

HB

12

HOUSE COMMITTEE REPORT

3.18.05

(7)
Date Referred to Committee: January 10, 2005

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3/17/05

The STATE AFFAIRS Committee considered:

HB 12

HOUSE BILL NO. 12

TVS AND MONITORS IN MOTOR VEHICLES

"An Act relating to televisions and monitors in motor vehicles."

Recommends it be replaced with [] HCS or [] CS for HB 12 (STA)
For Senate Bills with new title: [] Technical Title [] New Title: HCR _____ [] Same Title [] New Title

- [] 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
LEG
LAW
LWF
MVA
DNR
DPS
REV
DOT
UA

40FN

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	4			✓
DPS	3			✓
LAW	2			✓
Adm	1			✓

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

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>Berta Gardner</i>	Gardner	<input checked="" type="checkbox"/>			
<i>John</i>	LYNN	<input checked="" type="checkbox"/>			
<i>Mr. Greenberg</i>	Greenberg	<input checked="" type="checkbox"/>			
<i>J. Elkins</i>	ELKINS	<input checked="" type="checkbox"/>			
Chair: <i>Paul Keaton</i>	KEATON	<input checked="" type="checkbox"/>			
Chair:					

24-LS0058R
Luckhaupt
4/11/05

CS FOR HOUSE BILL NO. 12()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GRUENBERG, LYNN, GARDNER AND MCGUIRE, Ramras, Gara, Elkins

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to televisions, monitors, portable computers, and similar devices in**
2 **motor vehicles; and providing for an effective date."**

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

4 *** Section 1.** AS 28.35 is amended by adding a new section to read:

5 **Sec. 28.35.161. Driving a motor vehicle with a television, monitor, or**
6 **similar device operating; unlawful installation of television, monitor, or similar**
7 **device.** (a) A person commits the crime of driving with a screen operating if

8 (1) the person is driving the motor vehicle;

9 (2) the vehicle has a television, video monitor, portable computer, or
10 any other similar means to create a visual display visible to the person who the
11 person is driving the motor vehicle; and

12 (3) the monitor or visual display is operating while the person is
13 driving.

14 (b) A person may not install or alter equipment described in (a)(2) of this

1 section that allows the display to be visible to the driver while the driver is driving the
2 motor vehicle.

3 (c) Subsections (a) and (b) of this section do not apply to

4 (1) portable cellular telephones; or

5 (2) equipment that displays only

6 (A) audio equipment information, functions, and controls;

7 (B) vehicle information or controls related to speed, fuel level,
8 battery charge, and other vehicle safety or equipment information;

9 (C) navigation or global positioning;

10 (D) maps; or

11 (E) visual information to enhance or supplement the driver's
12 view forward, behind, or to the sides of the motor vehicle for the purpose of
13 maneuvering the vehicle.

14 (d) Subsections (a) and (b) of this section do not apply to equipment installed
15 in an authorized emergency vehicle or to a motor vehicle providing emergency road
16 service or roadside assistance.

17 (e) It is an affirmative defense to a prosecution under (b) of this section that
18 the equipment installed or altered also includes a device that, when the motor vehicle
19 is being driven, disables the equipment for all uses except those described in (c) of this
20 section.

21 (f) A person who violates (a) of this section is guilty of

22 (1) a class A misdemeanor, unless any of the circumstances described
23 in (2) - (4) of this subsection apply;

24 (2) a class C felony if the person's driving causes physical injury to
25 another person;

26 (3) a class B felony if the person's driving causes serious physical
27 injury to another person;

28 (4) a class A felony if the person's driving causes the death of another
29 person.

30 (g) A person who violates (b) of this section is guilty of a class A
31 misdemeanor.

1

* Sec. 2. This Act takes effect September 1, 2005.

24-LS0058\X
Luckhaupt
4/5/05

CS FOR HOUSE BILL NO. 12()

**IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

BY

**Offered:
Referred:**

**Sponsor(s): REPRESENTATIVES GRUENBERG, LYNN, GARDNER AND MCGUIRE, Ramras, Gara,
Elkins**

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to televisions, monitors, portable computers, and similar devices in**
2 **motor vehicles; and providing for an effective date."**

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

4 *** Section 1. AS 28.35 is amended by adding a new section to read:**

5 **Sec. 28.35.161. Driving a motor vehicle with a television, monitor, or**
6 **similar device operating; unlawful installation of television, monitor, or similar**
7 **device. (a) A person commits the crime of driving with a screen operating if**

8 (1) the vehicle has a television, video monitor, portable computer, or
9 any other similar means to create a visual display visible to the person while the
10 person is driving the motor vehicle;

11 (2) the person is driving ^{the} a motor vehicle; and

12 (3) the monitor or visual display is operating.

13 (b) A person may not install or alter equipment described in (a)(1) of this
14 section that allows the display to be visible to the driver while the driver is driving the

1 motor vehicle.

2 (c) Subsection (a) and (b) of this section do not apply to equipment that
3 displays only

4 (1) vehicle information;

5 (2) navigation or global positioning;

6 (3) maps; or

7 (4) visual information to enhance or supplement the driver's view
8 forward, behind, or to the sides of the motor vehicle for the purpose of maneuvering
9 the vehicle.

