

**HB**

**255**

**HOUSE BILL NO. 255**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**NINETEENTH LEGISLATURE - FIRST SESSION**

**BY REPRESENTATIVES OGAN, Kohring, Bunde**

**Introduced: 3/15/95**

**Referred: Judiciary, Finance**

**A BILL**  
**FOR AN ACT ENTITLED**

1 "An Act creating the crime of negligent vehicular homicide."

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 \* **Section 1.** AS 09.55.580(f) is amended to read:

4 (f) A person whose act or omission constitutes the felonious killing of another  
5 person may not recover damages for the death of that person either directly or as a  
6 personal representative of that person's estate. In this subsection, a "felonious killing"  
7 means a crime defined by AS 11.41.100 - 11.41.140, other than AS 11.41.133.

8 \* **Sec. 2.** AS 11.41 is amended by adding a new section to read:

9 Sec. 11.41.133. **NEGLIGENT VEHICULAR HOMICIDE.** (a) A person  
10 commits the crime of negligent vehicular homicide if, with negligence, the person  
11 operates a propelled vehicle in a manner that causes the death of another person.

12 (b) In this section, a person acts with "negligence" when the person fails to  
13 perceive an unjustifiable risk of harm to a person; the risk must be of such a nature  
14 and degree that the failure to perceive it constitutes a deviation from the standard of  
15 care that a reasonable person would observe in the situation.

1 (c) Negligent vehicular homicide is a class A misdemeanor.

2 \* Sec. 3. AS 13.11.305(g) is amended to read:


3 (g) In this section, a "felonious killing" means a crime defined under  
4 (AS 11.41.100 - 11.41.140, other than AS 11.41.133.)

*Effect of felonious  
Killing on intestate  
Succession*



Representative Scott Ogan  
House District 27

SPONSOR STATEMENT

To: House Committees of Referral for HB 255  
From: Representative Scott Ogan   
Re: HB 255  
Date: March 17, 1995

HB 255, "An Act creating the crime of negligent vehicular homicide", is a bill designed to fill an existing gap in Alaska's criminal code. Unfortunately, it has taken the recent loss of several lives to illustrate the need for this legislation.

Under current Alaska law, drivers are not held accountable when their careless and irresponsible use of a motor vehicle takes a human life. Unless a prosecutor can prove that the driver at fault acted with "criminal negligence," which is an extremely difficult standard to meet, there is no penalty available greater than a traffic ticket. The offender typically does not even lose his or her driver's license. While no one wishes to be vindictive towards someone who is responsible for a fatal accident, the lack of any criminal sanctions means that dangerous drivers are free to continue placing others at risk.

HB 255 simply states that if a driver operates his or her vehicle negligently, and takes someone's life in the process, society is no longer prepared to brush it off with a simple offering of condolences. The bill makes taking the life of another while driving a vehicle negligently a class A misdemeanor. Negligence is defined as failing to use the type of care or caution that a reasonable person would use under the circumstances. A class A misdemeanor is an appropriate classification for the proposed crime, as it gives a judge sufficient flexibility in sentencing to impose jail terms for repeat offenders, or a more moderate sentence of, perhaps, a driver's license revocation and fine or suspended imposition of sentence where the offender has no prior criminal history.

I urge you to support this much needed bill.

MEMO

To: Brian Porter, Chair

From: Anne Carpeneti *adc*  
Committee Counsel

Subject: HB 255

Date: April 12, 1995

I am writing a brief memo on the referenced bill, because the more I read it and think about it, the more troubling it becomes to me.

The bill creates Negligent Vehicular Homicide as an A misdemeanor. The troublesome part is that it uses a tort standard of conduct as the negligence standard. Although there are often similarities between tort and criminal law, the general rule has been that for negligent conduct to be criminal, it must constitute a greater leap from ordinary care than mere civil negligence.

Attached are some pages from LaFave and Scott, Substantive Criminal Law, 1986 edition. Section 3.7 discusses some of these ideas. Title 11 of the Alaska Statutes defines criminal negligence in terms of a gross deviation from the standard of reasonable care. AS 11/81/900 (a)(4) (also attached).

