

HB

381

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 4, 2002

FURTHER REFERRALS:

Date of Committee Action: 2.13.02

The JUDICIARY Committee considered:

HB 381

HOUSE BILL NO. 381

FAILURE TO STOP FOR PEACE OFFICER

"An Act relating to the crime of failure to stop at the direction of a peace officer; and providing for an effective date."

Recommends it be replaced with CS () [] Same Title [] New Title
 For Senate Bills with new title: [] Technical Title [] New Title: HCR _____

- [] attach amendments
- [] add new referral to _____ Committee
- [] Letter of Intent _____ Committee

List of
Abbrev.
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- J AA
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

<u>NEW FISCAL NOTES</u>				
*For Chief Clerk's Office Use Only				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>Tracy James</i>	JAMES	✓			
<i>John Lynch</i>	COCHRAN			✓	
<i>John Meyer</i>	MEYER	✓			
<i>Edith Berkowitz</i>	BERKOWITZ			✓	
Chair: <i>Nan Tokesby</i>	ROKEBERG	✓			
Chair:					

AMENDMENT

OFFERED IN THE HOUSE

To: HB 381

*Discussed
but not
offered.*

Amend AS 28.35.182 (a) to read:

(a) A person commits the offense of failure to stop at the direction of a peace officer in the first degree if the person violates (b) of this section, and during the commission of the offense

(1) the person violates AS28.35.040 [A TRAFFIC LAW OR COMMITS ANOTHER CRIME. IN THIS SUBSECTION,

(1) "CRIME HAS THE MEANING GIVEN IN AS 11.81.900;

(2) " TRAFFIC LAW' HAS THE MEANING GIVEN IN AS 28.15.261];

(2) the person is subject to an arrest warrant issued by a federal, state, or local court;

(3) as a result of the person's driving an accident occurs;

(4) as a result of the person's driving any person suffers serious physical injury;

(5) the person is committing vehicle theft;

(6) the person is in possession of an unlawful controlled substance; or

(7) the person is on probation or parole supervision for a felony offense.

*Discussed
but not
offered.*

*Section 1. AS 28.35.182(a) is amended to read:

(a) A person commits the offense of failure to stop at the direction of a peace officer in the first degree if the person violates (b) of this section, and, during the commission of the offense

(1) the person violates AS 28.35.040 [A TRAFFIC LAW OR COMMITS ANOTHER CRIME. IN THIS SUBSECTION,

(1) "CRIME HAS THE MEANING GIVEN IN AS 11.81.900;

(2) "TRAFFIC LAW" HAS THE MEANING GIVEN IN AS 28.15.261];

(2) the person is subject to an arrest warrant issued by a federal, state, or local court;

(3) as a result of the person's driving

(A) an accident occurs;

(B) any person suffers serious physical injury; or

(C) any person, including a pedestrian or bicyclist, must

take evasive action to prevent an accident or injury;

(4) the person is committing vehicle theft;

(5) the person is in possession of an unlawful controlled substance; or

(6) the person is on probation or parole supervision for a felony offense.

From the Department of Law

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 381
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
Title "An Act relating to the crime of failure to stop BR'1 Criminal Division
at the direction of a peace officer; and providing for ..." Component 1st-4th Judicial Districts; Criminal
Sponsor House Judiciary Committee Appeals/Special Litigation
Requester House Judiciary Committee Component No. 2198-99;2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 381 redefines the crime of failure to stop at the direction of a peace officer in the first degree as knowingly failing to stop as soon as practical and in a reasonably safe manner when directed to stop, while also driving recklessly as defined in AS 28.35.040. Current law does not limit the crime to failure to stop while violating the reckless driving statute. Failing to stop while violating any traffic law or committing another crime will do. Failure to stop at the direction of a peace officer in the first degree is a class C felony.

Because this bill limits the application of the felony for failure to stop, the Department of Law does not anticipate a fiscal impact from passage of this bill.

Prepared by: Joan M. Kasson Phone (907) 465-5370
Division: Attorney General's Office Date/Time 2/11/02 2:13 PM
Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 2/11/2002
Agency: Department of Law

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Alberi Kookesh



State Capitol
Juneau, AK 99801-1182
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Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 381

In 1998 state law was amended to address the problem of purposefully attempting to elude a peace officer. When an individual failed to stop at the direction of a peace officer and committed another crime, the level of the offense was raised from a misdemeanor to a felony.

Unfortunately, the unintended result since the law was amended has been that the number of felony eluding charges has increased each year. Not all situations rise to the level of a felony. Under the current law, an individual could fail to stop for a peace officer and if a taillight on their vehicle was broken, they could be charged with a felony under a broad interpretation of this law. A felony could be charged even though the driver did not attempt to speed away or knowingly elude the peace officer. In calendar year 2000, only 35.8 percent of the cases charged resulted in a felony conviction.