10 (d) Subsections (a) and (b) of this section do not apply to equipment installed
11 in an authorized emergency vehicle or to a motor vehicle providing emergency road
12 service or roadside assistance.

13 (e) It is an affirmative defense to a prosecution under (b) of this section that
14 the equipment installed or altered also includes a device that, when the motor vehicle
15 is being driven, disables the equipment for all uses except those described in (c) of this
16 section.

17 (f) A person who violates (a) of this section is guilty of

18 (1) a class A misdemeanor, unless any of the circumstances described
19 in (2) - (4) of this subsection apply;

20 (2) a class C felony if the person's driving causes physical injury to
21 another person;

22 (3) a class B felony if the person's driving causes serious physical
23 injury to another person;

24 (4) a class A felony if the person's driving causes the death of another
25 person.

26 (g) A person who violates (b) of this section is guilty of a class A
27 misdemeanor.

28 * Sec. 2. This Act takes effect September 1, 2005.



**Dept. of Public Health/
Community Health
and EMS**

Fax

To: Rep. McGurre **From:** Deborah Jilly
Fax: 907-485-8582 **Pages:** 3
Phone: **Date:** 4/1/2005
Re: House Bill 12 **CC:**

- Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:**

House Bill 12 -- Televisions and monitors in motor vehicles.

**Deborah Jilly, MPH, CLS
Acting Chief, CHEMS
Div. of Public Health
Department of Health & Social Services**

The intent of this legislation is to prevent motor vehicle crashes and the related injury and death of the vehicle occupants, and pedestrians involved at the crash site, by giving law enforcement agencies the authority to cite drivers who are viewing entertainment devices.

Research has shown that 25% to 56 % of all crashes in the United States involve factors where the driver of a motor vehicle is distracted or is inattentive.

In 2002, A Gallop Survey of Distracted and Drowsy Driving Attitudes and Behaviors found that 22% of causes that led to a crash were the result of dealing with technology within the vehicle. The technology included cell phones, beeper, in-car navigation system, GPS, internet-email, radios, etc.

In Alaska, the National Center for Statistics, Fatality Analysis Reporting System or FARS listed driver inattention or inattentiveness as the primary factor in nearly 7% of fatal crashes in 2003. (2002 - 9.7%; 2001 - 5.4%)

Development of electronic devices for use with a motor vehicle is rapid growing field.

The majority of manufacturers of in-vehicle entertainment systems have reviewed issues pertaining to driver distraction and have included features to minimize distraction such as

- Locating screens out of view of the driver;
- Providing headphone jacks for occupants;
- Developing electronic interlock systems that prohibit driver viewing while the vehicle is in motion.

Yet, the need to improve technology to minimize driver distraction has been acknowledged by automotive manufacturers. Terry Connolly, Director of GM Safety Center acknowledged the growing trend of in-vehicle entertainment system; in turn, manufacturers must address driver distraction in order to ensure safety features are incorporated in future technologies.

- Minimize hands-on, eyes off-the-road time
- Simplify or reduce the number of steps to adjust technology
- Development of a common interface system for multiple devices

However, R&D for these safety features is lagging behind consumer demand.

Detail information in support of this topic.

- Thirty-eight states have legislation banning front-seat entertainment systems;
- Twelve states with similar laws pertaining to televisions and monitors in motor vehicles exempt moving maps and driving direction systems.

Consumers can purchase and install in-vehicle entertainment systems in vehicles not already equipped and the consumer installation can bypass safety devices and manufacturer recommendations for location of screens and controls.

It is also possible, and technology exists, to modify moving map displays to view movies and DVDs.

And as fast as these safety features are developed and implemented by manufacturers, information is available on how to disengage, turn-off or circumvent the safety device on the web.

It should also be noted that it is possible to use a portable (laptop) computer in a motor vehicle for various applications such as listening to music, viewing GPS/map software, and potential view movies. While manufacturers of portable computers and software for maps recommended not using the equipment by drivers while driving, these are only recommendations.

Sarah Hook

From: eggnogg [eggnogg@alaska.net]
Sent: Friday, March 04, 2005 11:04 AM
To: Sarah Hook
Subject: HB 12

Thank you and Representative Gruenberg for e-mailing me a copy of HB 12 which I understand will be introduced for hearing before the Judiciary Committee tomorrow morning. I will be unable to personally testify before the Committee tomorrow but I would appreciate having my written testimony read into the record.

Thank you for the opportunity to comment on HB 12 and thanks to the sponsors of this bill. Its introduction and hopeful passage should save lives of our friends, family, neighbors, co-workers, other community members and visitors to our state and serve as a useful deterrent to thoughtless and grossly negligent use of the stated devices. The bill centers legal responsibility on those persons and businesses that are in the best position to avoid harm to the public.

