

**ALASKA STATE LEGISLATURE**  
**HOUSE STATE AFFAIRS STANDING COMMITTEE**

February 27, 2024

3:02 p.m.

**MEMBERS PRESENT**

Representative Laddie Shaw, Chair  
Representative Stanley Wright, Vice Chair  
Representative Ben Carpenter  
Representative Craig Johnson  
Representative Jamie Allard  
Representative Ashley Carrick  
Representative Andi Story

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

HOUSE BILL NO. 286

"An Act relating to victim restitution and compensation."

- MOVED CSHB 286 (STA) OUT OF COMMITTEE

HOUSE BILL NO. 316

"An Act relating to law enforcement requests for wireless telephone location information in emergencies."

- HEARD & HELD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 286

SHORT TITLE: CRIME VICTIM RESTITUTION

SPONSOR(S): REPRESENTATIVE(S) COULOMBE

01/24/24	(H)	READ THE FIRST TIME - REFERRALS
01/24/24	(H)	STA
02/08/24	(H)	STA AT 3:00 PM GRUENBERG 120
02/08/24	(H)	Heard & Held
02/08/24	(H)	MINUTE (STA)
02/20/24	(H)	STA AT 3:00 PM GRUENBERG 120
02/20/24	(H)	-- MEETING CANCELED --
02/27/24	(H)	STA AT 3:00 PM GRUENBERG 120

BILL: HB 316

SHORT TITLE: EMERGENCY CELL PHONE LOCATION DISCLOSURE

SPONSOR(S): REPRESENTATIVE(S) C.JOHNSON

02/09/24 (H) READ THE FIRST TIME - REFERRALS  
02/09/24 (H) STA  
02/27/24 (H) STA AT 3:00 PM GRUENBERG 120

**WITNESS REGISTER**

BUDDY WHITT, Staff  
Representative Laddie Shaw  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Provided an overview of Amendment 1 to HB 286; discussed the committee substitute for HB 316.

KACI SCHROEDER, Assistant Attorney General  
Criminal Division  
Legal Services Section  
Department of Law  
Juneau, Alaska

**POSITION STATEMENT:** Provided further details about Amendment 1 to HB 286.

GREG SMITH, Executive Director  
Kelsey Smith Foundation  
Overland Park, Kansas

**POSITION STATEMENT:** Gave invited testimony during the hearing on HB 316.

LEON MORGAN, Alaska Criminal Intelligence Manager  
Office of the Commissioner  
Department of Public Safety  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions during the hearing on HB 316.

**ACTION NARRATIVE**

[3:02:46 PM](#)

**CHAIR SHAW** called the House State Affairs Standing Committee meeting to order at 3:02 p.m. Representatives Carpenter, Johnson, Carrick, Story, Allard, Wright, and Shaw were present at the call to order.

HB 286-CRIME VICTIM RESTITUTION

3:03:58 PM

CHAIR SHAW announced that the first order of business would be HOUSE BILL NO. 286 "An Act relating to victim restitution and compensation."

3:04:15 PM

CHAIR SHAW moved to adopt Amendment 1 to HB 286, labeled 33-LS1012\B.2, C. Radford 2/15/24, which read as follows:

Page 1, line 11:  
Delete "necessary"

Page 2, line 7:  
Delete "[, INCLUDING LOSS OF INCOME,]"  
Insert ", including loss of income,"

3:04:18 PM

REPRESENTATIVE CARPENTER objected for the purpose of discussion.

3:04:29 PM

BUDDY WHITT, Staff, Representative Laddie Shaw, Alaska State Legislature, provided an overview of Amendment 1 and explained that the word "necessary" would be deleted from the bill for legal clarity. On page 2, line 7 of the bill, the term "including loss of income" would be reinserted into the bill as a result of discussions with the Department of Law and the Office of Victims' Rights.

3:05:50 PM

KACI SCHROEDER, Assistant Attorney General, Legal Services Section, Criminal Division, Department of Law, provided further detail about Amendment 1 to HB 286. She explained the reasoning behind the removal of the word "necessary" in the bill. She said the victim must show that the defendant's conduct was the proximate cause of the victims' loss or damages. She referred to Grubb v. State of Alaska, which said,

In order to obtain restitution for particular losses or damages the state must establish two facets of causation, that a defendants criminal conduct was the

cause in fact the but-for analysis of the losses incurred and that the losses were the natural and proximate result of the criminal conduct to which liability should attach. That the losses were not so attenuated from the wrongful conduct as to negate responsibility.

MS. SCHROEDER explained that the state must show that criminal conduct was a substantial factor in bringing about the damages sought. Inserting the word "necessary" implies that there is a different standard.