This bill clarifies the intent of the legislature in 1998, which was to increase penalties in certain situations in order to reduce the number of cases where a driver makes the decision to elude a peace officer who is attempting to stop the vehicle. These cases usually result when a peace officer attempts to stop a driver, and then the driver generally speeds away, running red lights or taking other actions that run the risk of serious harm to pedestrians, other drivers or the police officers attempting to make the stop.

This proposed amendment would make eluding a peace officer rise to a felony only if an individual was also recklessly driving. This change would clarify Alaska Statute 28.35.182 for law enforcement officers as to when the perpetrator should be charged with a felony instead of a misdemeanor.

The committee urges your support of this bill.

Article 3. Reckless and Negligent Driving.

Section

40. Reckless driving
45. Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner that creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle, or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. *Calder v. State*, 619 P.2d 1026 (Alaska 1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dangerous weapon even though a misdemeanor charge of reckless driving had already been adjudicated against him because, although the charges arose out of the same general incidents, they were based on different conduct during that incident. *Calder v. State*, 619 P.2d 1026 (Alaska 1980).

Lesser included offense of driving while intoxicated. — Trial court erred in refusing defendant's request, at his trial for driving while intoxicated, for an instruction on the lesser included offense of reckless driving and negligent driving, where the issue of defendant's intoxication was in dispute and the state presented evidence from which the jury could have found him guilty of reckless driving or negligent driving even if it acquitted him of DWI. *Comeau v. State*, 758 P.2d 108 (Alaska Ct. App. 1988).

Defendant was "in actual physical control" of her vehicle, where she was seated in the driver's seat behind the steering wheel, had possession of the ignition key and was attempting to put the key in the ignition; given these factors of control, it is not necessary that the engine be running. *State, Dep't of Pub. Safety v. Conley*, 754 P.2d 232 (Alaska 1988).

Trooper arriving at accident scene cannot ar-

rest for reckless driving without warrant. — The Alaska legislature has classified both reckless driving and operating or driving an automobile under the influence of intoxicating liquor as misdemeanors. Thus, a state trooper who arrived at an accident scene could not arrest a driver without a warrant for either reckless driving or drunk driving since neither of these offenses was committed or attempted in his presence. *Layland v. State*, 535 P.2d 1043 (Alaska 1975), aff'd, 549 P.2d 1182 (Alaska 1976), overruled on other grounds, *Anchorage v. Geber*, 592 P.2d 1187 (Alaska 1979).

Sentencing considerations. — Where it was undisputed at trial that there were three people in the rear of defendant's pickup who were extremely vulnerable in case of any accident, the judge could properly consider this fact at sentencing in evaluating the extent of defendant's recklessness, even though he could not properly consider the fact that they had died from defendant's recklessness. *Huckaby v. State*, 632 P.2d 975 (Alaska Ct. App. 1981).

Considering uncounseled moving violations in sentencing held harmless error. — Any error which might have occurred by reason of the trial court's consideration of two uncounseled moving violations in determining the sentence for negligent driving was harmless where the court also considered three counseled moving violations and where it did not restrict or suspend defendant's license but imposed a fine of \$100, which was only \$25 above that suggested by defendant's counsel. *McKenzie v. State*, 520 P.2d 791 (Alaska 1974).

Sentence upheld. — Severity of defendant's offense within the crime of reckless driving and the need to deter him, to deter others, and to reaffirm societal norms justified a one-year sentence. *Huckaby v. State*, 632 P.2d 975 (Alaska Ct. App. 1981).

Cited in *Hood v. Smedley*, 498 P.2d 120 (Alaska 1972); *Williford v. State*, 674 P.2d 1329 (Alaska 1983); *Wilson v. State*, 680 P.2d 1173 (Alaska Ct. App. 1984); *Smith v. State*, 787 P.2d 1038 (Alaska Ct. App. 1990).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 312 to 320.

61A C.J.S., Motor Vehicles, §§ 609 to 624.

What amounts to reckless driving within statute making reckless driving of automobile a criminal offense, 52 ALR2d 1337.

Reckless driving as lesser included offense of driving while intoxicated or similar charge, 10 ALR4th 1252.

Definiteness and certainty of statute prohibiting reckless driving, 52 ALR4th 1161.

Sec. 28.35.045. Negligent driving. (a) A person who drives a motor vehicle in the state in a manner that creates an unjustifiable risk of harm to a person or to property and who, as a result of the creation of the risk, actually endangers a person or property is guilty of negligent driving. An unjustifiable risk is a risk of such a nature and degree that a failure to avoid it constitutes a deviation from the standard of care that a reasonable person would observe in the situation. Proof that a defendant actually endangered a person or property is established by showing that, as a result of the defendant's driving,

(1) an accident occurred;

(2) a person, including the defendant, took evasive action to avoid an accident;

(3) a person, including the defendant, stopped or slowed down suddenly to avoid an accident; or

(4) a person or property, including the defendant or the defendant's property, was otherwise endangered.

(b) The offense of negligent driving is a lesser offense than, and included in, the offense of reckless driving, and a person charged with reckless driving may be convicted of the lesser offense of negligent driving.

