

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 22, 2016

1:35 p.m.

**MEMBERS PRESENT**

Senator Lesil McGuire, Chair  
Senator John Coghill, Vice Chair  
Senator Peter Micciche  
Senator Bill Wielechowski

**MEMBERS ABSENT**

Senator Mia Costello

**COMMITTEE CALENDAR**

SENATE BILL NO. 123

"An Act relating to the penalty for the use of electronic devices while driving."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 83(JUD)

"An Act relating to collecting information about civil litigation by the Alaska Judicial Council; repealing Rule 41(a)(3), Alaska Rules of Civil Procedure, and Rules 511(c) and (e), Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 83(JUD) OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 93(STA)

"An Act relating to the duties of probation officers; and relating to conditions of parole."

- MOVED SCS CSHB 93(JUD) OUT OF COMMITTEE

**PREVIOUS COMMITTEE ACTION**

BILL: SB 123

SHORT TITLE: USE OF ELECTRONIC DEVICES WHILE DRIVING

SPONSOR(S): SENATOR(S) MEYER

01/19/16 (S) PREFILE RELEASED 1/8/16

01/19/16 (S) READ THE FIRST TIME - REFERRALS  
01/19/16 (S) STA, JUD  
02/13/16 (S) STA AT 10:00 AM BUTROVICH 205  
02/13/16 (S) Heard & Held  
02/13/16 (S) MINUTE (STA)  
02/16/16 (S) STA AT 9:00 AM BUTROVICH 205  
02/16/16 (S) Moved SB 123 Out of Committee  
02/16/16 (S) MINUTE (STA)  
02/17/16 (S) STA RPT 3DP 2NR  
02/17/16 (S) DP: COGHILL, HUGGINS, MCGUIRE  
02/17/16 (S) NR: STOLTZE, WIELECHOWSKI  
02/22/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 83

SHORT TITLE: REPEAL COLLECTION OF CIVIL LITIG. INFO  
SPONSOR(S): REPRESENTATIVE(S) LEDOUX

01/28/15 (H) READ THE FIRST TIME - REFERRALS  
01/28/15 (H) JUD  
02/06/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/06/15 (H) <Bill Hearing Canceled>  
02/13/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/13/15 (H) <Bill Hearing Canceled>  
02/20/15 (H) JUD AT 1:00 PM CAPITOL 120  
02/20/15 (H) Heard & Held  
02/20/15 (H) MINUTE (JUD)  
03/02/15 (H) JUD AT 1:00 PM CAPITOL 120  
03/02/15 (H) <Bill Hearing Canceled>  
03/04/15 (H) JUD AT 1:00 PM CAPITOL 120  
03/04/15 (H) Moved CSHB 83(JUD) Out of Committee  
03/04/15 (H) MINUTE (JUD)  
03/06/15 (H) JUD RPT CS (JUD) 4DP 1DNP  
03/06/15 (H) DP: CLAMAN, GRUENBERG, FOSTER, LEDOUX  
03/06/15 (H) DNP: KELLER  
04/07/15 (H) TRANSMITTED TO (S)  
04/07/15 (H) VERSION: CSHB 83(JUD)  
04/08/15 (S) READ THE FIRST TIME - REFERRALS  
04/08/15 (S) JUD, FIN  
04/15/15 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
04/15/15 (S) Scheduled but Not Heard  
02/17/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/17/16 (S) Heard & Held  
02/17/16 (S) MINUTE (JUD)  
02/22/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 93

SHORT TITLE: PROBATION AND PAROLE: WORK, TRAVEL ACCOM.

