

**HB**

**326**

**SFIN**

**FILE**

# SENATE FINANCE COMMITTEE REPORT

REPORTED OUT  
 MAY 04 2006  
 SENATE FINANCE COMMITTEE

DATE: 3/16/06

FURTHER:

DATE TURNED  
IN TO OFFICE: 5/4/06

Finance Committee considered CS FOR HOUSE BILL NO. 326(JUD) am

## HB 326 USE OF LEWD MATERIAL AS HARASSMENT

"An Act relating to the definition of the crime of harassment."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous S CS CS HB 326 (JUD)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**  
 Same Title  
 New Title

**SCS House Bill:**  
 Same Title  
 Technical Title Change  
 New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
CRT	1/13/06			✓	1
LAW	1/26/06			✓	2
DPS	1/17/06			✓	3

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>A. Brundage</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
<i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			
COCHAIR: <i>[Signature]</i>	✓			

# FISCAL NOTE

REPORTED OUT  
MAY 04 2006  
SENATE FINANCE COMMITTEE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: CSHB 326(JUD)  
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
Title Posting Lewd Material as Harassment RDU Alaska Court System  
Component Trial Courts  
Sponsor Representative Meyer  
Requester \_\_\_\_\_ Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mentl. Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
The court system does not anticipate any fiscal impact from the passage of HB 326.

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750  
Division: Alaska Court System Date/Time 1/13/06 @ 11:00 AM  
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 1/13/2006  
Agency: Alaska Court System

## COMMITTEE COPY

# FISCAL NOTE

REPORTED OUT  
MAY 04 2006  
SENATE FINANCE COMMITTEE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2  
Bill Version: CSHB 326(JUD)  
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to harassment." RDU CRIMINAL  
Component Criminal Justice Litigation  
Sponsor Representatives Meyer and Lynn  
Requester House Judiciary Component No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
This bill amends AS 11.61.120 (Criminal Law - Offenses Against Public Order) by adding a new way to commit the crime of harassment - by, with intent to harass or annoy another person, publishing or distributing a photo of another person's genitals, etc. or the person engaged in a sex act. Harassment is a class B misdemeanor. Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
Division: Administrative Services Division Date/Time 1/26/06 12:31 PM  
Approved by: Kathryn Daughhete for David Márquez, Attorney General Date 1/26/2006  
Agency: Department of Law

## COMMITTEE COPY

# FISCAL NOTE

REPORTED OUT  
MAY 04 2006  
SENATE FINANCE COMMITTEE

STATE OF ALASKA  
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3  
Bill Version: CSHB 326(JUD)  
(H) Publish Date: 1/30/06

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title: An Act relating to harassment. RDU: Alaska State Troopers  
Component: AST Detachments  
Sponsor: Representative Meyer  
Requester: House Judiciary Committee Component No.: 2325

**Expenditures/Revenues** (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2006) 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)  
Passage of this legislation will have no fiscal impact on the Department of Public Safety. Even though there is a potential increase in the number of arrests for violations, the increase can be absorbed by the current assets of the department.

Prepared by: Lieutenant James Helgoe Phone 907-269-4532  
Division: Alaska State Troopers Date/Time 1/17/06 10:19 AM  
Approved by: Commissioner William Tandeske Date 1/17/2006  
Agency: Department of Public Safety

# **REPRESENTATIVE KEVIN MEYER**

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HOUSE DISTRICT 30

## **SPONSOR STATEMENT**

**SCS CSHB 326 (JUD)**

*"An Act relating to harassment."*

The rapid evolution of technology often outpaces a statute's ability to protect Alaskans from offensive and criminal behavior. The invention and widespread adoption of digital cameras in all sorts of products ranging from pens to cellular phones has opened new avenues for those bent on harassing others to cause anguish, hurt and humiliation.

House Bill 326 An Act relating to harassment builds on my previous effort in the 23<sup>rd</sup> Legislature to cover harassment through e-mail and other electronic means. With camera phones and hidden digital cameras, individuals can take lewd and obscene pictures of others and post them electronically or physically.

When this is done as part of a pattern of threats and intimidation it should be considered harassment. HB 326 changes the current statute to include the publishing or posting of lewd or obscene pictures in the definition of harassment.

# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** April 4, 2006  
**TO:** Representative Kevin Meyer  
**FROM:** Mike Pawlowski  
**RE:** Sectional Analysis for SCS CSIB 326 (JUD)  
(Version No. 24 - LS1223M)

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As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds the publishing or distribution of lewd pictures of another person to the definition of harassment.

Section 2. Adds an immediate effective date.