(c) A person convicted of negligent driving is guilty of an infraction as provided under AS 28.40.050.

(d) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 7 ch 74 SLA 1974; am § 6 ch 241 SLA 1976; am § 19 ch 144 SLA 1977; am § 43 ch 21 SLA 1985)

NOTES TO DECISIONS

Codification of common-law standard of care.

— This section and AS 28.35.040, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Specific conduct not proscribed. — This section and AS 28.35.040, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. *Bailey v. Lenord*, 625 P.2d 849 (Alaska 1981).

Negligent driving is an infraction, not an offense for double jeopardy purposes, and pleading no contest to negligent driving does not preclude a subsequent prosecution for the offense of second-

degree assault. *Carlson v. State*, 676 P.2d 603 (Alaska Ct. App. 1984).

Lesser included offense of driving while intoxicated. — Trial court erred in refusing defendant's request, at his trial for driving while intoxicated, for an instruction on the lesser included offense of reckless driving and negligent driving, where the issue of defendant's intoxication was in dispute and the state presented evidence from which the jury could have found him guilty of reckless driving or negligent driving even if it acquitted him of DWI. *Comeau v. State*, 758 P.2d 108 (Alaska Ct. App. 1988).

Cited in *Williford v. State*, 674 P.2d 1329 (Alaska 1983); *McCollum v. State*, 808 P.2d 268 (Alaska Ct. App. 1991).

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, §§ 321, 322.

61A C.J.S., Motor Vehicles, § 612.

Article 4. Duties Following Accidents.

Section	Section
50. Action of operator immediately after accident	100. Form of reports
60. Duty of operator to give information and render assistance	110. Penalty for giving false information in report or failing to report
70. Examination or impounding before repair	120. Use of accident reports in evidence
80. Immediate notice of accident	130. False report or destruction of evidence
90. Rendering of report by others	

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,

(1) "access device" means a card, credit card, plate, code, account number, algorithm, or identification number, including a social security number, electronic serial number, or password, that is capable of being used, alone or in conjunction with another access device or identification document, to obtain property or services, or that can be used to initiate a transfer of property;

(2) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(3) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(4) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(5) "cannabis" has the meaning ascribed to it in AS 11.71.900(10), (11), and (14);

(6) "conduct" means an act or omission and its accompanying mental state;

(7) "controlled substance" has the meaning ascribed to it in AS 11.71.900(4);

(8) "correctional facility" means premises, or a portion of premises, used for the confinement of persons under official detention;

(9) "credit card" means any instrument or device, whether known as a credit card, credit plate, courtesy card, or identification card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining property or services on credit;

(10) "crime" means an offense for which a sentence of imprisonment is authorized; a crime is either a felony or a misdemeanor;

(11) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(12) "criminal street gang" means a group of three or more persons

(A) who have in common a name or identifying sign, symbol, tattoo or other physical marking, style of dress, or use of hand signs; and

(B) who, individually, jointly, or in combination, have committed or attempted to commit, within the preceding three years, for the benefit of, at the direction of, or in association with the group, two or more offenses under any of, or any combination of, the following:

(i) AS 11.41;

Felony Eluding a Police Officer 1998 - 2001

Charges and Convictions

	AST			
	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	28	17	3	71%
2000	27	20	1	78%
2001*	40	6	0	15%
All years	95	43	4	49%

	Police Depts			
	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	47	26	2	60%
2000	135	38	32	52%
2001*	143	30	20	35%
All years	325	94	54	46%

	All Agencies			
	Charges	Felony Convictions	Misdemeanor Convictions	Conviction %
1999	75	43	5	64%
2000	162	58	33	56%
2001*	183	36	20	31%
All years	420	137	58	46%

* Many 2001 charges have not yet been adjudicated, convictions can be expected to rise as cases are handled

Committee Minutes

FLEEING OR EVADING A PEACE OFFICER

House Bill 405

Number 0054

CHAIRMAN GREEN announced the first item of business would be HB 405, "An Act relating to failing to stop a vehicle when directed to do so by a peace officer," sponsored by Representative Kott.

JIM HORNADAY, Legislative Assistant to Representative Pete Koti, Alaska State Legislature, came before the committee to present HB 405 on behalf of Representative Kott. He explained the committee members should have a sponsor statement and sectional analysis of the bill. The fiscal notes are in progress from the Department of Law and the Public Defender's Agency. Mr. Hornaday read the following statement into the record:

"HB 405 increases the penalties for not stopping at the direction of a police officer. Failure to stop at the direction of a police officer in the first degree occurs if during the commission of the offense the person violates any other law during the commission of the offense and is a class C felony. Failure to stop at the direction of a peace officer in the second degree occurs if the person knowingly fails to stop as soon as possible in a safe manner and is a class A misdemeanor. " The crime of eluding a police officer is inherently dangerous for pedestrians, other drivers and innocent bystanders. As an example, in the Municipality of Anchorage in August of 1998[7], a passenger in a vehicle attempting to avoid arrest was killed when the vehicle ran a red light and struck a building. This is only one of several recent incidents where casualties have resulted from this very serious crime. "Increasing the penalties for this crime will not only help deter this potentially dangerous behavior, but will more correctly align the severity of the punishment with the severity of the crime itself."