This bill would be a significant change in our criminal law, and one which would in an important way change the philosophical underpinnings of our criminal code.

Sec. 11.81.640. Application of Article 11.81

NOTES TO DECISIONS

Cited in *Cole v. State*, 828 P.2d 175  
(Alaska Ct. App. 1992)

Article 6. Definitions.

Section  
900. Definitions

**Sec. 11.81.900. Definitions.** (a) For purposes of this title, unless the context requires otherwise,

(1) a person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result; when intentionally causing a particular result is an element of an offense, that intent need not be the person's only objective;

(2) a person acts "knowingly" with respect to conduct or to a circumstance described by a provision of law defining an offense when the person is aware that the conduct is of that nature or that the circumstance exists; when knowledge of the existence of a particular fact is an element of an offense, that knowledge is established if a person is aware of a substantial probability of its existence, unless the person actually believes it does not exist; a person who is unaware of conduct or a circumstance of which the person would have been aware had that person not been intoxicated acts knowingly with respect to that conduct or circumstance;

(3) a person acts "recklessly" with respect to a result or to a circumstance described by a provision of law defining an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that disregard of it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation; a person who is unaware of a risk of which the person would have been aware had that person not been intoxicated acts recklessly with respect to that risk;

(4) a person acts with "criminal negligence" with respect to a result or to a circumstance described by a provision of law defining an offense when the person fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists; the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

(b) In this title, unless otherwise specified or unless the context requires otherwise,

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§ P.2d 280

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P.2d 1137

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in the defense of self-defense.<sup>13</sup> But for the most part, as we have seen, something more than negligence is required for criminal liability. To progress from ordinary negligence to some greater fault (greater than negligence though less than intention or knowledge) which the criminal law ordinarily requires, the components of ordinary negligence which may be varied are the above two—(1) the unreasonable-risk component and (2) the objective-standard component. To repeat: (1) we may require that the defendant's conduct create a risk greater than simply an unreasonable risk, or (2) while requiring only an unreasonable risk, we may require that the defendant have a subjective awareness of the unreasonable risk he creates, or (3) we may require both the higher risk and an awareness of that higher risk.

*Law*

Before leaving negligence as a basis for criminal liability, it should be noted that there is something of a dispute as to whether criminal liability should, on principle, ever be based upon objective negligence. It has been suggested that the threat of punishment for negligence cannot serve to deter people from negligent conduct; one who is unaware of the risk he is creating cannot be deterred from creating it by thoughts of punishment if he creates it.<sup>14</sup> But others have argued that the threat of punishment for risk-creating does tend to make people think harder about the risks created by their conduct, thus tending to reduce risky conduct and so to promote public safety, the great object of the criminal law.<sup>15</sup>



WESTLAW REFERENCES

risk /3 tak! creat! /s harm injury /s criminal crime punishment

(b) **Criminal Negligence.** Though the legislatures and the courts have often made it clear that criminal liability<sup>16</sup> generally requires more fault than the ordinary negligence which will do for tort liability, they have not so often made it plain just what is required in addition to tort negligence—greater risk, subjective awareness of the risk, or both. Statutes are sometimes worded in terms of "gross negligence" or "culpable negligence" or "criminal negligence," without any further

13. Thus an intended homicide or battery may be justified on the ground of self-defense, a matter of "affirmative defense" which depends on whether the defendant was free from negligence in believing that his adversary was about to attack him and that he had to kill or wound the adversary in order to protect himself. See § 5.7.

14. J. Hall, *General Principles of Criminal Law* 137 (2d ed. 1960); G. Williams, *supra* note 8, at § 43.

15. Holmes, J., in *Commonwealth v. Pierce*, 138 Mass. 165, 52 Am.Rep. 264 (1884) (the leading case on applying an objective standard of negligence for manslaughter); Model Penal Code § 2.02, Comment at 243 (1985).