Over two years ago, close friends were killed in an accident that devastated family, friends, co-workers in what was alleged to have been a driver watching a DVD. This vehicle purportedly crossed over into our friends' driving lane snuffing out their lives and devastating all who knew and loved them. I sat through much of a very high profile trial in which the driver was charged with the murder of my friends. The jury acquitted that driver because of reasonable doubt as to his guilt. I believe the outcome of that trial might have been very different had the Alaska State Troopers investigating at the accident scene and the Alaska Crime Lab had better training on how to determine whether the DVD was engaged and playing at the vehicles' impact. As the State Crime lab apparently cut or disabled the battery, it could not be forensically determined whether the DVD was engaged on impact. I believe in addition to HB12 's passage, this Legislature should appropriate sufficient public safety funding to better ensure proper field and crime lab training to deal with collecting evidence with this relatively new technology so that spoliation of critical evidence is far less likely to occur.

Thank you for your thoughtful consideration and hopeful positive reporting out of this bill from your Committee.

Respectfully,

Russell A. Nogg
515 Fredricks Drive
Anchorage, Alaska 99504
(907) 276-6040 or (907) 337- 6851

■ BOTTOM LINE: The city is right to ask a large local church to justify exempting so many houses from local property taxes.

DVD case

There oughtta be a law about this

Erwin "Jamie" Petterson Jr. may or may not have been watching a DVD when he crashed his truck into another vehicle and killed two people on the Seward Highway. A jury will decide that question.

But his case does highlight a gap in Alaska law. Unlike many other states, Alaska has no rule against installing a video screen inside a vehicle where it can distract a driver.

This is one of those laws we wouldn't need if people would just use common sense. But in today's video-saturated, constant-stimulation culture, some folks apparently just have to have videos at their fingertips while they're behind the wheel.

It's one thing to have a video player for kids riding in the backseat. But putting one where a driver can see it is downright idiotic. Even if the player is wired to shut off when the car is in gear, it puts too much temptation in front of a video junkie driver. It is too easy to eliminate the cut-off switch, as Mr. Petterson did when he installed his DVD player.

This should be a no-brainer: No video players in view of the driver's seat. Period, end of discussion.

The fastest a bill can move through the Alaska Legislature's normal process is about a week. When lawmakers show up in January, it shouldn't take them any longer than that to ban video players from vehicle dashboards.

■ BOTTOM LINE: Give it up, video junkies. Those dashboard DVD players have got to be banned.

ALASKA ALMANAC

Weird animal news



Anchorage Daily News

August 7, 2004

HB 12

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Representative Max Gruenberg

MEMORANDUM

Date: March 21, 2005

To: Representative Lesil McGuire, Chair
House Judiciary Committee

From: Representative Max Gruenberg

A handwritten signature in black ink, appearing to read "MG".

Re: House Bill 12

I respectfully request that House Bill 12, "An act relating to televisions and monitors in motor vehicles," be scheduled for hearing in the House Judiciary Committee at your earliest possible convenience.

Enclosed please find:

- The most recent version of the bill
- Sponsor statement
- Sectional analysis
- Fiscal Notes
- Additional background materials

We will update you with additional material as it becomes available and provide a list of witnesses in advance of the meeting. Thank you.

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Sponsor Statement and Sectional Analysis

HB 12 – Televisions and Monitors in Motor Vehicles

The purpose of the bill is to prevent operators of motor vehicles from watching television, video, and any other programming by making it a crime. Furthermore the bill makes it a crime to install a device capable of being viewed while the vehicle is in operation.

Sectional analysis

Paragraph (a) sets forth the general rule that a person shall not drive a motor vehicle while watching television or video.

Paragraph (b) prohibits installing video equipment in a motor vehicle that can be viewed by the driver while the vehicle is moving. This paragraph goes on to provide for specified means of disabling the equipment lawfully.

Paragraph (c) provides specific exemptions to the general rule that are all in the nature of aides to navigation or operation.

Paragraph (d) makes it clear that the bill is not intended to cover mobile digital terminals that are intended to provide emergency service or roadside assistance.

Paragraph (e) prescribes the types of crimes that a person who is in violation of the law will face under various circumstances including injury and death of another.

A person who violates the law is guilty of a

- (1) class A misdemeanor
- (2) class C felony if as a result of that violation another person suffers a physical injury;
- (3) class B felony if as a result of that violation another person suffers a serious physical injury ;
- (4) class A felony if as a result of that violatio. another person suffers death.

Paragraph (f) prescribes the crime and punishment of a person who installs equipment in violation of the law.

FISCAL NOTE HB 12

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB012-DPS-ASTD-2-28-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title Televisions and monitors in motor vehicles RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Representative Gruenberg
 Requester House State Affairs Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 Passage of this bill will have no fiscal impact on the Department of Public Safety.