MR. HORNADAY pointed out that the legislation is a part of the Municipality of Anchorage's legislative package. He continued to read the sectional analysis.

"Section 1 of the bill repeals AS 28.35.182 , the offense for failing to stop at the direction of a peace officer, and reenacts that section as failure to stop at the direction of a peace officer in the first and second degree. "Subsection (a) creates the new offense of failure to stop at the direction of a peace officer in the first degree which is committed when a person violates subsection (b), failure to stop at the direction of a peace officer in the second degree and the person violates another law, ordinance, or traffic regulation.

"Subsection (b) provides that a person commits the offense of failure to stop at the direction of a peace officer in the second degree if the person, while operating a vehicle, knowingly fails to stop when requested to do so by a peace officer.

"Subsection (c) provides affirmative defenses to a person charged with failure to stop at the direction of a peace officer. The defenses are that the peace officer's vehicle, if the peace officer was operating a vehicle when requesting the defendant to stop, did not meet lighting and audible

signaling requirements for law enforcement vehicles and was not marked appropriately so as to be recognizable as a law enforcement vehicle or that the peace officer was not wearing the uniform of office or displaying a badge when requesting the defendant to stop.

"Subsection (d) supplies definitions.

"Subsection (e) provides that failure to stop at the direction of a peace officer in the first degree is a class C felony, and failure to stop at the direction of a peace officer in the second degree is a class A misdemeanor."

MR. HORNADAY noted Mr. Udland was waiting to give testimony.

Number 0358

DUANE UDLAND, Police Chief, Municipality of Anchorage, testified via teleconference from Anchorage. He thanked the committee for hearing the bill and Representative Kott for sponsoring the legislation. He noted that three years ago the legislature dealt with the "joy-riding" issue and raised the penalty to a felony and started calling it "vehicle theft." Mr. Udland stated he believes it is now the time to look at the penalty of fleeing from a police officer. He pointed out that in most cases when somebody decides to flee, they know they are not going to stop until they lose the police officer or they crash. Mr. Udland said it is such a problem that five years ago they severely restricted the ability of their police officers to chase people who flee from them because of the inherent dangers of fleeing as well as the danger to the police officers themselves. Mr. Udland indicated that Mayor Mystrom and police officers support the legislation and urged passage. He referred to the impact that will be caused on the court system and the Department of Corrections and said when the legislation was passed that raised the penalty on vehicle theft, the rates of vehicle theft decreased.

Number 0553

CHAIRMAN GREEN asked Mr. Udland if the legislation were to become law, would he see any significant change in the cost of his operation. He pointed out that there isn't a fiscal note and he is trying to get an idea of what financial effect the bill would have.

MR. UDLAND said he doesn't think there would be any impact on his operation, financially or operationally.

Number 0602

REPRESENTATIVE BRIAN PORTER said, "I know that the wording here is about the same, but I guess just to get it on the record, I don't believe that the wording is now broken out as intending to mean that what is traditionally called an 'unmarked police car' would not be able to make a traffic stop and have the benefit of this statute."

MR. UDLAND said their intent is that a person who is fleeing has to clearly know that somebody behind them is a police officer. In other words, you won't have a police officer in their unmarked car, with no identification, waiving. It has to be a knowingly act on the part of the person who is fleeing.

REPRESENTATIVE PORTER noted the wording in the legislation is the same as it is in existing statute such as "unmarked" cars that are more visibly marked once the officer decides to make a stop with lights, sirens and emergency gear that any other car would have. He said, "But I just, for the record, wanted to establish that this doesn't change that - having broken it out from a big paragraph does not change the situation."

Number 0729

BARBARA BRINK, Director, Alaska Public Defender Agency, testified via teleconference from Anchorage. She said she certainly understands the reasoning and logic behind the bill, but her concern is that when a policy decision is being made that there be some good identifiable information about the cost. Ms. Brink apologized about not having forwarded to the committee, but she is still waiting on some numbers. She said there definitely are increased costs for her agency with the increase in penalties. She explained a felony trial is handled in a much different manner than a misdemeanor trial. For example, there is the grand jury proceeding. The case is tried to a 12 person jury rather than a 6 person jury. She pointed out that the client always faces the impact of having a permanent felony record which (indisc.) both civil and criminal. Ms. Brink informed the committee that some of the people who are charged will be facing presumptive sentences if they have prior felonies on their record. She stated that Chief Justice Warren Matthews in his State of Judiciary (indisc.) pointed out that felony cases are a lot more likely to go to trial than other cases. She explained she is still waiting for some figures so that she can try and make a statewide determination on the cost. Ms. Brink noted that under national standards, lawyers can handle three times as many misdemeanor cases as they can felony cases. Ms. Brink explained that those people who are impulsive enough, and if they lack the good judgement when a police officer is trying to get their attention, aren't really thinking about (indisc.) consequences and what might happen to them. She said she hopes the legislation has a deterrent effect, but she does have some real concerns as to whether the legislation will be effective.