16. The principal crimes which may be committed by some type of negligence greater than tort negligence, though less than intention, are (1) voluntary manslaughter and (2) battery, discussed at §§ 7.12, 7.13. However, there are types of involuntary manslaughter and battery other than the type committed by conduct amounting to criminal negligence. Thus for manslaughter there is (1) intended-bodily-harm-causing-unintended-death manslaughter, and (2) misdemeanor-manslaughter; and for battery there is (1) intended-bodily-harm battery, and (2) misdemeanor-battery.

realize the risk for criminal law, though he need not for tort law.<sup>20</sup> In applying this subjective test for criminal negligence, it would seem that a person can be said to realize the risk which his conduct entails not only (a) when he directly knows it to be risky but also (b) when he knows that he does not know whether it is risky or not, and in fact it is risky.<sup>21</sup>

(3) Lastly, a few cases quite clearly spell out that criminal liability requires both greater risk and subjective realization of that risk. Thus in a case wherein the defendant, having previously suffered blackouts and having been warned by his doctor not to drive alone, was driving alone when he suffered another blackout, so that his car went out of control and killed another motorist, the defendant was held guilty of a statutory crime punishing one who causes death while driving a car "in wilful and wanton disregard for the rights or safety of others." The court stated that one is guilty of "wilful and wanton disregard" where, knowing of the existing conditions "and conscious from such knowledge that injury will likely or probably result from his conduct, and with reckless indifference to the consequences," he goes ahead with his conduct.<sup>22</sup>

Much of the source of the confusion in the law lies in the criminal statutes, which have used expressions like "gross" and "culpable" negligence and "wilful and wanton" disregard of safety without defining these terms. The courts thus have had to do their best with little guidance from the legislature, with varying results.<sup>23</sup> The Model Penal

20. *Trujillo v. People*, 133 Colo. 186, 292 P.2d 980 (1956) (manslaughter), noted in 28 *Mt.L.Rev.* 409 (1956).

Some cases clearly spell out a subjective test without making it clear whether in addition the degree of risk must be higher than for ordinary negligence. Thus in two manslaughter cases where the defendant, practicing as a physician, prescribed a fatal treatment or medicine for his sick patient, it was held that the defendant could not be guilty of manslaughter if he honestly believed that his treatment or medicine would cure; a subjective standard was thus required. *State v. Schulz*, 55 Iowa 628, 8 N.W. 469 (1881); *Rice v. State*, 8 Mo. 561 (1844). Cf. *Commonwealth v. Pierce*, supra.

21. Thus Hart, *The Aims of the Criminal Law*, 23 *Law & Contemp.Prob.* 401, 416 (1958), suggests that the defendant in *Commonwealth v. Pierce*, supra note 15, who wrapped kerosene rags about his patient's body may have been subjectively negligent even though he thought his treatment would cure. Though he did not directly realize the possibility of harm, he did realize (1) his own deficiency in appraising the

possibility of harm (not having had the special training and knowledge of a doctor) and (2) the risk which such a deficiency created.

22. *State v. Gooze*, 14 N.J.Super. 277, 81 A.2d 811 (1951) (subjective standard is apparent from word "conscious"; high risk from the expression "injury will likely or probably result"). Another such case is *Bussard v. State*, 233 Wis. 11, 288 N.W. 187 (1939) (though defendant was "negligent in a high degree" he is not guilty of "gross negligence" manslaughter without subjectively realizing the high degree of risk his conduct entailed), noted at 1941 *Wis.L.Rev.* 25, 27.

23. See, e.g., *Lupro v. State*, 603 P.2d 468 (Alaska 1979) (crime of negligent homicide requires "reckless disregard of consequences"); *McCreary v. State*, 371 So.2d 1024 (Fla.1979) (manslaughter statute requiring "culpable negligence" means "reckless disregard," but statute using recklessness standard means a degree of negligence "more than a mere failure to use ordinary care"); *Thompson v. State*, 554 P.2d 105 (Okla.Crim.App.1976) (homicide in "reckless disregard of the safety of

Code, however, sets forth definitions for the terms "recklessness"<sup>24</sup> and "negligence,"<sup>25</sup> and in most recent recodifications the Model Penal Code approach has been substantially followed.<sup>26</sup>

others" is established by "want of the usual and ordinary care").

24. "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation." Model Penal Code § 2.02(2)(c). Thus, the Code defines recklessly in terms of both greater risk and subjective awareness. For a detailed assessment of this formulation, see Treiman, *Recklessness and the Model Penal Code*, 9 *Am.J.Crim.L.* 281 (1981), which also notes at 375-86 the extent to which the Code formula has been adopted in modern codes.

