclear with regard to what would constitute an applicable affirmative action under the bill.

REPRESENTATIVE GRUENBERG, acknowledging those points, withdrew Amendment 2.

[2:44:12 PM](#)

REPRESENTATIVE GRUENBERG made a motion to adopt Amendment 3, labeled 27-LS1165\D.5, Gardner, 2/8/12, which read:

Page 1, line 1:
Delete "**and**"

Page 1, line 4, following "**vehicle**":
Insert "**; and providing for an effective date**"

Page 3, following line 20:
Insert a new bill section to read:
"*** Sec. 6.** This Act takes effect immediately under AS 01.10.070(c)."

REPRESENTATIVE GRUENBERG explained that Amendment 3 would provide for an immediate effective date, which he characterized as an important thing to do.

REPRESENTATIVE PRUITT objected for the purpose of discussion, and then removed his objection.

CHAIR GATTO, after ascertaining that there were no further objections, announced that Amendment 3 was adopted.

[2:45:26 PM](#)

REPRESENTATIVE GARA explained that passage of HB 255 - specifically Version D - is now also necessary in order to address the use of wireless technology by law enforcement and emergency response personnel; again, Version D's proposed 28.35.161(d) would provide an additional exemption for the viewing of authorized screen devices by law enforcement and other emergency response personnel when such persons reasonably believe that the information on such devices is necessary to respond to health, safety, or criminal matters.

REPRESENTATIVE GRUENBERG relayed that to address a concern expressed by the court regarding the meaning of the word "verbal" [as it's used in the existing statutory exemption for certain equipment], the bill would also, via its proposed AS 28.35.161(c), change the term, "verbal communication" to the term, "voice communication".

REPRESENTATIVE GARA, in conclusion, said, "I'm very serious about this bill - I think texting is dangerous - I think we should pass the bill this year."

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RODNEY DIAL, Lieutenant, Deputy Commander, A Detachment, Division of Alaska State Troopers, Department of Public Safety (DPS), said that the DPS supports HB 255, and has no concerns with the proposed exemption for the authorized viewing of screen devices for emergency vehicles. Currently, he relayed, some DPS vehicles have "in-car video camera systems" and monitors that display some text information, and some DPS vehicles are being equipped with computers, which will display suspect and wanted-vehicle information, and occasionally dispatch sends photos of suspects or suspect vehicles to law enforcement officers via their cell phones. In response to questions, he acknowledged that failures of [installed equipment] have occasionally resulted in law enforcement officers having to use their cell phones or other forms of communication to speak with dispatch and other officers; and that it can be difficult for law enforcement officers to observe the proscribed behavior - it's

more common to discover during the course of investigating a traffic accident that the proscribed behavior had occurred. Unless there is probable cause to believe that someone is texting while driving, law enforcement officers won't take any enforcement action, and if there is such probable cause, then it would be up to the individual law enforcement officer to determine whether the person actually was texting.

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QUINLAN STEINER, Director, Central Office, Public Defender Agency (PDA), Department of Administration (DOA), in response to questions regarding the PDA's fiscal note, indicated that its analysis includes information he'd received from the DOL that the state's existing crime of texting while driving isn't always being prosecuted because of court interpretations, and offered, "my expectation is that with the explicit criminalization of texting and driving, you will see more enforcement, prosecution - and, of course, successful prosecution - which will have some fiscal impact on our agency, though it's impossible for me to determine what that would be."

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MARK S. HALL, Chief, Anchorage Fire Department, Municipality of Anchorage (MOA), said simply that the Anchorage Fire Department supports HB 255.

[2:55:18 PM](#)

RICHARD ALLEN, Director, Anchorage Office, Office of Public Advocacy (OPA), Department of Administration (DOA), relayed that the OPA is not anticipating that there will be a significant impact on its caseload as a result of passage of HB 255, and has therefore submitted a zero fiscal note. Speaking, then, as the parent of two young children who have to be driven around on Alaska's roads, he said he supports a ban on texting.

[2:56:16 PM](#)

BOB GRIFFITHS, Chief, Cordova Police Department, City of Cordova; Executive Director, Alaska Association of Chiefs of Police, Inc. (AACOP), relayed that he and the AACOP extend their unqualified support for HB 255.

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PATRICIA GRISWOLD, [characterizing HB 255's proposed changes as a start,] said she would prefer to see a complete ban on cell phone use while driving, considering such use to be more dangerous than driving under the influence because of the prevalence of cell phones, and mentioned that one of her sons was involved in a motor vehicle accident after which the driver of the other vehicle was heard speaking on a cell phone.

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REPRESENTATIVE BOB HERRON, Alaska State Legislature, relayed that he'd been involved in a hit and run accident - while he was stopped at a stop sign, his car was struck from behind by another vehicle - and after the accident occurred he saw the driver of the other vehicle texting and continuing to text as she drove away. In conclusion, he offered his belief that texting while driving is an issue that needs to be addressed, and his hope that such behavior could be modified.

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ALBERT JUDSON said he would like to speak in favor of HB 255 and any bill that would ban the use of cell phones and any other devices while driving. Mentioning that he was run over in 2007, and recounting some the details of that accident and the injuries he suffered as a result, he raised the issue of non-reporting/under-reporting; for example, when he was run over, there was no mention of it in the paper, but the day after he was run over, his dog was run over, and the paper ran a story about that. Statewide, he opined, there is lack of reporting about people being injured and/or killed, and he suggested that there should be an investigation to determine why. Other issues that need to be addressed, he opined, are the issue of accountability, particularly accountability [for causing] long-term injuries, and the issue of possibly expanding the statutory penalties for causing injury and/or death. In conclusion, he thanked the joint prime sponsors for introducing and promoting HB 255, characterizing it as being long overdue - a matter of life and death - and said he would like to see HB 255 pass, along with other bills addressing the issue of cell phone use while driving, adding that he did not know whether the driver who ran him over was texting at the time or merely talking on the cell phone.

[HB 255, Version D as amended, was held over.]

The committee took an at-ease from 3:10 p.m. to 3:12 p.m.

3:12:10 PM

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:12 p.m.