SPONSOR(s): REPRESENTATIVE(s) TILTON

01/30/15 (H) READ THE FIRST TIME - REFERRALS  
01/30/15 (H) STA  
02/17/15 (H) STA AT 8:00 AM CAPITOL 106  
02/17/15 (H) Moved CSHB 93(STA) Out of Committee  
02/17/15 (H) MINUTE (STA)  
02/19/15 (H) STA AT 8:00 AM CAPITOL 106  
02/19/15 (H) Moved CSHB 93(STA) Out of Committee  
02/19/15 (H) MINUTE (STA)  
02/20/15 (H) STA RPT CS (STA) 5DP  
02/20/15 (H) DP: TALERICO, STUTES, KELLER, KREISS-  
TOMKINS, LYNN  
02/27/15 (H) TRANSMITTED TO (S)  
02/27/15 (H) VERSION: CSHB 93(STA)  
03/02/15 (S) READ THE FIRST TIME - REFERRALS  
03/02/15 (S) STA, JUD  
03/26/15 (S) STA AT 9:00 AM BUTROVICH 205  
03/26/15 (S) Heard & Held  
03/26/15 (S) MINUTE (STA)  
04/07/15 (S) STA RPT 1DP 3NR  
04/07/15 (S) DP: COGHILL  
04/07/15 (S) NR: STOLTZE, HUGGINS, WIELECHOWSKI  
04/07/15 (S) STA AT 9:00 AM BUTROVICH 205  
04/07/15 (S) Moved CSHB 93(STA) Out of Committee  
04/07/15 (S) MINUTE (STA)  
02/03/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/03/16 (S) Heard & Held  
02/03/16 (S) MINUTE (JUD)  
02/22/16 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 123.

EDRA MORLEDGE, Staff  
Senator Kevin Meyer  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to SB 123 on behalf of the sponsor.

KACI SCHROEDER, Assistant Attorney General

Office of the Attorney General  
Department of Law (DOL)

**POSITION STATEMENT:** Answered questions related to SB 123.

LIEUTENANT DAVID HANSON, Deputy Commander  
Alaska Bureau of Highway Patrol  
Alaska State Troopers  
Department of Public Safety (DPS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 123.

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

**POSITION STATEMENT:** Answered questions related to SB 123.

REPRESENTATIVE CATHY TILTON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of HB 93.

CHRISTOPHER CLARK, Staff  
Representative Cathy Tilton  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained the changes in the SCS for CSHB 93(JUD) on behalf of the sponsor.

#### **ACTION NARRATIVE**

[1:35:10 PM](#)

**CHAIR LESIL MCGUIRE** called the Senate Judiciary Standing Committee meeting to order at 1:35 p.m. Present at the call to order were Senators Wielechowski, Coghill, Micciche and Chair McGuire.

#### **SB 123-USE OF ELECTRONIC DEVICES WHILE DRIVING**

[1:35:32 PM](#)

CHAIR MCGUIRE announced the consideration of SB 123.

[1:36:12 PM](#)

SENATOR KEVIN MEYER, Alaska State Legislature, Juneau, Alaska, sponsor of SB 123, informed the members that the Anchorage Assembly recently passed an ordinance that does basically the

same thing as the bill. He continued the introduction paraphrasing the following sponsor statement:

SB 123 changes the penalty for driving while texting from a class A misdemeanor to a violation of up to \$500, unless the action causes physical injury or death to another person. The more severe felony penalties for those offenses will remain unchanged. The reduction in penalty is intended to make prosecution of distracted drivers more expedient, in that law enforcement officers will be able to issue tickets immediately, rather than prosecute the individual through the court system. No other aspect of current law as summarized below is changed by this legislation.

Except for emergency vehicles, operating an electronic screen device while driving is illegal when:

1. The vehicle is moving
2. The vehicle has a television, video monitor, or portable computer in full view of the driver and the monitor or visual display is operating while the person is driving.

Exceptions to the law are:

1. Using cell phones or tablets for verbal communication or displaying caller ID
2. Using equipment that is displaying information such as audio/stereo, GPS and navigation devices, vehicle operation information, video equipment showing reversing/maneuvering (driving) operation
3. Utilizing vehicle dispatching and response information for emergency roadside assistance and passenger or freight package delivery
4. Using information being displayed to perform highway construction, maintenance, or repair or data acquisition by DOT/PF or a municipality
5. Emergency vehicles (police, fire or emergency medical service) are exempt from these prohibitions

SENATOR MEYER posited that law enforcement will be more inclined to cite someone who is texting while driving if the penalty is a simple violation as opposed to a class A misdemeanor. He assured members that no other aspect of the existing law changes, including the penalty for texting that results in serious injury or death. He assured the members that the bill is not intended to be a revenue generator. It provides that an officer who

witnesses an individual texting while driving can stop the car and issue a ticket immediately. The driver has the right to appeal the citation, but it would be in traffic court as opposed to criminal court. He noted the two zero fiscal notes and offered his belief that the bill would result in a savings to the state.