25. "A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation." Model Penal Code § 2.02(2)(d). Thus, the Code defines negligence in terms of greater risk and the objective standard.

26. Ala.Code 1975, § 13A-2-2; Alaska Stat. 11.81.900; Ariz.Rev.Stat. § 13-105; Ark.Stats. § 41-203; Colo.Rev.Stat. 18-1-501; Conn.Gen.Stat. Ann. § 53a-3; Del. Code tit. 11, § 231; Hawaii Rev.Stat. § 702-206; Ill.—S.H.A. ch. 38, §§ 4-6, 4-7; Ky.Rev.Stat. 501.020; Me.Rev.Stat. Ann. tit. 17-A, § 35; Vernon's Ann.Mo.Stat. § 562.016; Mont.Code Ann. 45-2-101; Neb.Rev.Stat. § 28-109; N.H.Rev.Stat. Ann. 629:2; N.J.Stat. Ann. 2C:2-2; N.Y.—McKinney's Penal Law § 15.05; N.D.Cent. Code 12.1-02-02; Or.Rev.Stat. 161.085; Pa. Cons.Stat. Ann. tit. 18, § 302; S.D.Cod. Laws 22-1-2; Vernon's Tex.Code Ann., Penal Code § 6.03; Utah Code Ann. 1953, 76-2-103; West's Rev.Code Wash. Ann. 9A.08.010. The Ala., Alaska, Ariz., Colo., Conn., Del., Me., Mo., Tex., Utah and

Wash. negligence standards are labelled "criminal negligence"; the Ky. statute is labelled "recklessness"; the Ky. negligence standard is labelled "recklessness"; the Ky. recklessness standard is labelled "wantonly"; and the Mont. recklessness standard is labelled "negligence."


Some of the modern codes, however, use quite different definitions. As to recklessness, there is West's Ann.Ind.Code 35-41-2-2 ("engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct"); Kan.Stat. Ann. 21-3201 ("under circumstances that show a realization of the imminence of danger to the person of another and a reckless disregard or complete indifference and unconcern for the probable consequences of such conduct"); La.Stat. Ann.—Rev.Stat. 14:12 ("there is such disregard of the interest of others that the offender's conduct amounts to a gross deviation below the standard of care expected to be maintained by a reasonably careful man under like circumstances"); and Ohio Rev.Code § 2901.22 ("when with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist"). As to negligence, there is Ohio Rev.Code § 2901.22 ("when, because of a substantial lapse from due care, he fails to perceive or avoid a risk that his conduct may cause a certain result or may be of a certain nature"); S.D.Cod.Laws 22-1-2 ("a want of attention to the nature or probable consequences of an act or omission which a prudent man ordinarily bestows in acting in his own concerns"); and Wyo.Stat. 1977, § 6-1-104 ("a great or excessive deviation from that standard of care which a reasonable, prudent person would exercise under the same or similar circumstances to avoid a substantial and unjustifiable risk of harm").

Compare *People v. Calvaresi*, 188 Colo. 277, 534 P.2d 316 (1975) (where legislature departed from Model Penal Code formulation by adding "reasonably should be aware" to definition of recklessness, so



Representative Scott Ogan  
House District 27

SPONSOR STATEMENT

To: House Committees of Referral for HB 255  
From: Representative Scott Ogan   
Re: HB 255  
Date: March 17, 1995

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Under current Alaska law, drivers are not held accountable when their careless and irresponsible use of a motor vehicle takes a human life. Unless a prosecutor can prove that the driver at fault acted with "criminal negligence," which is an extremely difficult standard to meet, there is no penalty available greater than a traffic ticket. The offender typically does not even lose his or her driver's license. While no one wishes to be vindictive towards someone who is responsible for a fatal accident, the lack of any criminal sanctions means that dangerous drivers are free to continue placing others at risk.