Number 0895

CHAIRMAN GREEN referred to Ms. Brink indicating that she didn't think the legislation would have an impact on a person who currently exercises poor judgement and asked if once the word gets out that they really mean business that it won't have a beneficial effect.

MS. BRINK said it is so hard to know that. She referred to cases she has personally been involved in and said she has seen people get caught in the heat of the moment and make this impulsive choice. She doesn't believe that alluding a police officer is a well-planned premeditated thought out crime, they see the red light and impulsive behavior takes over and there isn't a whole lot of good thinking going on.

Number 0987

DEL SMITH, Deputy Commissioner, Department of Public Safety, came before the committee to testify on HB 405. He said that he believes Mr. Udland has eloquently stated the case for Ms. Brink's consideration. He said he has been informed by people in Anchorage that there were 78 cases of eluding or evading police officers in calendar year 1997, that the Alaska State Troopers did a case report on. Mr. Smith stated his presumption is that they probably wouldn't have done a case report unless they actually got somebody in hand, did some prosecution or at least made the

arrest. The 78 cases combined with the 81 that Mr. Udland had charged in 1997 would make it approximately 160 cases a year. He noted that figure doesn't include some of the smaller municipalities. Mr. Smith stated, "I was somewhat surprised by the number in Anchorage, but it creates a situation where last year I think the legislature passed a law regarding shooting at a building and making it a felony. I think it's no less important that if you're driving down the roadway at 90 miles an hour and the police have backed off long ago on the search and you are ultimately caught that there is a price you should be paying for that." He said he would answer any questions the committee may have.

Number 1096

CHAIR GREEN referred to the legislation and asked Mr. Smith if he could give a rough estimate of how many out of the 78 cases would be class A misdemeanors or class C felonies.

MR. SMITH said he hasn't had an opportunity to review the reports and he doesn't know if he could do that with any accuracy. He referred to when they originally discussed the bill and said they did not want to charge felonies against a person who is driving within the speed limit and just doesn't recognize the state of Alaska or local police's authority to stop them. He said they didn't think it should necessarily be a felony if they were obeying the speed limit. Mr. Smith stated that the legislation would trip a number of these people into a felony because all they have to do is violate another law or ordinance, including running a red light or stop sign.

Number 1160

REPRESENTATIVE ETHAN BERKOWITZ said it seems to him that if someone is speeding down the road and they're endangering other individuals, they would be liable to assaulted conduct which is already felonious.

MR. SMITH said he would defer to the Department of Law to respond. He said, "If they were doing 80 or 90 miles an hour through the middle of town, potentially I guess that's possible, Representative Berkowitz. I think with the process of screening by district attorneys if the offense, back to your ever popular turn signal violation, might well not be charged as a felony when it in fact gets to cooler heads the next morning and the screening process."

Number 1216

REPRESENTATIVE PORTER indicated that he believes that most of the assault-type violations would require specific intent and that is the problem that you have in a vehicle situation. Unless there is serious physical injury or death, it's extremely difficult (indisc.). He said he can't recall ever having a successful prosecution for what used to be (indisc.).

ANNE CARPENETI, Assistant Attorney General, Legal Services Section - Juneau, Criminal Division, Department of Law, came before the committee. She referred to Representative Berkowitz's previous comment and said assault in the third degree has a provision that says, "recklessly place another person in fear of imminent serious physical injury by means of a dangerous instrument." She stated, "It's not something that we ... prefer to charge under a section like addressed to the particular conduct a little bit more clearly, but I suppose you could logically apply that."

REPRESENTATIVE BERKOWITZ said, "Two points here. First is look at the crime that inspired this bill. And I understand that the B misdemeanor is just not enough because it really has no effective value, but the crime where casualties resulted would have led to, at the very least, manslaughter charges in addition to the misdemeanor charges for violating traffic ordinances and disregarding the police officer."

REPRESENTATIVE PORTER said the previous iteration of the bill had a higher level of a class B felony for this conduct that might result in serious physical injury or death, but it was noted that is another crime specific. That wasn't the intent to have redundancy.

REPRESENTATIVE BERKOWITZ said, "I don't think we use the assault statutes nearly enough and we tend to draw our statutes so narrowly, which is what this does, that we have a tendency away from using the assault statute the way it should be used which is to put the facts in front of a jury and let make a determination whether assaulted conduct has occurred."

Number 1394

MS. CARPENETI said, "That would just address one incident that this bill I think is addressing and that is if a person is put in fear of eminent serious physical injury, I don't know if somebody is speeding down the street and you have to jump away whether we would be able to prove beyond a reasonable doubt to a jury of 12 people that that is fear of eminent serious physical injury. You know if somebody just turned away, I don't know whether we would..."

REPRESENTATIVE PORTER responded, "Thus, this specific offense, criminal offense of reckless driving indicates that the driving has created this hazardous situation without having to require the specific state of mind evidence from potential victims."