This bill will prohibit the driver of a motor vehicle from watching a television receiver, video monitor, TV video screen, or similar device for viewing television or video signals while operating the motor vehicle. It also prohibits the installation of these devices so that they can be viewed by the driver of a motor vehicle while the vehicle is in motion. The bill does allow the following equipment; a vehicle information display; a GPS display; a mapping display; and a display used to enhance a drivers view forward, behind, or to the sides of the vehicle.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223
 Division Alaska State Troopers Date/Time 2/28/05 1:26 PM
 Approved by: Commissioner William Tandeske Date 2/28/2005
 Agency Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB012-DPS-CRI-2-28-05
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An Act relating to televisions and RDU Statewide Support
monitors in motor vehicles Component Alaska Criminal Records &
 Sponsor Representative Gruenberg Identification
 Requester House State Affairs Component No. 1180

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill creates new AS 28.35.16 (a) to prohibit operating of a motor vehicle while watching a television or monitor; (b) prohibits installing a television or monitor viewable by the driver without an interlock; (c) exempts vehicle information, GPS, map, or maneuvering displays, and equipment with an interlock; (d) exempts emergency or assistance vehicles; (e) and (f) provides the penalties. AS 28.35.16(a) creates four different levels of offense (misdemeanor or felony, depending on the facts), which may cause confusion and increase the risk of error on forms and in criminal record systems. Although some criminal statutes share this format, it should be avoided when new crimes are created because it may cause a misdemeanor to be erroneously identified as a felon, or vice versa, and can result in a violation of the person's rights and privileges and a risk to public safety. To avoid this, the Department proposes that the four different levels of offense be differentiated in four separate statutes, as are assault and sexual abuse of a minor statutes.

Prepared by: Director David Schade
 Division: Statewide Services
 Approved by: Commission William Tandeske
 Agency: Department of Public Safety

Phone 269-5092
 Date/Time 2/28/05 1:39 PM
 Date 2/28/2005

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB012-LAW-CDCO-2-28
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to televisions and monitors
in motor vehicles. RDU CRIMINAL
 Component Criminal Justice Litigation
 Sponsor Representative Gruenberg
 Requester House State Affairs Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

POSITIONS	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends AS 28.35 prohibiting watching a television receiver, a video monitor or the like while driving a motor vehicle. The bill similarly prohibits the installation of televisions or monitors or the like in such a way that they can be viewed by the driver of the vehicle unless there is a locking device that blocks power to the the unit while the motor vehicle is in motion. The bill excepts vehicle information display, GPS, mapping display, or equipment intended to enhance the driver's view forward, behind or to either side of the motor vehicle. The bill does not apply to emergency vehicles.

The Department of Law does not anticipate that there will be many new prosecutions arising out of passage of this legislation, and thus does not anticipate a fiscal impact.

Prepared by: Kathryn Daughhete, Director Phone 465-3673
 Division: Administrative Services Division Date/Time 2/28/05 2:57 PM
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/28/2005
 Agency: Department of Law

FISCAL NOTE

STATE OF ALASKA
2005 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 12
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to televisions RDU Legal and Advocacy Services
and monitors in vehicles Component Public Defender Agency
 Sponsor Reps. Gruenberg, Lynn, Gardner,...
 Requester House State Affairs Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
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 ()						
-------------------------------	--	--	--	--	--	--

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 (Specify Type—Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2005) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill creates a number of new offenses, including felonies, for operating a motor vehicle while watching a TV or video monitor or installing such equipment that is capable of being viewed by the driver while the vehicle is moving. Due to the indigency of public defender clients this bill, if enacted, is not expected to have a significant fiscal impact on the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416
 Division: Public Defender Agency Date/Time 3/1/05 7:26 AM
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/1/2005
 Agency: Department of Administration



Consumer Electronics Association

2500 Wilson Blvd. Arlington, VA 22201-3834 USA (703) 907-7600 main (703) 907-7601 fax www.CE.org

March 16, 2005

VIA E-MAIL

Page 1 of 3

The Honorable Paul Seaton
Chair, State Affairs Committee
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Re: **H.B. 12 ("An act relating to televisions and monitors in motor vehicles")**

Dear Representative Seaton:

The Consumer Electronics Association (CEA) appreciates the opportunity to present its comments regarding House Bill 12 for the hearing scheduled on March 17, 2004 before the House State Affairs Committee.

CEA represents more than 1,800 companies involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. CEA also produces the nation's largest annual trade event, the International Consumer Electronics Show.

CEA welcomes the introduction of H.B. 12, which is an opportunity to revise and elevate Alaska's current law concerning in-vehicle video displays. CEA's main interest in this subject is to achieve and maintain a consistent regulatory approach to in-vehicle video displays across the United States, which benefits consumers, industry and the law enforcement community.

Two years ago, CEA developed model legislation regarding in-vehicle video displays, and versions of the model have been enacted in both California and Louisiana. The Louisiana legislation was subsequently adopted by the Council of State Governments for its 2004 volume of *Suggested State Legislation*. Attached is a copy.

The CEA model legislation (copy below) achieves three important objectives with regard to regulating in-vehicle video displays: consistency, flexibility and focus. As mentioned above, it is beneficial to achieve and maintain uniformity among the states with laws on this subject. Secondly, regarding flexibility, the model legislation avoids calling out specific technologies, which always change over time. Finally, the model legislation focuses on the video functions of concern while avoiding a broad ban on any visual presentation, such as navigation displays.