HB 255 simply states that if a driver operates his or her vehicle negligently, and takes someone's life in the process, society is no longer prepared to brush it off with a simple offering of condolences. The bill makes taking the life of another while driving a vehicle negligently a class A misdemeanor. Negligence is defined as failing to use the type of care or caution that a reasonable person would use under the circumstances. A class A misdemeanor is an appropriate classification for the proposed crime, as it gives a judge sufficient flexibility in sentencing to impose jail terms for repeat offenders, or a more moderate sentence of, perhaps, a driver's license revocation and fine or suspended imposition of sentence where the offender has no prior criminal history.

I urge you to support this much needed bill.



# Alaska State Legislature

## HOUSE OF REPRESENTATIVES


Official Business

State Capitol  
Juneau, AK 99801-1182

**Representative Scott Ogan**

House District 27

### SECTIONAL ANALYSIS

To: House Committees of Referral for HB 255  
From: Representative Scott Ogan   
Re: Sectional Analysis of HB 255  
Date: March 17, 1995

The following is a sectional analysis of HB 255, "An Act creating the crime of negligent vehicular homicide."

**Section 1:** Section 1 adds a provision to AS 09.55.580(f), which is the statute that prohibits someone who has committed a felonious killing of another from obtaining a damage award for the victim's death. The provision currently defines "felonious killing" as any crime numbered AS 11.41.100 - 11.41.140. Negligent Vehicular Homicide, however, would fall within this numerical range, and is only a misdemeanor; Section 1 therefore AS modifies 09.55.580(f) to avoid classifying a misdemeanor as a felony in that section.

**Section 2:** Section 2 adds a new crime against the person to AS 11.41 called "Negligent Vehicular Homicide". The elements of the crime are causing the death of another while operating a motor vehicle with negligence. Negligence is defined as a failure to perceive an unjustifiable risk of harm to a person, when that failure is a deviation from the standard of care that a reasonable person would observe in the circumstances. This new crime would be a class A felony.

# The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

February 8, 1994

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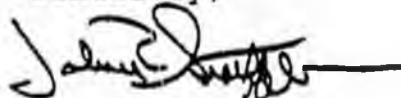
Mandates! Directives! That's all we seem to hear from our federal brethren in Washington, D.C. States have recognized the burden these mandates and directives have created at the state level. Unlike the feds the states can't print money to cover their debts. Patrick Henry put it this way, "(Y)our rich, smug, fine, fat, federal officers - the number of collectors of taxes and excises - will outnumber anything from the states. Who can cope with the excise man and the tax man?"

But when an order to levy taxes is mandated by a federal court, how are you to respond to such an order? How do states begin to question or even reject the orders of the federal courts when even the United States Supreme Court upholds as constitutional a lower federal court order to levy a direct tax increase upon the citizens of a city? How do you respond to what we believe is a violation of not only the Constitution of that state, but as we also believe the Constitution of the United States?

With this in mind Missouri State Senator Walt Mueller and I visited a federal judge in his office, and in the capacity of an elected state official and as a private citizen posed that very question. We were notified that such action was part of an ongoing case and as such, he would not discuss it. We were then directed to leave. This action by the judge was not unexpected, but it was felt that his orders needed to be questioned. We felt it was a legitimate question to pose inasmuch as the Constitution of the United States is quite clear in that the judiciary has never been granted the power to tax.

When a federal judge claims that he cannot discuss judicial directives which violate the constitution of a state with a member of the legislative branch of government, something is drastically wrong. So what does one do when the judiciary mandates direct taxes and Congress refuses to challenge the federal court's usurpation of Article I powers as they pertain to taxation? Our answer is to rein in the power that the judiciary has usurped by asking other states to join our call for an amendment to the Constitution that will put a stop to this judicial grab for power. Action must be taken now. We need your help and active support of this proposed amendment.

Sincerely,



John R. Stoeffler  
Chairman, The Madison Forum

# The Madison Forum

17 East Glenwood Lane - St. Louis, Missouri 63122

March 1995

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As each of you consider our request to join the growing number of states which are calling upon Congress to submit to the states an amendment to the United States Constitution that would limit the power of the federal judiciary to levy or increase taxes, we ask you to consider the implications of federal court intervention in state budgets should a balanced budget amendment become a reality. A number of individuals have.