## Durango Herald

### Local man guilty of 26 felonies

Former Fort Lewis College student cited for criminal libel

[Read related article](#)

January 27, 2006

By Shane Benjamin / *Herald Staff Writer*

After seven days of trial and seven hours of jury deliberations, jurors found Davis Temple Stephenson guilty Thursday of 26 felonies, including criminal libel.



Stephenson

Stephenson, clean-cut in a conservative sports coat and tie, remained stone-faced as the jury foreman announced "guilty" 26 times. He remained silent throughout.

A deputy handcuffed him and escorted him to the La Plata County Jail.

Stephenson's defense attorney, Rae Dreves of Durango, said her client plans to appeal.

Meanwhile, Stephenson, 38, faces up to 1½ years for some felonies and up to three years for others. If added together, he faces up to 52½ years, but some penalties will be served concurrently, reducing the sentence. He also faces up to 10½ years for violating bail.

Sentencing for both cases is set for 1:30 p.m. March 2 in District Court.

Over the course of three years, while a student at Fort Lewis College, Stephenson brought fear to seven victims, jurors learned through prosecution witnesses.

Prosecutors identified his targets as jail guards, a police officer, a landlord, a college newspaper editor and several FLC professors, saying he chipped away at their reputations and sense of safety by spreading lies about their character.

Evidence outlined how Stephenson created Web sites identifying his victims as sexual deviants, guided victims' family and bosses to the sites, created posters identifying victims as sex offenders and even sending a fake obituary to a newspaper falsely stating that a jail guard died of AIDS.

After the verdict, Deputy District Attorney Todd Norvell thanked the jury and Rita Warfield, the Durango Police Department's lead investigator on the case.

Then he declined to comment before Stephenson's sentencing.

During trial, prosecutors portrayed Stephenson as an intellectual who hated feminists and challenged those in power.

"The defendant goes after the reputations of his victims," Assistant District Dondi Osborne told jurors during closing statements.

But Stephenson's lawyer offered a different viewpoint, saying his actions really amounted to only bad manners and opposing political opinion.

Jurors did a good job of paying attention, Doves said, but some of the guilty verdicts were unfounded.

Stephenson's prosecution involved a Colorado criminal libel statute now under fire in a federal appeals court. A former student at the University of Northern Colorado was charged with criminal libel for posting articles on a satiric online publication that poked fun at a finance professor.

During Stephenson's trial, some 40 witnesses testified and more than 100 pieces of evidence went to the jury.

One FLC professor told jurors of letters sent to her home and on campus. They included compliments from unfamiliar men about a rape-me fantasy Web site started by Stephenson and disclosing her real address.

"I didn't want anybody coming into my house raping me," the professor testified.

Scared, she removed her phone number from the public directory. And, she noted, "I began to take a lot more precautions. It has certainly affected my sense of safety."

Each day in court, Stephenson took extensive notes and whispered frequently to his lawyer.

Security was extraordinary during the trial supervised by District Judge David Dickinson.

Stephenson has "somewhat of a volatile personality," said sheriff's Capt. Doug Hanna, and he has a large build. So, La Plata County Sheriff Duke Schirard asked that Stephenson be shackled at the feet during trial - a security precaution not normally taken.

A black cloth covered the prosecution and defense tables so jurors would not see the ankle restraints.

Other security measures included:

- Only a 3-inch pencil for Stephenson to write with.
- Up to three deputies behind him at all times.
- A belt capable of delivering 50,000 volts of electricity, much like a Taser gun, and triggered by a remote control held by a courtroom deputy.

The jury included eight men and four women for deliberations.

After the verdict, Marilyn Wood, Stephenson's former landlord whom he depicted as a sex offender, reflected on a wasted life. As an American Indian, she said, Stephenson received free tuition at FLC. Instead of taking advantage of that, she noted, he became consumed by his anger.



"I look at this man as a person who had the opportunity of a lifetime," Wood said. "He squandered the whole thing."  
*shane@durangoherald.com*



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## Camera Phones In The Workplace: To Ban Or Not To Ban

By [Andrea G. Chatfield](#)

It is no secret that workers in the high tech industry love their electronic gadgets. The more advanced and powerful, the better. However, there is one personal technology gadget that can cause tremendous harm to high tech companies if abused. The use of camera phones, and other portable devices with embedded cameras or video capability, in the workplace is spreading like wildfire. The number of people with camera phones was estimated at 8 million last year but a report issued this summer by IT analyst firm iSupply estimated that number would jump to 488 million by 2008.