REPRESENTATIVE BERKOWITZ said if the recklessness inspires fear, he is worried at what level the fear is, whether it's a serious physical injury or just a mere irritation. That should be a question for a jury to determine. He indicated that he believes the legislation stacks the deck and takes the power away from the juries to make a determination as to whether a crime has occurred.

MS. CARPENETI said she thinks the bill addresses something else besides assault. It addresses conduct to where a person is asked to pull over by a police officer and knowingly refuses to do so and drives on and violates more laws not necessarily assaulting anybody, but creates the danger that might result in a crash.

REPRESENTATIVE BERKOWITZ said that his point is that the committee is focusing on the danger. He said he isn't minimizing the danger, he understands the problem of people fleeing. People who have been arrested are subject to several charges, including felony escape if they're under arrest for a felony charge. That group of people are outside the realm. He said, "We're saying that the traffic problem, itself is less serious than the failure to stop which could be felonious. I'm not sure that that's something we should do specifically do by statute or something that we should allow the district attorneys to charge, under current statutes, and try and convince a jury of 6 or 12 that the charge is correct."

MR. HORNADAY noted that Mr. Udland submitted a letter and gave a copy to the committee members.

Number 1696

REPRESENTATIVE NORMAN ROKEBERG questioned why the sponsor introduced the legislation.

MR. HORNADAY indicated the legislation is part of the Municipality of Anchorage's legislative program. He quoted from the summary that the municipality submitted making the crime of alluding a police a class C felony, "Currently the crime of alluding a police officer is a misdemeanor under the Alaska Criminal Code. The Municipality of Anchorage requests that the legislature amend the code to make this crime a class C felony for the following reasons:

The crime of alluding a police officer is inherently dangerous for pedestrians, other drivers and innocent bystanders; classification as a misdemeanor does little to detour a criminal from attempting to outrun a police officer; several other local government police departments, including the Anchorage Police Department, have adopted a no-chase policy due to the potentially dangerous outcome of police chases; and having adopted a 'no-chase' policy it is important to detour this behavior and more strictly punish offenders."

MR. HORNADAY continued to read, "In August of this year a passenger in a vehicle attempting to evade arrest was killed when the vehicle ran a red light and struck a building. This is only one of several recent incidents where casualties have resulted from this very serious crime. The Municipality of Anchorage supports legislation to increase the penalty for the crime of alluding a police officer and this will not only help detour this potentially dangerous behavior, but will more correctly align the severity of the punishment with the severity of the crime itself."

Number 1796

CHAIRMAN GREEN said Mr. Udland's testimony indicated that when we increased the consequences of joy-riding to be a serious crime, the number of car thefts decreased. It is Mr. Udland's opinion that by increasing the penalty for failure to stop, then that too will decrease. The Alaska State Troopers also feels the same way. He noted the public defender feels that it won't have an impact. Chairman Green noted there were 78 failures to stop or alluding troopers in 81 Anchorage police reports for 1997.

Number 1860

REPRESENTATIVE ERIC CROFT said almost any time a misdemeanor is increased to a felony, or define a felony, we're going to increase business for the public defender's office. He asked Ms. Brink if there were other problems with the way the bill is written.

MS. BRINK pointed out that her testimony was about how much more costly felony cases are than misdemeanor cases. She said, "I would like to point out one problem that I don't believe has been brought up yet. The numbers that we've received, about 150 combining the troopers and APD (Anchorage Police Department) is still lacking, I think, another group of folks. The municipal prosecutor told me that they prosecuted 66 of these cases as misdemeanors, but the way the statute is written there is also an alluding infraction that involves specifically failing to stop at the direction of a police officer. Those numbers aren't included here. So I feel pretty

comfortable that the 150 cases a year that we've gotten are fairly good numbers. I just think there is potential for the number to be even higher. And my concern with the effectiveness of this as a deterrent measure is simply that the clients that I've dealt with in an alluding case didn't make any plan or didn't have a premeditated course of action to allude ... the red light went on and they engaged in some bad judgement and very impulsive behavior without thinking clearly. So my concern was we will have great costs. I'm insecure about what kind of a benefit we're going to get derived from this because the people that I've seen involved in alluding or running away from police officers aren't really thinking about the consequences. It's a very impulsive short-sided adrenalin rush kind of situation where they make a bad judgement call. I hope I'm wrong if this does become a felony."

REPRESENTATIVE BERKOWITZ suggested that instead of going to an A misdemeanor and a C felony, have a B misdemeanor and an A misdemeanor, and then have a statutory aggravator in felony cases for some kind of failure to stop.

MS. BRINK said, "That would it would reduce that costs. I mean it's the fact of the different procedures involved in a felony case that increases our cost. Once again, who knows whether this will enter anybody's thought process, but you certainly would have a harsher hammer to use against somebody who engaged in this behavior if you had a graduated scheme like that."