MS. SCHROEDER explained that Amendment 1 adds in "loss of income". The purpose of the bill is to say that victims can recover funds from lost wages, childcare, elder care, transportation, and other expenses incurred during the victim's participation in the investigation or prosecution of the offense, or attendance at court proceedings. This is in direct response to cases where the court seemed unsure that those types of damages would be recoverable.

[3:08:58 PM](#)

MR. WHITT added that each committee member was provided copies and explanations of Amendment 1. The explanation was written by Ms. Schroeder.

[3:09:15 PM](#)

CHAIR SHAW noted that the word "necessary" is unnecessary.

[3:09:23 PM](#)

MS. SCHROEDER provided the case number for Grubb v. State, 506 P 3d 791.

CHAIR SHAW thanked Ms. Schroeder.

[3:09:44 PM](#)

REPRESENTATIVE CARPENTER removed his objection. There being no further objection, Amendment 1 was adopted.

[3:09:51 PM](#)

CHAIR SHAW asked for a motion.

[3:10:01 PM](#)

REPRESENTATIVE WRIGHT moved to report HB 286, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 286(STA) was reported from the House State Affairs Standing Committee.

[3:10:21 PM](#)

The committee took an at-ease from 3:10 p.m. to 3:13 p.m.

**HB 316-EMERGENCY CELL PHONE LOCATION DISCLOSURE**

[3:13:14 PM](#)

CHAIR SHAW announced that the final order of business would be HOUSE BILL NO. 316, "An Act relating to law enforcement requests for wireless telephone location information in emergencies."

[3:13:36 PM](#)

REPRESENTATIVE WRIGHT moved to adopt the proposed committee substitute (CS) for HB 316, Version 33LS1235\B, Walsh, 2/20/24 as a working document.

[3:13:53 PM](#)

CHAIR SHAW objected for the purpose of discussion.

[3:13:59 PM](#)

The committee took a brief at-ease.

[3:14:30 PM](#)

BUDDY WHITT, Staff, Representative Laddie Shaw, discussed two changes that would be made by the proposed CS to HB316, Version B. The first change would omit lines 10-11 from the original bill version, which had language concerning 911 emergency calls. He explained the subject of the bill involves tracking mobile phones. Including 911 calls in the bill does not enhance the policy and could potentially dilute the policy due to its over specificity. The bill sponsor sought to include broader language. The second change would include the addition of an immediate effective date should the bill become law.

[3:16:07 PM](#)

CHAIR SHAW removed his objection. There being no further objection, Version B was before the committee as a working document.

[3:16:36 PM](#)

REPRESENTATIVE JOHNSON as prime sponsor of HB 316, paraphrased from his sponsor statement, which read as follows [included in the committee packet]:

HB316, known as the Kelsey Smith Act, already has passed in 30 states, and currently is pending in three others, as well as at the federal level. The legislation is needed in Alaska to help protect victims in emergency situations. HB316 would require that telecommunications companies immediately respond to law enforcement requests for location information of victims who are in jeopardy of death or serious physical harm.

On June 2, 2007, Kelsey Smith was abducted in broad daylight from an Overland Park, Kansas department store, then raped and murdered. The abduction was captured on the store's security camera, leaving little doubt of the emergency nature of the situation. Four days after she disappeared, authorities were able to locate Kelsey's body after her wireless provider finally released call information from her cell phone.

The tragic abduction and murder of Kelsey Smith is heartbreaking and should never happen again. In life-or-death situations it is paramount that our law enforcement agencies have access to life-saving resources; and the fear of legal liability should never stand in the way of rescuing a victim from a life-threatening situation.

The Kelsey Smith Act makes certain that law enforcement officials, not a phone company, are able to determine if a loved one is in an emergency situation. The privacy of every Alaskan is important, and this legislation strikes the appropriate balance between the ability of law enforcement to help individuals in grave danger, while also ensuring the proper checks are in place to guard against potential abuse or government overreach.

HB316 will ensure that law enforcement has the resources they need from cell phone providers to locate missing or abducted Alaskans. If one life can be saved, or one child returned safely to their loved ones, then this act will have served Alaskans well.

The legislation does not require additional funding. In fact, it should save money.

To learn more about Kelsey's story and the effort to enact the Kelsey Smith Act across the country, please visit: <https://kelseysarmy.org/#ks-act>

3:19:07 PM

GREG SMITH, Executive Director, Kelsey Smith Foundation, submitted written testimony about HB 316 [copy included in the committee packet]. He highlighted his experience in law enforcement and government affairs. He said that 30 states have passed legislation regarding the Kelsey Smith Act. He promised that this bill will save lives and not cost anything. He said this legislation is "too important to ignore," and recounted the kidnapping story of his daughter, Kelsey Smith, in 2007. Over the course of four days, Mr. Smith worked with law enforcement agencies to call wireless providers and to determine the location of her phone. He said 3 days passed before the information was released about the location of her cell phone, but it was too late.