Former United States Senator John C. Danforth stated in February of 1994, "A balanced-budget amendment would be a disaster if federal courts were able to increase taxes or cut spending."

United States Senator Paul Simon stated these same concerns as early as 1992 when he noted that the Supreme Court could issue a court order requiring Congress to bring the budget into balance. "I don't think that will happen in the immediate future. I'm not sure but that 30 or 40 years from now the court might not be in a position to order Congress to comply." Suppose the courts themselves did in fact become the agents of enforcement.

Judge Robert H. Bork did not feel that such an initiative is impossible. Judge Bork cited *Missouri vs. Jenkins* which affirmed the power of the court to oversee fiscal policy calling such actions "a dismal prospect."

United States Senator Robert Byrd shared his concern over the potential for federal court mischief in determining fiscal policy. "It would . . . bring the judicial branch into the equation, and to that extent our representative democracy would become less of a representative democracy."

Syndicated columnist James J. Kilpatrick stated his concern over the federal courts propensity to usurp Congress' power of the purse. "In recent years federal judges have not hesitated to order states and localities to raise taxes in order to carry out judicial decrees. Judges have turned themselves into school superintendents, prison wardens and state legislatures. Who or what would restrain them in the matter of declaring ways to achieve a balanced budget? My own distrust is massive."

Former United States Senator Tom Eagleton stated in a commentary which appeared in the St. Louis Post Dispatch on February 2, 1994 "The proposed (balanced budget amendment) means either too much or too little -- take your pick. Only the

AMENDMENT

OFFERED IN THE HOUSE  
TO: HB 255

BY REPRESENTATIVE FINKELSTEIN

Page 2, line 1  
Delete "A"  
Insert "B"

# Alaska State Legislature



House of Representatives  
House Judiciary Committee

State Capitol, Room 120  
Juneau, Alaska 99801-1182  
(907) 465-4990

January 23, 1996

TO: Members of the House Judiciary Committee

FROM: Tom Meyer, committee aide

RE: Materials for HB 255 for 1/24/96 meeting

Attached are update materials to be included in your bill packets already in your possession from last session.

# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 255

Revision Date:

Dept. Affected: Alaska Court System

Title: Negligent homicide by automobile

BRU: Trial Courts

Component:

Sponsor: Rep. Ogan

Requestor: House Judiciary

COMPONENT SERIAL NO. 768

**Expenditures/Revenues**

(Thousands of Dollars)

| OPERATING EXPENDITURES | FY 97      | FY 98      | FY 99      | FY 00      | FY 01      | FY 02      |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES      |            |            |            |            |            |            |
| TRAVEL                 |            |            |            |            |            |            |
| CONTRACTUAL            |            |            |            |            |            |            |
| SUPPLIES               |            |            |            |            |            |            |
| EQUIPMENT              |            |            |            |            |            |            |
| LAND & STRUCTURES      |            |            |            |            |            |            |
| GRANTS & CLAIMS        |            |            |            |            |            |            |
| MISCELLANEOUS          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

CAPITAL EXPENDITURES

CHANGE IN REVENUES ( )

**Fund Source**

(Thousands of Dollars)

|                          |            |            |            |            |            |            |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts    |            |            |            |            |            |            |
| 1003 GF Match            |            |            |            |            |            |            |
| 1004 GF                  | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        | 0.0        |
| 1005 GF/Program Receipts |            |            |            |            |            |            |
| 1037 GF/Mental Health    |            |            |            |            |            |            |
| Other                    |            |            |            |            |            |            |
| <b>TOTAL</b>             | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY 96) cost: None

**Positions**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| Full-Time |  |  |  |  |  |  |
| Part-Time |  |  |  |  |  |  |
| Temporary |  |  |  |  |  |  |

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. See attached analysis.

Prepared by: C. S. Christensen III, Staff Counsel

Agency: Alaska Court System

Phone: 264-8228

Date: 01/23/96

Approved by: Arthur H. Snowden, II, Administrative Director

Agency: Alaska Court System

Date: 01/23/96

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

**Alaska Court System**  
**Fiscal Analysis**  
**HB 255**

HB 255 establishes the crime of negligent vehicular homicide as a class A misdemeanor. This crime uses the civil negligence standard of conduct, rather than the stricter criminal standards of conduct currently used when prosecuting a vehicular homicide.

