# HB

# 15

# ALASKA STATE LEGISLATURE

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## Representative Berta Gardner

*House District 24*

February 16, 2009

SPONSOR STATEMENT
HB 15

*"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."*

Our automobile insurance rates illustrate the well-established fact that younger and less experience drivers have more vehicle accidents than older drivers. Today, a growing body of evidence shows that use of cell phones increases risk of accident for all drivers, but especially for younger ones.

Each year, Alaska sees an increase in the number of motor vehicle accidents involving the use of cellular phones by drivers. Between 2002 and 2006 there were 289 traffic accidents involving cell phones in Alaska. The largest group, about 35 percent, involved drivers between 16 and 20 years old, although they make up only about 7.6% of Alaskan drivers.

Additionally, people between 16 and 24 are the most frequent cell phone users. While drivers age 21 or older with cell phones are about equally likely to use their cell phones for outgoing calls as they are to take incoming calls, cell phone-using drivers age 16-20 are more likely to use their cell phones to take incoming calls than they are to make outgoing calls while driving.

Other statistics show:

- 16 and 17 year old drivers have the highest fatality rate in car crashes.
- For the 16-to-20 age group, the crash fatality rate in 2004 was nearly twice as high as other age groups
- Motor vehicle crashes are number 1 cause of death among teenagers

The National Highway Traffic Safety Administration (NHTSA) has gathered data that nearly 25% of all vehicle accidents directly involve the use of cell phones. By limiting a minor's use of a cell phone while driving, we can make our roads safer for everyone.

Please join me in supporting House Bill 15 to make our roads safer.

# CS FOR HOUSE BILL NO. 15(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**
**Referred:**

**Sponsor(s): REPRESENTATIVES GARDNER AND TUCK, Muñoz**

## A BILL

## FOR AN ACT ENTITLED

**"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."**

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

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

**Sec. 28.35.165. Prohibited use of cellular telephone.** (a) A person under 18 years of age may not use a cellular telephone when driving a motor vehicle on a highway or vehicular way or area.

(b) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer is authorized by law to stop or detain the motor vehicle other than for a violation of (a) of this section.

(c) A person who violates this section is guilty of an infraction and may be punished as provided under AS 28.90.010.

*** Sec. 2.** This Act takes effect July 1, 2009.

# ALASKA STATE LEGISLATURE
# HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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**Committee Members:**
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

## Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 19, 2009

Re: Please go final on HB15

Jerry,

Today the House Judiciary Committee passed out HB15 version 26-LS0110\E with amendment E.1, please go final?

Thank you

Amendment #2

26-LS0110\E.1
Luckhaupt
3/18/09

**AMENDMENT**

By Rep Kawasa

OFFERED IN THE HOUSE

TO: HB 15

Page 1, lines 10 - 11:

Delete "has probable cause"

Insert "is authorized by law"

Amendment #1 was conceptual

and was p. 1 L 10-11 - delete "probable cause" and insert "Reasonable Suspision".

w/d.

# FISCAL NOTE

**STATE OF ALASKA**
**2009 LEGISLATIVE SESSION**

Fiscal Note Number:
Bill Version: **HB 015**
() Publish Date:

Identifier (file name): **HB015-DPS-DET-03-17-09**
Title: BAN CELL PHONE USE BY MINORS WHEN DRIVING
Sponsor: Representative Gardner
Requester: House Judiciary

Public Safety
RDU: Alaska State Troopers
Component: AST Detachments
Component Number: 2325

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

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

| | Appropriation Required | Information | | | | | |
|---|---|---|---|---|---|---|---|
| **OPERATING EXPENDITURES** | **FY 2010** | **FY 2010** | **FY 2011** | **FY 2012** | **FY 2013** | **FY 2014** | **FY 2015** |
| 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** | **0.0** |
| **CAPITAL EXPENDITURES** | | | | | | | |
| **CHANGE IN REVENUES ( )** | | | | | | | |

**FUND SOURCE** (Thousands of Dollars)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1002 Federal Receipts | | | | | | | |
| 1003 GF Match | | | | | | | |
| 1004 GF | | | | | | | |
| 1005 GF/Program Receipts | | | | | | | |
| 1037 GF/Mental Health | | | | | | | |
| Other Interagency Receipts | | | | | | | |
| **TOTAL** | **0.0** | **0.0** | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

**Estimate of any current year (FY2009) cost:** 0.0

**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.

Prepared by: Lt. Rodney Dial
Division: Alaska State Troopers
Approved by: Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
Date/Time 3/17/09 1:00 PM
Date 3/17/2009

(Revised 11/19/2007 OMB)

# Science of Safe Driving Among Adolescents

**Special Supplement to *Injury Prevention***

**June 20, 2006**

## Teen Driver Facts

- Traffic crashes occur disproportionately among newly driving young adults with one in four crash fatalities in the US involving 16 to 24 year olds (FARS)[1].