**Suggested Language for Legislation
Concerning In-Vehicle Video**

- (a) A person may not operate a motor vehicle if a television receiver, a video monitor, or a television or video screen capable of displaying a television broadcast or video signal that produces entertainment or business applications, is located in the motor vehicle at any point forward of the back of the driver's seat, or is visible to the driver while operating the motor vehicle.
- (1) Section (a) does not apply to the following equipment when installed in a motor vehicle:
- (i) A vehicle information display;
 - (ii) A navigation or global positioning display;
 - (iii) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of low-speed maneuvering of the vehicle;
 - (iv) A television receiver, video monitor, television or video screen or any other similar means of visually displaying a television broadcast or video signal, if that equipment has a device that, when the motor vehicle is being driven, disables the equipment for all uses except as a visual display as described in paragraphs (i)–(iii).
- (b) A person may not install in a motor vehicle a television receiver, a video monitor, or a television or video screen capable of displaying a television broadcast or video signal that produces entertainment or business applications at any point forward of the back of the driver's seat, or that is visible to the driver while operating the motor vehicle.

As introduced, H.B. 12 closely follows the model supported by CEA. One issue the committee might wish to consider is whether the last sentence in Section (b) of the H.B. 12 is redundant given the preferred language in Section (c)(5). In addition, the reference to "remove power" in Section (b) might be too proscriptive.

House State Affairs Committee
March 16, 2005
Page 3

Thank you again for the opportunity to provide the views of the consumer electronics industry regarding H.B. 12, and please let us know if you or the Committee have questions or need additional information.

Sincerely,

A handwritten signature in cursive script, appearing to read "Douglas Johnson", with a long horizontal flourish extending to the right.

Douglas Johnson
Senior Director, Technology Policy
djohnson@ce.org

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By Fax and Mail

February 28, 2005

Representative Max Gruenberg
Representative Bob Lynn
Representative Berta Gardner
Representative Lesil McGuire
State Capitol
Juneau, Alaska 99801

Re: HB 12

Dear Representatives:

On behalf of State Farm Insurance Companies, I would like to express State Farm's support of HB 12, "An Act relating to televisions and monitors in motor vehicles." If there is any information we can provide to you, please let me know.

Sincerely,



Sheldon E. Winters

SEW/caf

RepsGruenberg-Lynn-Gardner-McGuire.wpd

Sarah Hook

From: egglogg [egglogg@alaska.net]
Sent: Friday, March 04, 2005 11:04 AM
To: Sarah Hook
Subject: HB 12

Thank you and Representative Gruenberg for e-mailing me a copy of HB 12 which I understand will be introduced for hearing before the Judiciary Committee tomorrow morning. I will be unable to personally testify before the Committee tomorrow but I would appreciate having my written testimony read into the record.

Thank you for the opportunity to comment on HB 12 and thanks to the sponsors of this bill. Its introduction and hopeful passage should save lives of our friends, family, neighbors, co-workers, other community members and visitors to our state and serve as a useful deterrent to thoughtless and grossly negligent use of the stated devices. The bill centers legal responsibility on those persons and businesses that are in the best position to avoid harm to the public.

Over two years ago, close friends were killed in an accident that devastated family, friends, co-workers in what was alleged to have been a driver watching a DVD. This vehicle purportedly crossed over into our friends' driving lane snuffing out their lives and devastating all who knew and loved them. I sat through much of a very high profile trial in which the driver was charged with the murder of my friends. The jury acquitted that driver because of reasonable doubt as to his guilt. I believe the outcome of that trial might have been very different had the Alaska State Troopers investigating at the accident scene and the Alaska Crime Lab had better training on how to determine whether the DVD was engaged and playing at the vehicles' impact. As the State Crime lab apparently cut or disabled the battery, it could not be forensically determined whether the DVD was engaged on impact. I believe in addition to HB12's passage, this Legislature should appropriate sufficient public safety funding to better ensure proper field and crime lab training to deal with collecting evidence with this relatively new technology so that spoliation of critical evidence is far less likely to occur.

Thank you for your thoughtful consideration and hopeful positive reporting out of this bill from your Committee.

Respectfully,

Russell A. Nogg
515 Fredricks Drive
Anchorage, Alaska 99504
(907) 276-6040 or (907) 337- 6851

nbc6.net

NBC 6 Investigation: Reckless Ride

More Motorists Watching TV While Driving

POSTED: 9:02 am EST February 11, 2005
UPDATED: 7:19 am EST February 16, 2005

MIRAMAR, Fla. -- They're on our roadways -- people driving and watching TV screens at the same time. It's a reckless ride that NBC 6 found happening more and more.

Watching video in cars has been around for years, but usually for passengers in the back seat.

FeedRoom



Reckless Ride

NBC 6 FeedRoom

Now, more of these new entertainment systems are being installed in the front seat where drivers can see the n. You can watch movies, music videos and even live television.

For safety's sake, the driver is supposed to be restricted from watching while the car is moving, but NBC 6's Willard Shepard found several motorists watching while driving.