While incredibly useful (and cool!), camera phones also increase the risk of corporate espionage, employee harassment, invasion of privacy, and a litany of other offenses that can create liability for employers. The litigation over these types of problems is costly and time consuming, but can be minimized with proactive workplace policies.

The best way to address the issue of camera phones in the workplace is proactively rather than reactively. Currently, there are no laws that specifically address the use of camera phones. Employers generally have a wide latitude on regulating behavior in their own workplaces. Given the prevalence of these devices, employers must start to impose workplace policies that address the presence and/or the use of camera phones in the workplace. Such policies should also address personal cell phones. There are a number of ways a company can handle these issues, but basically it comes down to whether or not the use and/or presence of the phones should be banned in all or parts of an employer's place of work. This is becoming an ongoing debate.

Reasons for wanting a ban of some sort are based on the fact that high tech companies, which are embracing camera phones and other types of advanced electronic devices, are ironically, among the most vulnerable to their abuse. Camera phones can be misused to disclose and even broadcast, in an instant, images of trade secrets, research and development processes, proprietary materials, and confidential information about employees, clients, or customers. Ironically, a leading maker of camera phones has banned workers and visitors from bringing camera phones into certain of its factories. Other high tech companies have also banned the presence of camera phones in certain areas of its facilities.

Camera phones can easily become instruments of harassment in the wrong hands. Images of coworkers in private areas such as dressing areas, bathrooms, and locker rooms can be embarrassing and quickly transmitted to countless other people. Taking a picture everyday of a female coworker to show other male workers what she is wearing may seem like a harmless joke to some, but highly offensive and harassing to others.

By tolerating the misuse of camera phones in the workplace, employers put themselves at risk for lawsuits under the Massachusetts privacy statute (M.G.L. ch. 214, §1B) which provides all persons, including employees in the workplace, with a right against unreasonable or serious interference with their privacy. Moreover, if the employee has a video cell phone, which also records sound, they risk being in breach of federal and state wiretap laws if they record others in the workplace without their knowledge or consent.

On the other hand, there are a number of experts who think a ban is too harsh. They cite the difficulty of enforcing a ban given how easy it is to conceal a camera phone on one's person. Many employees rely heavily on the use of such devices to stay in touch with the office and customers, and for some jobs, camera phones may be very effective and useful. A service technician may be able to identify a problem more quickly by sending an image of a customer's piece of equipment to the home office for assessment. A ban on personal property devices may also be considered detrimental to the firm's workplace culture and morale. Further, employers may not like the options for enforcing a ban, such as confiscating a camera phone that is an employee's or visitor's personal property, or terminating an employee for bringing one to work.

The issue, however, need not be an all or nothing proposition. Certain employers are deciding that the presence or use of camera phones, and other personal cell phones, may be acceptable in some areas, but not in others, such as laboratories, prototype testing areas, R&D facilities, human resources offices, as well as dressing rooms or bathrooms. If this is the approach an employer decides to take, it should also consider posting the policy or signs in the restricted areas and determine if it needs to provide a method for employees to secure their phones prior to entering restricted areas.

Employers can also decide to restrict the use, but not the presence, of camera and other personal cell phones during work time. These types of policies generally state that employees should not use their phones and should shut them off while working, and allow them to check their phones during authorized breaks. In any event, when companies provide employees with cell phones for use within their jobs, unless there is a business necessity to have visual capabilities, they should choose phones that do not have camera or video functions, or determine if such functions can be disabled.

Finally, technology itself may provide the ultimate solution. While not widely used or available yet, there are several new technologies that are designed to either jam a camera phone signal or sound an alarm when it detects a signal in use. The jamming devices can be installed in certain areas of the workplace called wireless privacy zones. Camera phones that are in the privacy zones are disabled from sending images. Once they are taken out of the zone, they are activated again. Whether such technologies can be used legally in private workplaces remains to be seen.

Employers do have much discretion on what kind of policy they want to establish, as long as they do so consistently and communicate the policy clearly. A policy alone cannot physically prevent someone who wants to steal confidential information from doing so, but it can decrease the risk by discouraging employees from bringing such devices to work. Further, by sending a message to all employees of the problems such devices can pose if misused, employees themselves may also be more vigilant in ensuring that no one, including themselves, is misusing a camera phone in the workplace.

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Andrea G. Chatfield is a member of the Employment Law Practice Group and the Corporate Department at the law firm of McLane, Graf, Raulerson & Middleton, P.A. Andrea can be reached

at 603-628-1341 or [andrea.chatfield@mclane.com](mailto:andrea.chatfield@mclane.com). The McLane Law Firm is the largest full-service law firm in the state of New Hampshire, with offices in Concord, Manchester and Portsmouth.

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