According to the Department of Law, in 1994 there were 70 fatal vehicular accidents resulting in 85 fatalities. Approximately 25 of those fatalities resulted in a person being charged with some form of felony homicide. If this bill were to become law, the Department of Law estimates that approximately two-thirds of the remaining cases (37 cases) would result in misdemeanor vehicular homicide charges. Most of these cases are currently being prosecuted as another misdemeanor, such as Assault 4, Reckless Endangerment or Reckless Driving. However, the different standards of conduct for this new charge will probably result in a different trial rate and trial length, affecting both judicial time and jury costs. The differences cannot reasonably be predicted at this time.

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: CSHB 255(JUD)**

Revision Date: 1/11/96 Dept. Affected: Public Safety  
 Title: Negligent Homicide by Automobile BRU: Motor Vehicles  
 Sponsor: Representative Ogan Component: Driver Services  
 Requestor: H. Jud. COMPONENT SERIAL NO. 0500

**EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)**

| OPERATING                     | FY 97 | FY 98 | FY 99 | FY 00 | FY 01 | FY 02 |
|-------------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES             |       |       |       |       |       |       |
| TRAVEL                        |       |       |       |       |       |       |
| CONTRACTUAL                   |       |       |       |       |       |       |
| SUPPLIES                      |       |       |       |       |       |       |
| EQUIPMENT                     |       |       |       |       |       |       |
| LAND & STRUCTURES             |       |       |       |       |       |       |
| GRANTS CLAIMS                 |       |       |       |       |       |       |
| MISCELLANEOUS                 |       |       |       |       |       |       |
| <b>TOTAL OPERATING</b>        | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CAPITAL EXPENDITURES</b>   | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| <b>CHANGE IN REVENUES ( )</b> | -0-   | -0-   | -0-   | -0-   | -0-   | -0-   |
| Revenue Code                  |       |       |       |       |       |       |

**FUNDING: (Thousands of Dollars)**

|                          |     |     |     |     |     |     |
|--------------------------|-----|-----|-----|-----|-----|-----|
| 1002 Federal Receipts    |     |     |     |     |     |     |
| 1003 GE Match            |     |     |     |     |     |     |
| 1004 GE                  |     |     |     |     |     |     |
| 1005 GE/Program Receipts |     |     |     |     |     |     |
| 1006 GE/MHTIA            |     |     |     |     |     |     |
| Other                    |     |     |     |     |     |     |
| <b>TOTAL</b>             | -0- | -0- | -0- | -0- | -0- | -0- |

Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

**POSITIONS:**

|           |   |   |   |   |   |   |
|-----------|---|---|---|---|---|---|
| FULL-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| PART-TIME | 0 | 0 | 0 | 0 | 0 | 0 |
| TEMPORARY | 0 | 0 | 0 | 0 | 0 | 0 |

ANALYSIS: (Attach a separate page if necessary.)

It is anticipated that passage of this bill will not have significant impact on the Division of Motor Vehicles.

Prepared By: Juanita Hensley Phone: 465-2650  
 Division: Motor Vehicles Date: 1/11/96  
 Approved by Commissioner: *Ronald L. Otte* Date: 1/11/96  
 Agency: Ronald L. Otte, Dept. of Public Safety

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# LEGAL SERVICES

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## MEMORANDUM

January 16, 1996

**SUBJECT:** Criminally negligent Homicide - CSHB 255(JUD),  
Draft, Dated 1/12/96 (Work Order No. 9-LS0694\F)

**TO:** Representative Brian Porter  
Attn: Tom Meyer

**FROM:** Gerald P. Luckhaupt *JGL*  
Legislative Counsel

Enclosed is the CS(JUD) you requested. As I told Tom on the phone I have two comments about the bill draft.