[1:39:44 PM](#)

CHAIR MCGUIRE requested clarification on two points. First, it's still legal to use a cellphone while driving as long as the driver is using a hands-free device. Second, it's still permissible to use navigation devices such as GPS.

SENATOR MEYER confirmed that the bill does not change existing law regarding cellphone use while driving or the use of navigational devices. He deferred further comment to his staff.

[1:40:46 PM](#)

EDRA MORLEDGE, Staff, Senator Kevin Meyer, agreed that SB 123 only changes the aspect of current law related to texting while driving.

SENATOR MICCICHE asked, if there is an accident, is there an easy way for law enforcement to know that the driver had pulled over to text?

MS. MORLEDGE deferred to an agency to say how easy it would be to prove the vehicle was not in motion.

CHAIR MCGUIRE stated support for the bill and expressed hope that future lawmakers would review the law to ensure there is no abuse of the authority and Alaskans' privacy rights are preserved.

[1:43:34 PM](#)

SENATOR MICCICHE wondered if the sponsor considered approaching a safety organization to get the word out that texting will be illegal if the bill passes and becomes law.

SENATOR MEYER said he hadn't thought of that since it is already illegal to text and he believes the word will get out after a few \$500 fines are levied. He clarified that it is still legal to text while stopped at a red light.

[1:45:18 PM](#)

SENATOR WIELECHOWSKI asked if a driver in Anchorage would be subject to both the municipal and state fine.

MS. MORLEDGE related that the municipal attorney said it would be up to the investigating detective to determine whether to prosecute under the municipal or state law.

SENATOR WIELECHOWSKI expressed interest in knowing for certain if drivers in Anchorage potentially would be subject to a \$1,000 fine when the same infraction elsewhere in the state would be a \$500 fine.

CHAIR MCGUIRE asked Lt. Hanson if he could answer Senator Wielechowski's question.

[1:46:47 PM](#)

LIEUTENANT DAVID HANSON, Deputy Commander, Alaska Bureau of Highway Patrol, Alaska State Troopers, Department of Public Safety (DPS), agreed that it would be at the discretion of the municipal officer to charge under either the municipal code or state statute.

SENATOR WIELECHOWSKI asked if other communities have a texting while driving provision and a penalty similar to the one in Anchorage.

LIEUTENANT HANSON said he didn't know what other municipalities are doing.

CHAIR MCGUIRE suggested doing some research on that between now and the next hearing.

SENATOR WIELECHOWSKI asked if there is a possibility of a plea bargain.

MS. MORLEDGE offered to look into it.

SENATOR MEYER clarified that the intent is to make this similar to a traffic ticket, but he didn't know if plea bargains are a possibility in that circumstance.

[1:49:20 PM](#)

SENATOR WIELECHOWSKI suggested the committee make a policy call about whether it wants drivers in Anchorage subject to a \$1,000 fine when the violation would be a \$500 fine in other jurisdictions.

SENATOR MEYER said the intent is that a driver would only be fined once, not under both the municipal and state codes. He committed to do what's needed to make sure that is clear.

[1:50:09 PM](#)

SENATOR COGHILL noted that the bill says up to \$500 and he wonders where that is in statute.

SENATOR MEYER said he'd check on that.

CHAIR MCGUIRE asked Ms. Schroeder to address the question of a double fine, and whether she reads the bill to allow flexibility in the fine.

[1:51:02 PM](#)

KACI SCHROEDER, Assistant Attorney General, Office of the Attorney General, Department of Law (DOL), advised that there would be double jeopardy implications due to the Title 28 provision that requires municipal ordinances to be consistent with state law. Addressing the second question, she directed attention to AS 12.55.035 that states that a fine may be a range. Thus it could be negotiated.

SENATOR WIELECHOWSKI asked if the police officer would make the decision about the fine.

MS. SCHROEDER deferred to Lt. Hanson to explain the mechanics.

LT. HANSON asked for the question to be restated.

CHAIR MCGUIRE said Title 12 provides discretion within the range of a fine. Senator Wielechowski asked if the officer who issues the citation decides the dollar amount and if the amount of the fine or the citation itself are appealable.

LT.HANSON said littering is the only offense he's aware of that provides a fine within a range.

SENATOR WIELECHOWSKI asked for clarification that a trooper would write a citation for \$500 if a person was stopped for texting while driving. He questioned if the court or prosecutor could then negotiate it down.