Number 1981

REPRESENTATIVE PORTER said he would agree with Ms. Brink that a certain percentage of people make an initial reaction without contemplated thought. He said he believes the bill gets at people at either end of that scale. At one end, there will be the person who isn't going to stop because of some constitutional issue of theirs. Then at the other end of the scale, the person who makes that initial judgement and then continues with it, which does require conscious thought, that is the person for whom the felony is very appropriate. Unfortunately, in Anchorage, as in a couple of other communities, there has been a lot of publicity over the last couple of years on pursuit policies. He indicated that many people are aware that the largest community in the state has a policy that the Anchorage Police Department will not pursue in a hazardous situation unless it is very hazardous like shooting guns out of windows. He stated for those reasons, he believes it is appropriate legislation.

REPRESENTATIVE JAMES noted the Fairbanks Police Department also has the no-chase policy. She indicated she agrees with a bigger penalty as it might be a deterrent.

Number 2120

CHAIRMAN GREEN referred to the roughly 150 cases and asked Mr. Hornaday if he knows how many of those might be young drivers as opposed to more mature drivers. He asked how many are teenagers.

MR. SMITH said without reviewing the police reports, he couldn't answer.

Number 2136

REPRESENTATIVE BUNDE asked Representative Porter if there is a difference between failure to stop and alluding.

REPRESENTATIVE PORTER said he couldn't answer that question unless he reviewed the statutes and read the definitions.

REPRESENTATIVE ROKEBERG referred to the step up in the offenses and asked if the bill would preclude any infraction for an unintentional failure to stop.

MR. HORNADAY responded that he believes it requires a "knowingly" in the statute as defined in the criminal statutes.

REPRESENTATIVE ROKEBERG asked if that is currently the level or standard for the infraction.

MR. HORNADAY responded that he isn't sure what it currently is, but in the legislation it states it has to be knowingly which is generally required.

REPRESENTATIVE BERKOWITZ said, "I'm curious to know if [Department of] Corrections has any idea of what the additional cost of turning this into felonious (indisc.) would be bearing in mind that a lot of these people would be hopped up and be presumptive?"

Number 2235

BRUCE RICHARDS, Program Coordinator, Office of the Commissioner, Department of Corrections, came before the committee. He said, "We are currently in about the same boat as everybody else as far as numbers go. We've heard the number is near 150 cases per year. It's unclear to us how many of these people would be convicted as felons, which has a substantially higher penalty. In looking at the bill, it seems like a good many of them could be convicted as felons if they violate, under the law, ordinance or traffic regulation law while they're failing to stop. So I think that's pretty common. If they fail to stop, I would assume they're probably speeding, driving recklessly. So I think that you're going to have a significant number of felonies and we are trying to figure out, if we can, how many of those will be, but it's difficult and we're trying to get with everybody else on these numbers as well. I don't know the answer to Representative Berkowitz's question at this point."

REPRESENTATIVE CROFT said he would hope that most of the people that are stopped would be for a good reason - for a violation, and a lot of them would be felonies for that reason. He stated that he would like to see how many felonies will be added to the Department of Corrections.

REPRESENTATIVE PORTER referred to the cost of these kinds of pieces of legislation has gone on and on and said, generally, most of the offenses that have been put on the books have been used as tools. He referred to the fiscal note on the felony conspiracy statute and said it was outrageous. He stated that this is another one of those kinds of crimes that would be used as a tool. In an egregious situation, there would probably be a prosecution for a felony. He said he would guess that in at least 50 percent of the cases, if not more, that are currently on the books, thorough plea bargain, or just general discretion at the prosecutor's level, there would not be a felony crime, but it would get out that there are felony type consequences for (indisc.) failing to stop.

Number 2339

REPRESENTATIVE BUNDE observed that the part that can't be calculated is how many fewer people would fail to stop. He said we have to presume that consequences of our behavior does affect behavior, otherwise, a lot of laws could be removed.

REPRESENTATIVE JAMES said, "Well I think also if you're going think that you're going to decrease the number, that might not stop. You might also increase safety of the public."

Number 2371

REPRESENTATIVE BERKOWITZ said that before the bill is moved he would like to conceptual amendment to implement a stepped up scheme which is leave the low level B misdemeanor as failure in the second degree. Make failure in the first degree an A misdemeanor and create a statutory aggravator of failure to stop if there is felonious behavior such as an assault, manslaughter, theft of a vehicle, et cetera. He said, "The way an aggravator works is when someone who is sentenced for a felony, the prosecution and the defense make a ... statutory list of good things, bad things - aggravators and mitigators, and if we make this one of the aggravators, then prosecutors will be able to say, 'This is one of the bad things, this sentence should be enhanced consequently.' But what it also does is allow the Department of Corrections some flexibility here because I am concerned about the fiscal note - concerned about the fiscal note for corrections, for public defenders and probably for the prosecutors office as well. So that being the case, that's my amendment."