1. The Judiciary Committee amended a part of the title to "An Act raising the penalties for negligent vehicular homicide ...". The trouble with this amendment is that the bill draft raises the penalties for the crime of "criminally negligent homicide" which can be committed in any number of ways not involving the use of a vehicle and which requires the defendant to act with criminal negligence, not mere negligence. Therefore, it is my opinion that the subject of the bill is not adequately expressed in the title of the bill as required by Art. II, § 13 of the Alaska Constitution. To remedy this problem, I recommend that the committee delete the words "negligent vehicular homicide" appearing on page 1, line 1 of the bill draft and insert the words "criminally negligent homicide" in their place.

2. In sec. 2 of the bill draft the revocation of an operator's license is authorized for negligent driving. Negligent driving is codified at AS 28.35.045 and is an infraction punishable as provided in AS 28.40.050. AS 28.40.050 provides that an infraction is a non-criminal offense with a fine of not more than \$300 and not resulting in loss of an operator's license. Since sec. 2 of the bill authorizes the loss of an operator's license for negligent driving, the committee added a bill section 3, which provides that while an infraction does not usually result in a loss of an operator's license, in cases of negligent driving it will. The trouble here is that if a person can lose an operator's license for negligent driving, an infraction, that offense probably can no longer be considered a minor offense that does not give rise to a right to a jury trial, right to counsel, and other procedural rights. Classifying negligent driving as an infraction while providing for the revocation of operators' licenses for its violation, is inconsistent with the statutory scheme of AS 28.35 and the specific explanation of the effects of an infraction in AS 28.40.050(d). Therefore, you may want to reconsider the exception we are providing in AS 28.40.050(d) and instead amend the negligent driving

Representative Brian Porter

January 16, 1996

Page 2

section, AS 28.35.045 to make the violation of that section a misdemeanor, and set forth a specific penalty that could, if you so choose, mimic the penalty currently provided for negligent driving that merely provides a fine and does not include a jail term. This would still not be a minor offense and would require a jury trial, but at least this new offense would be consistent with the statutory scheme of AS 28.35 and no longer be inconsistent with AS 28.40.050(d).

You may also want to consider the rather significant fiscal effects that may result from this change due to the required provision of jury trials and other procedural protections.

GPL:pl:klb

96-017.plm

9-LS0694F  
Luckhaupt  
1/16/96

CS FOR HOUSE BILL NO. 255(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES OGAN, Kohring, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act raising the penalties for negligent vehicular homicide; and relating to the  
2 revocation of drivers' licenses for negligent driving."

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

4 \* Section 1. AS 11.41.130(b) is amended to read:

5 (b) Criminally negligent homicide is a class B [CLASS C] felony.

6 \* Sec. 2. AS 28.15.181(a) is amended to read:

7 (a) Conviction of any of the following offenses is grounds for the immediate  
8 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

9 (1) manslaughter or negligent homicide resulting from driving a motor  
10 vehicle;

11 (2) a felony in the commission of which a motor vehicle is used;

12 (3) failure to stop and give aid as required by law when a motor  
13 vehicle accident results in the death or personal injury of another;

14 (4) perjury or making a false affidavit or statement under oath to the

- 1 department under a law relating to motor vehicles;
- 2 (5) operating a motor vehicle or aircraft while intoxicated;
- 3 (6) reckless driving;
- 4 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
- 5 officer;
- 6 (8) refusal to submit to a chemical test authorized under
- 7 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
- 8 commercial motor vehicle, or aircraft while intoxicated, or authorized under
- 9 AS 28.35.031(g);
- 10 (9) driving while license, privilege to drive, or privilege to obtain a
- 11 license, canceled, suspended, or revoked, or in violation of a limitation;
- 12 (10) negligent driving.

13 \* Sec. 3. AS 28.40.050(d) is amended to read:

14 (d) An infraction, as provided for in (c) of this section, is not considered a

15 criminal offense and may not result in imprisonment, nor is a fine imposed for the

16 commission of an infraction considered a penal or criminal punishment; nor may the

17 commission of a single infraction result in the loss of a driver's license or privilege to

18 drive or register vehicles in this state, except as may result under AS 28.15.181(a) or

19 from the accumulation of points under AS 28.15.221 - 28.15.261 [, OR THE

20 REGISTRATION OF VEHICLES]; nor does a person cited with an infraction have a

21 right to trial by jury or to court-appointed counsel.