SURVEY

Can motorists safely watch television and drive at the same time?

- Yes
- No

[Vote](#)

[Results](#) | [Disclaimer](#)

"Sure, I could watch the DVD while driving," Janet Rodriguez said.

"If we be careful and pay attention to the road, we're not going to hurt nobody," Juan Montoya said.

In West Miami-Dade County, downtown, on Miami Beach and in Broward County, NBC 6 found drivers breaking the law -- finding ways around safety systems designed to prevent viewing television from the driver's seat.

Alaska prosecutors say driving and watching television led to a crash that killed Robert and Donna Weiser. Some legal observers say driver Jamie Petterson was acquitted of murder in the case because police didn't establish exactly what he was viewing before the TV device was taken from the dashboard after the crash.

On the 836, NBC 6 saw Steven Rivera watching a DVD and talking on his cell phone at 60 mph. When interviewed, he told us about clubs sprouting up for those who drive and watch.

"We've got the same TV on the dash in the same place," Rivera said.

Surprisingly in Florida, watching while driving is a non-criminal traffic infraction. The penalty is a \$71 ticket -- no deterrent to drivers like Montoya, who has an illegal TV.

"Yeah, I've been stopped. We got a lot of tickets," he said.

As a state legislator, Miami-Dade Commissioner Sally Heyman tried to toughen the penalties for distracted drivers. A study she pushed found that distracted drivers were hurt or killed twice as often as drivers in other accidents.

She says it's only a matter of time before a TV-watching driver kills a South Florida resident.

"As it becomes more available, as more people do it, you bet (it will happen)," Heyman said.

Lester Taks, who runs Cartronics where these entertainment systems are properly installed, says the front seat TVs are manufactured with devices to shut the video off when the car is in motion.

"It will shut down and this is the way they come from the factory," Taks said. "They are designed to work that way -- all of them."

But drivers told NBC 6 they didn't have any trouble finding ways around the safeguards. Some even told us where they had the work done.

With our undercover camera rolling, a worker at the Senor Stereo outlet in Pembroke Pines said, "We could hook it up so you can watch it."

But when confronted with a camera, the workers officially had no comment. Later, the company faxed a statement saying, "These systems are installed according to manufacturer recommendations."

Montoya said Best Buy installed his TV system and it came so he could watch and drive at the same time.

"That's how they do it," he said.

We went to a Best Buy store on Pines Boulevard where one employee told an NBC 6 producer how to bypass the safety system, but he said they would not do it and that we would have to do it on our own.

Best Buy responded saying it is concerned about the safe use of mobile electronics products and that the "products are installed in a manner that ensures the video mode of the product is not operable while the vehicle is in motion."

Florida Attorney General Charlie Crist says there's a need for the Legislature to take a close look at updating the Florida law to protect everyone on the road.

"If it is happening and it is increasing ... That's why it's important for policy makers to be vigilant about what modern technologies keep coming online," Crist said.

Another distraction is other motorists driving near a car with a TV screen because they're tempted to look over and see what's playing.

Installers point out the screens play a valuable role for drivers, displaying navigation aids and rear-mounted cameras that prevent backing over children.

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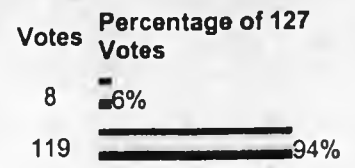


Can motorists safely watch television and drive at the same time?

Choice

Yes

No



Thanks for sharing your opinion!

[close window](#)

583 P.2d 840 (Alaska 1978); *State v. Afcan*, 583 P.2d 849 (Alaska 1978); *Daniels v. State*, 584 P.2d 47 (Alaska 1978); *Honeycutt v. State*, 583 P.2d 805 (Alaska 1978); *Ferguson v. State*, 590 P.2d 43 (Alaska 1979); *One v. State*, 592 P.2d 1193 (Alaska 1979); *Dayton v. State*, 598 P.2d 67 (Alaska 1979); *Stone v. State*, 598 P.2d 72 (Alaska 1979); *Edinger v. State*, 598 P.2d 943 (Alaska 1979); *Larson v. State*, 598 P.2d 946 (Alaska 1979); *LaBarbera v. State*, 598 P.2d 947 (Alaska 1979); *Elstad v. State*, 599 P.2d 137 (Alaska 1979); *Charles v. State*, 606 P.2d 390 (Alaska 1980); *Pyrdol v. State*, 617 P.2d 513 (Alaska 1980); *Coleman v. State*, 621 P.2d 869 (Alaska 1980), cert. denied, 454 U.S. 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628 (1981); *Shearer v. State*, 619 P.2d 726 (Alaska 1980); *Nelson v. State*, 619 P.2d 480 (Alaska Ct. App. 1980); *Bryant v. State*, 623 P.2d 310 (Alaska 1981); *Hoover v. State*, 641 P.2d 1263 (Alaska Ct. App. 1982); *Davidson v. State*, 642 P.2d 1383 (Alaska Ct. App. 1982); *Parker v. State*, 714 P.2d 802 (Alaska Ct. App. 1986); *State v. Price*, 740 P.2d 476 (Alaska Ct. App. 1987); *State v. Capjohn*, 779 P.2d 1255 (Alaska Ct. App. 1989); *State v. Clark*, 782 P.2d 308 (Alaska Ct. App. 1989).