REPRESENTATIVE PORTER objected to the adoption of the conceptual amendment. He said, "I understand what the maker of the amendment is trying to respond to, and I don't disrespect that. I just think that, first of all, I'm not too sure if there isn't the language that would be close to what this would constitute as an aggravator already - felony list. So that might be a bit redundant in some cases, but like it or not sometimes life is more effected by sound bites than comprehensive knowledge. And the sound bite that says this is now a felony is one heck of a sound bite. It has an effect, believe me. (Indisc.) lowest felony that there is."

TAPE 98-29, SIDE B

Number 0010

REPRESENTATIVE ROKEBERG said he would like to know if there is an aggravator in existing state statute and/or in the municipal code.

REPRESENTATIVE BERKOWITZ responded, "Title 12 through 55."

MS. CARPENETI explained there are currently 29 aggravating factors in Title 12. She noted she didn't see one of them on the list of 29.

REPRESENTATIVE PORTER said his recollection of the 29 was there was something about adding an aggravator if the action presented a risk to 30 or more people.

MS. CARPENETI said she believes that is one.

REPRESENTATIVE PORTER stated that in a reckless driving situation that could very well be.

REPRESENTATIVE BERKOWITZ said you would still need to show three more people which he thinks will be one of the problems in charging assault of conduct for this behavior.

MS. CARPENETI stated that she would like to point out that the way the bill is written, you couldn't be charged or convicted if you didn't know knowingly fail to stop. It wouldn't be a question of not noticing the police officer and not stopping under those circumstances. You would have to be aware of the fact that they had asked you to pull over.

Number 0091

REPRESENTATIVE ROKEBERG asked that someone from the Department of Corrections address his next question. He said if they knew there was going to be ten people incarcerated under a class C felony, what would the annual fiscal note be for ten people.

MR. RICHARDS if you're currently under a class B misdemeanor, which is 90 days maximum, a class C felony can be up to five years. He indicated he doesn't know what the average sentence would be for these cases.

REPRESENTATIVE ROKEBERG asked what the annual amount would be for ten people for one year for a felony.

MR. RICHARD responded it would be approximately \$360,000.

Number 0142

REPRESENTATIVE BERKOWITZ said, "It occurs to me ... that you're going to get probably felons who get traffic stopped who are worried about parole violations. I mean the idea of making it a felony for failure to stop is going to discourage -- cuts both ways because it could encourage people to flea as well because they'd be worried about picking up a second felony, in which case they would be presumptive which is four years at the very least - or two years."

Number 0167

REPRESENTATIVE CROFT said he thinks the bill is trying to accomplish good public policy goals. He stated he believes the amendment improves the bill.

REPRESENTATIVE ROKEBERG asked that Representative Berkowitz clarify more specifically about what would constitute the aggravation. He asked if a reckless driving activity would constitute aggravation.

REPRESENTATIVE BERKOWITZ responded, "Conceptually, I would hope that the conduct that would constitute a failure to stop at the direction of a peace officer, that's listed here, ... that language would be used in the aggravator. And I haven't reviewed it closely, but it would seem to me that that would be okay as an aggravator's description. It's basically knowingly fail to stop at the direction of a peace officer would be the aggravator."

CHAIRMAN GREEN asked if that would apply to a misdemeanor or would it be a felony to invoke the aggravator.

REPRESENTATIVE BERKOWITZ stated it would be in a felony situation.

CHAIRMAN GREEN indicated he was confused.

REPRESENTATIVE BERKOWITZ said if somebody has a previous felony and they now have stolen a car, they refuse to stop, this would be an aggravator on that felony charge.

Number 0241

REPRESENTATIVE ROKEBERG said he thinks one of the problems with a pursuit is it generates a reckless driving problem and hazard to the public. He asked if that would constitute the aggravator and noted he thinks it should. He asked Representative Berkowitz if that was his intention.

REPRESENTATIVE BERKOWITZ stated that if you are being trailed by a cop and you don't stop, and you eventually do end up in custody, the failure to stop would be an aggravator to the felony charge. If there was reckless driving and failure to stop, that person could be charged with reckless driving.

REPRESENTATIVE ROKEBERG asked, "Is that enough to get you into the C felony list?"

REPRESENTATIVE BERKOWITZ said, "No, but under the way it's written currently, yes, if you were driving recklessly and then were eventually stopped, that would constitute, as I understand it, a violation of a law which would make this a C felony."

REPRESENTATIVE ROKEBERG asked if reckless driving egregious enough to fit the aggravator.

REPRESENTATIVE BERKOWITZ stated that it could be.

REPRESENTATIVE ROKEBERG said, "If we're going to adopt that, I'd like to see that."

Number 0240

CHAIRMAN GREEN asked for a roll call vote on Representative Berkowitz's conceptual amendment. Representatives Porter, James, Bunde and Green voted against the amendment. Representatives Croft, Rokeberg and Berkowitz voted in favor of adopting the amendment. The amendment failed to be adopted by a vote of 4-3.

Number 0333

REPRESENTATIVE JAMES made a motion to move HB 405 out of committee with individual recommendations and with the appropriate forthcoming fiscal notes. There being no objection, HB 405 moved out of the House Judiciary Standing Committee.