MR. SMITH explained that HB 316 would allow law enforcement to access wireless device location when a person is believed to be at risk of serious bodily harm or death. He explained that photos, texts, and calls would not be accessed. The location of the device is the only information that would be disclosed so that law enforcement has a starting point in investigations of emergent situations.

MR. SMITH added that opponents to the bill may argue for the Fourth Amendment. He described operating under exigent circumstances. He alluded to a case where the court opined that to protect and preserve life or avoid serious injury is justification for what would otherwise be illegal in the absence of an emergency. He described a common misconception of using this bill to "get around a warrant." He assured that the purpose of the bill is to aid in finding potential victims in need of medical aid or rescue. He noted that technology often

moves faster than the law and court cases provide case law for law enforcement to operate under until state legislatures can create laws.

[3:24:53 PM](#)

MR. SMITH noted a case that is currently guiding case law, United States v. Gilliam, which involved a kidnapping which led to sex trafficking. In the case, the cell phone provider transferred info to the police and made it possible to locate the victim and the sex trafficker who was later convicted of several felonies. This case referenced federal law including a "voluntary disclosure of customer communications records."

MR. SMITH noted a provision where a wireless provider can disclose information to a government entity if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency. The only problem with this law is that the wireless provider customer service agents become responsible for determining emergent status and may lack adequate training. He described his personal experience working with wireless customer service and an agent who refused to release the location of a victim's cell phone because they lacked adequate training to determine if the situation was an exigent circumstance.

MR. SMITH explained that HB 316 would take the decision-making process away from wireless providers and give power to law enforcement for exigent circumstances. He referenced a U.S. Supreme Court case, United States v. Carpenter, which involved tracking a bank robber's phone for 127 days. The U.S. Supreme Court agreed that phone tracking is an investigation tool that warrants an exception to the Fourth Amendment if there are exigent circumstances.

[3:29:46 PM](#)

MR. SMITH referenced United States v. Hammon which involved an armed robber whose phone was tracked to stop a dangerous armed robbery spree. The U.S. Supreme Court denied hearing the case and said that United States v. Carpenter set the precedent for the use of cell phone tracking under exigent circumstances. Mr. Smith said HB 316 would codify the previously mentioned court decisions.

MR. SMITH explained that under federal law, cell phone tracking information can be released to a government entity, which is defined as "a department or agency of the United States or any state or political subdivision thereof." The proposed legislation would make cell phone tracking information available to law enforcement and no other entity. It would provide an immunity clause for the cell phone providers so that when they cooperate with law enforcement, they are protected from legal action. He mentioned that lobbying groups from wireless companies have spoken out in favor of similar bills across the country and at the federal level. He mentioned that HB 316 doesn't need to be titled the "Kelsey Smith Act." He described training he provides to law enforcement about using technology in exigent circumstances. He remarked emotionally about testimonies he has heard from people whose loved ones were saved because of the Kelsey Smith Act.

[3:34:21 PM](#)

CHAIR SHAW thanked Mr. Smith for his powerful testimony and story. He thanked Representative C. Johnson for bringing the bill forward.

[3:34:32 PM](#)

The committee took a brief at-ease.

[3:35:52 PM](#)

CHAIR SHAW asked for questions from the committee.

REPRESENTATIVE CARPENTER asked if the proposed legislation includes satellite phones and other geolocation devices.

[3:36:44 PM](#)

LEON MORGAN, Alaska Criminal Intelligence Manager, Office of the Commissioner, affirmed that HB 316 [Version B] would apply to satellite phones and inReach devices. He noted that geolocation is known to service providers of satellite phones and similar devices and providers have existing programs to relay necessary location information to law enforcement.

[3:37:27 PM](#)

REPRESENTATIVE CARPENTER asked about the definition of exigent circumstances and whether is it broad enough to cover amber or silver alerts.

MR. MORGAN affirmed that the term is sufficient and includes amber and silver alerts.

[3:37:57 PM](#)

REPRESENTATIVE CARRICK asked whether location tracking for other devices such as tablets and smart watches would be covered under HB 316 [Version B].

MR. MORGAN affirmed that most devices that submit location do so on a cellular network and are able to provide location data to law enforcement under exigent circumstances.

[3:39:12 PM](#)

CHAIR SHAW announced that HB 316 [Version B] was held over.

[3:39:27 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House State Affairs Standing Committee meeting was adjourned at [3:39] p.m.