Sentence too lenient. — See *State v. Chaney*, 477 P.2d 441 (Alaska 1970); *State v. Wortham*, 537 P.2d 1117 (Alaska 1975); *State v. Lancaster*, 550 P.2d 1257 (Alaska 1976); *State v. Abraham*, 566 P.2d 267 (Alaska 1977); *State v. Wassilie*, 578 P.2d 971 (Alaska 1978); *Putnam v. State*, 629 P.2d 35 (Alaska 1980); *State v. Brinkley*, 681 P.2d 351 (Alaska Ct. App. 1984); *Cleary v. State*, 548 P.2d 952 (Alaska 1976); *Salazar v. State*, 562 P.2d 694 (Alaska 1977); *Cleary v. State*, 564 P.2d 374 (Alaska 1977); *Amidon v. State*, 565 P.2d 1248 (Alaska 1977); *Black v. State*, 569 P.2d 804 (Alaska

1977); *Sumabat v. State*, 580 P.2d 323 (Alaska 1978); *Hansen v. State*, 582 P.2d 1041 (Alaska 1978); *Kanipe v. State*, 620 P.2d 67P (Alaska 1980); *Hintz v. State*, 627 P.2d 207 (Alaska 1981); *State v. Hooper*, 750 P.2d 840 (Alaska Ct. App. 1988).

Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge. — See *Paris v. State*, 571 P.2d 1003 (Alaska 1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. *Pascoe v. State*, 628 P.2d 547 (Alaska 1980).

Case remanded for resentencing. — See *Neal v. State*, 628 P.2d 19 (Alaska 1981).

Case remanded for sentence review. — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence if imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. *Padie v. State*, 594 P.2d 50 (Alaska 1979).

Sec. 12.55.125. Sentences of imprisonment for felonies. (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an

adopted parent, a legal to the child; or (2) caused under AS 11.41.200 — authority" have the m

(c) Except as provided may be sentenced to a be sentenced to the following 12.55.155 — 12.55.175

(1) if the offense is described in (2) of this

(2) if the offense is

(A) other than for dangerous instrument offense, or knowingly otherwise clearly identified medical technician, par was engaged in the per

(B) for manslaughter directed towards a child

(C) for manslaughter while under the influence seven years;

(3) if the offense is

(4) if the offense is sentencing under (l) of

(d) Except as provided may be sentenced to a be sentenced to the following 12.55.155 — 12.55.175

(1) if the offense is

(2) if the offense is

(e) Except as provided may be sentenced to a shall be sentenced to the in AS 12.55.155 — 12.5

(1) if the offense is

(2) if the offense is

(3) if the offense is 08.54.720(a)(15), one y

(f) If a defendant is

(1) imprisonment for pending under AS 12.55

(2) imposition of sen

(3) imprisonment for except as provided in (j

(g) If a defendant is section, except to the e

(1) imprisonment ma

(2) imposition of sent

(3) terms of imprison

(h) Nothing in this se except as specifically pr to impose a sentence of

adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person

convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 40 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, eight years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (l) of this section, 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 30 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (l) of this section, 15 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 20 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 years;

(C) if the offense is a third felony conviction, does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a third felony conviction, and the defendant has two prior convictions for sexual felonies, 15 years;

(4) sexual assault or possession of child pornography in the second degree or sexual assault in the second degree or exploitation of a minor in the second degree may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is described in (B) of this

(B) if the offense is a sexual felony, the

(C) if the offense is described in (D) of this

(D) if the offense is a felony conviction for sexual

(j) A defendant sentenced under (a) of this section may

Alaska Rules of Criminal Procedure consider the defendant for a sentence of good time under (l) of this section

under the Alaska Rules of Criminal Procedure the definite term or (B)

more than one motion for a new trial or a writ of habeas corpus, regardless of the date of the conviction

subsection, regardless of the date of the conviction

(k) A first felony offense for which a sentence of imprisonment is not suspended

(1) may be sentenced to a definite term of imprisonment of not more than 10 years if the offender is convicted of a felony offense

of age 16;

(2) except as provided in this section, a defendant convicted of a felony offense

if the offender is convicted of a felony offense and there is evidence that an aggravating factor exists that would

justify a sentence of imprisonment of not more than 99 years

(l) Notwithstanding anything to the contrary in this section, a defendant convicted of a class A felony offense

of this section, shall be sentenced to a definite term of imprisonment of not more than 99 years

more than 99 years if the offender is convicted of a felony offense

a definite sentence of imprisonment of not more than 99 years if a defendant is convicted of a felony offense

(1) imprisonment for a term of not more than 10 years

(2) imposition of a sentence of imprisonment of not more than 10 years

(3) imprisonment for a term of not more than 10 years provided in (j) of this section

(m) Notwithstanding anything to the contrary in this section, a defendant convicted of a felony offense