LT. HANSON said his experience in traffic court is that the magistrate reduces the fine. He has never seen an instance where an officer or trooper would reduce the fine.

1:55:07 PM

SENATOR WIELECHOWSKI wondered whether this might lead to more people going to court to fight their texting fines.

LT. HANSON said his personal experience is that defendants do appear in traffic court to try to get their fine reduced.

SENATOR MICCICHE asked the reason that just 110 citations have been issued since 2013.

LT. HANSON said he can't speak to the municipal statistics, but from 2012-2015 DPS initiated 69 cases involving a driver who was texting, operating a screen device or otherwise distracted. Of those, 17 were charged under 13 AAC 02.495(c), which is the catchall regulation that addresses distracted drivers. The other 52 cases were charged under AS 28.35.161 that specifically speaks to prohibiting screen devices.

He opined that troopers are less likely to charge a person with a class A misdemeanor due to the burden of proof requirement. Reducing the crime to a violation would likely result in a trooper being able to observe an offense and citing the driver to court.

SENATOR MICCICHE asked if the department trains its troopers to use their screen devices with discretion and not as though they have an exemption.

LT. HANSON confirmed that AST has clear policies governing the use of laptops in patrol vehicles to ensure that the law isn't violated.

2:00:57 PM

SENATOR WIELECHOWSKI asked if the proposed change would give a trooper or the police the right to seize a person's cellphone.

MS. SCHROEDER replied it's not likely to happen, but the Alaska Supreme Court has said that search warrants may be issued in circumstances of violations.

SENATOR WIELECHOWSKI asked if the change from a misdemeanor to a violation affects what can be seized.

MS. SCHROEDER explained that the Alaska Supreme Court has said that violations are quasi-criminal and most criminal procedures therefore apply. For a search, a judge could issue a warrant and seize evidence.

SENATOR WIELECHOWSKI summarized that the change from a misdemeanor to a violation would not affect the procedure for search and seizure. A search warrant would be required.

MS. SCHROEDER agreed.

SENATOR WIELECHOWSKI asked how many times troopers have attempted to seize cellphones.

MS. SCHROEDER said she didn't have the number, but in most of the misdemeanor cases the Department of Law has seen the defendants admitted they were texting while driving.

SENATOR WIELECHOWSKI asked if the typical procedure is that the trooper requests the search warrant immediately as opposed to a few days later.

MS. SCHROEDER replied it could be either way, but searching a cellphone is onerous so it could take time. She deferred further comment to Lt. Hanson.

SENATOR WIELECHOWSKI asked Lt. Hanson to talk about the actual practice.

LT. HANSON explained that troopers would first ask if they could take the phone. If consent was denied, it's likely that they would take the phone but not search it until a warrant was obtained. The process to apply for the warrant, go through the examination process and make arrangements to return the phone would take hours. He noted that if consent was given to take the phone and do a search, the person might not have a way to call and withdraw their consent.

SENATOR WIELECHOWSKI asked how many times troopers have attempted to seize a phone.

LT. HANSON replied he didn't know.

SENATOR WIELECHOWSKI asked if it would be standard practice for a trooper to file for a search warrant if they suspected a person was texting while driving.

LT. HANSON said he believes it is less likely that they would seize the phone and apply for a warrant under existing law. If the bill passes and the trooper is able to see the driver is texting it wouldn't be necessary to apply for a warrant.

2:06:26 PM

SENATOR WIELECHOWSKI recalled U.S. Supreme Court case law that said that once a phone is seized, it could be searched for any type of information. He asked if that is accurate or practice.

LT. HANSON indicated he didn't know the answer.

MS. SCHROEDER advised that the Department of Law has to articulate what it is looking for when filing for the warrant. Trolling through all the apps on the phone would not be permitted unless that was the specified reason for the warrant.

SENATOR WIELECHOWSKI emphasized that while someone who is texting while driving should be punished, he didn't believe the search should become a fishing expedition. He asked if the intent of the Department of Law would be to limit the searches to texting violations.

MS. SCHROEDER replied she couldn't comment on the court case, but the Department of Law would look for what is in the warrant.

CHAIR MCGUIRE requested she read the case before the next hearing and prepare to comment on it.