(a)(4) of this section shall be sentenced to a definite term of imprisonment of not more than 10 years

166 SLA 1978; am § 18

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, two years;

(B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three years;

(C) if the offense is a third felony conviction and does not involve circumstances described in (D) of this paragraph, three years;

(D) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, six years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 — 30 ch 143 SLA 1982; am § 8 ch 78

SLA 1983; am §§ 1 — 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 — 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 — 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 — 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000; am § 4 ch 60 SLA 2002; am §§ 1 — 5 ch 90 SLA 2003; am § 5 ch 99 SLA 2004)

Cross references. — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

Effect of amendments. — The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (l) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 33.20.010"; and added subsection (l).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (a)(4) and made related stylistic changes, and added subsection (m).

The 2002 amendment, effective July 1, 2002, added subparagraph (c)(2)(C).

The 2003 amendment, effective September 11, 2003, added "Except as provided in (i) of this section" at the beginning of subsections (c)-(e); substituted "(e)(3)" for "(e)(4)" in subsection (g); rewrote subsection (i); and made stylistic changes.

The 2004 amendment, effective July 23, 2004, substituted "subsection" for "section" at the end of the introductory language of subsection (l).

Editor's notes. — Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections (c), (f), (i), and (j) and added subsection (l), "apply to all convictions occurring before, on, or after June 27, 1996."

Subsection (b) was amended by § 9, ch. 54, SLA 1999, with an effective date of June 5, 1999, and was further amended by § 1, ch. 65, SLA 1999, with a later effective date of September 20, 1999. Thus, on and after June 5 and before September 20, 1999, subsection (b) read as follows: "A defendant convicted of murder in the second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."

Section 12(a), ch. 90, SLA 2003 provides that the provisions of §§ 1 — 5, ch. 90, SLA 2003 amending this section apply "to sentencings for offenses committed on or after September 11, 2003," and that "[a]ll references to prior or previous convictions in [that section] apply to convictions occurring before, on, or after September 1, 2003."

- I. General Consideration.
- II. Sentencing.
 - A. In General.
 - B. Specific Crimes.
- III. Presumptive Sentencing
 - A. In General.
 - B. First Offenders.

I. GENERAL CON

Constitutionality of 1982 143, SLA 1982, which do not violate the Alaska Const § 14. *Galbraith v. State*, 693 1985).

Applied in Faulkenberry (Alaska Ct. App. 1982); *Stat* (Alaska Ct. App. 1982); *Qual* (Alaska Ct. App. 1982); *Willis* (Alaska Ct. App. 1982); *Conn* (Alaska Ct. App. 1982); *Sean* (Alaska Ct. App. 1982); *Hardl* (Alaska Ct. App. 1982); *Griffi* (Alaska Ct. App. 1982); *Nix* (Alaska Ct. App. 1982); *Dunn* (Alaska Ct. App. 1982); *Stat* 1060 (Alaska Ct. App. 1982); 1196 (Alaska Ct. App. 1982); 1199 (Alaska Ct. App. 1982); 1324 (Alaska Ct. App. 1983) P.2d 621 (Alaska Ct. App. 19 P.2d 184 (Alaska 1983); *Con* 654 (Alaska Ct. App. 1984); (662 (Alaska Ct. App. 1984); 912 (Alaska Ct. App. 1984); 415 (Alaska Ct. App. 1984); P.2d 1093 (Alaska Ct. App. 1 P.2d 737 (Alaska Ct. App. 19 P.2d 1061 (Alaska Ct. App. 1 693 P.2d 887 (Alaska Ct. App 698 P.2d 1230 (Alaska Ct. A 702 P.2d 651 (Alaska Ct. App. 730 P.2d 161 (Alaska Ct. App. P.2d 695 (Alaska Ct. App. 198 P.2d 1164 (Alaska Ct. App. 1 P.2d 1198 (Alaska Ct. App. 1 715 P.2d 269 (Alaska Ct. App. 739 P.2d 769 (Alaska Ct. Ap 759 P.2d 541 (Alaska Ct. App 771 P.2d 448 (Alaska Ct. App 770 P.2d 296 (Alaska Ct. App. P.2d 599 (Alaska Ct. App. 198 P.2d 377 (Alaska Ct. App. 19 P.2d 1258 (Alaska Ct. App. 15 P.2d 33 (Alaska Ct. App. 1990 P.2d 677 (Alaska Ct. App. 15 807 P.2d 506 (Alaska Ct. App 808 P.2d 280 (Alaska Ct. App 826 P.2d 775 (Alaska Ct. App. 829 P.2d 1191 (Alaska Ct. App 837 P.2d 130 (Alaska Ct. App. P.2d 1244 (Alaska Ct. App. 19 P.2d 1347 (Alaska Ct. App. 19 P.2d 298 (Alaska Ct. App. 199 P.2d 1319 (Alaska Ct. App. 199 P.2d 517 (Alaska Ct. App. 199 P.2d 1335 (Alaska Ct. App. 199 P.2d 1208 (Alaska Ct. App. 19