SENATOR COGHILL suggested the Department of Law and the sponsor look at the way the Municipality of Anchorage handles the fine when it allows for a range from \$1 to \$500. He also questioned whether the statute should establish a specific fine for a texting violation.

RICK ALLEN Director, Office of Public Advocacy, Department of Administration (DOA), Anchorage, Alaska, introduced himself and offered to answer questions. He added to the discussion about searching phones expressing doubt that law enforcement could successfully search an iPhone with passcodes, even with a warrant.

2:09:37 PM

SENATOR COGHILL asked what incentive he would have to voluntarily give up his phone if he was stopped for texting while driving. "Do they have any right to look at that phone at that point?"

MR. ALLEN advised that there would be no incentive for a driver to give up their phone if they knew they were texting while driving. He added his belief that if it's a violation, it would

be unlikely that an officer would pursue a warrant to ascertain the time a text was sent unless an accident caused serious injury or death.

SENATOR COGHILL offered that it's appropriate to change the penalty to a violation if the misdemeanor isn't working.

[2:11:55 PM](#)

CHAIR MCGUIRE closed public testimony on SB 123 and held the bill in committee.

**HB 83-REPEAL COLLECTION OF CIVIL LITIG. INFO**

[2:12:31 PM](#)

CHAIR MCGUIRE announced the consideration of HB 83. She noted the individuals available to answer questions. [CSHB 83(JUD) was before the committee.]

[2:13:16 PM](#)

SENATOR COGHILL related that the committee previously heard from Mr. Jacobus who said that the rule is onerous for those who follow it and unenforceable for those who don't.

CHAIR MCGUIRE found no questions and solicited a motion.

[2:13:34 PM](#)

SENATOR COGHILL motioned to report CSHB 83(JUD) from committee with individual recommendations and attached zero fiscal note.

CHAIR MCGUIRE announced that without objection CSHB 83(JUD) is reported from the Senate Judiciary Standing Committee.

**HB 93-PROBATION AND PAROLE: WORK, TRAVEL ACCOM.**

[2:14:00 PM](#)

CHAIR MCGUIRE announced the consideration of HB 93. She named the individuals available to answer questions and asked the sponsor if she wanted to comment.

[2:14:50 PM](#)

REPRESENTATIVE CATHY TILTON, Alaska State Legislature, Juneau, Alaska, sponsor of HB 93, stated that a committee substitute was prepared with the recommendations from Senator Wielechowski and she is satisfied with the bill.

CHAIR MCGUIRE asked for an explanation of the changes.

[2:15:20 PM](#)

CHRISTOPHER CLARK, Staff, Representative Cathy Tilton, related that Senator Wielechowski recommended adding educational courses and training programs as something a probation officer would take into account when considering a travel pass for a probationer. That was inserted in the bill on page 2, lines 10, 14 and 31, and page 5, line 3. This addresses the ability for a probationer to get or keep a job or take an educational course or training program.

CHAIR MCGUIRE noted that page 4, lines 12-13, provide the ability for individuals to get mental health and substance abuse treatment.

[2:17:32 PM](#)

At ease

[2:17:51 PM](#)

CHAIR MCGUIRE reconvened the meeting and asked for a motion to adopt the committee substitute.

[2:18:05 PM](#)

SENATOR COGHILL motioned to adopt the work draft Senate CS for CSHB 93, labeled 29-LS0404\N, as the working document.

CHAIR MCGUIRE announced that without objection version N is before the committee.

[2:18:22 PM](#)

SENATOR COGHILL moved to report the Senate CS for CSHB 93 from committee with individual recommendations and attached fiscal note(s).

CHAIR MCGUIRE announced that without objection, SCS CSHB 93(JUD) is reported from the Senate Judiciary Standing Committee.

[2:18:51 PM](#)

SENATOR MICCICHE said he hadn't seen the fiscal notes.

CHAIR MCGUIRE reviewed the zero fiscal notes from the Public Defender Agency and the Department of Corrections.

SENATOR MICCICHE asked if the accommodation from parole officers to obtain steady employment or training would add to the cost.

SENATOR COGHILL added that previous testimony indicated that officers were doing this already and this simply places it in statute.

2:20:11 PM

There being no further business to come before the committee, Chair McGuire adjourned the Senate Judiciary Standing Committee meeting at 2:20 p.m.