- The crash fatality rate (crash fatalities/100,000 population) is highest for 16 to 17 year olds – with the first six months after licensure the most dangerous – and remains high through age 24[2].

- For the 16-to-20 age group, the crash fatality rate in 2004 was nearly twice as high as other age groups: 27deaths/100,000 population for 16 to 20 year olds, as compared with 15 for 25 to 34 year olds and 11 for those 55 to 64 and 18 for those 74 years and older[3].

- Approximately two-thirds (63 percent) of teen (13 to 19 year olds) passenger deaths occur when other teenagers are driving. Child passengers (under age 16 years) driven by teenaged (16 to 19 year olds) drivers have three times the risk of injury in a crash than children driven by adults. Overall, 9 percent of child fatalities occur with a driver under age 19[4, 5].

- US research demonstrates that the "overwhelming majority" of crashes involving teen drivers were due to failure to employ safe operating practices and failure to recognize the inherent risk rather than "thrill seeking" or deliberate risk-taking[6].

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1. NHTSA. *Traffic Safety Facts 2004 Data: Overview.* 2006 [cited 2006 May 22, 2006]; 1-12]. Available from: http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2004/809911.pdf.
2. Mayhew, D.R., H.M. Simpson, and A. Pak, *Changes in collision rates among novice drivers during the first months of driving.* Accident Analysis and Prevention, 2003. **35**: p. 683-691.
3. NHTSA. *Traffic Safety Facts 2004: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System.* 2006 [cited 2006 May 22, 2006]; 1-222]. Available from: http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2004.pdf.
4. Williams, A.F. and S.A. Ferguson, *Rationale for graduated licensing and the risks it should address.* Injury Prevention, 2002. **8**(Suppl II): p. ii9-ii16.
5. (IIHS), I.I.f.H.S., *FATALITY FACTS 2004: TEENAGERS.* 2006, Insurance Institute for Highway Safety: Arlington, VA. p. 1-11.
6. McKnight, A.J. and A.S. McKnight, *Young novice drivers: careless or clueless?* Accident Analysis and Prevention, 2003. **35**: p. 921-925.

# LEGISLATIVE RESEARCH REPORT

FEBRUARY 13, 2009

REPORT NUMBER 09.141

## CELLULAR PHONE USE BY TEEN DRIVERS

PREPARED FOR REPRESENTATIVE BERTA GARDNER

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked for information about states that have enacted laws prohibiting cellular (cell) phone use by teenagers while driving. Specifically, you wanted to know the effectiveness of such laws.[1]

In 2003, the National Traffic Safety Board recommended that states limit or bar young drivers from using cell phones. As of January 2009, seventeen states and the District of Columbia have enacted legislation restricting novice drivers from talking on cell phones while driving.[2] Six states (California, Connecticut, New Jersey, New York, Utah, and Washington) ban the use of hand-held (as opposed to hands-free) cell phones by all drivers regardless of age. We include, as Attachment A, a table from the Insurance Institute for Highway Safety (IIHS) that shows states' cell phone laws (not just for teenagers), including whether states specifically ban text messaging.[3] Also in Attachment A, we include a February 2009 *question and answer* sheet from the IIHS on cell phones and driving. It provides a thorough overview of the myriad issues surrounding this topic.

According to Dr. Anne McCartt, Senior Vice President of the IIHS, there has been no research on whether there are fewer accidents in jurisdictions where cell phone use by teen drivers have been banned.[4] She explains that such research would be nearly impossible to conduct as police crash reports do not reliably report drivers' cell phone use. Additionally, police must rely on the accounts of drivers, many of whom would be unlikely to report phone use prior to a crash—especially in jurisdictions where such use is illegal.

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[1] Background for this report came from numerous sources including the Insurance Institute for Highway Safety (*www.iihs.org*), the Highway Safety Research Center at the University of North Carolina (*www.hsrc.unc.edu*), the National Transportation Safety Board (*www.ntsb.gov*), and the National Conference of State Legislatures (*www.ncsl.org*).

[2] A "novice" driver generally means a teenage driver with less than three years driving experience. States with restrictions on cell phone use by novice drivers are California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, Tennessee, Texas, Virginia, and West Virginia.

[3] Alaska is one of the seven states that prohibit all drivers from text messaging while operating an automobile.

[4] Anne McCartt can be reached at (703) 247-1534. All of our other sources concurred that no research has been conducted on the effectiveness of cell phone bans in limiting accidents.

907-465-3991
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**Alaska Legislature**
**Legislative Research Services**
w3.legis.state.ak.us/laa/research/research.php

State Capitol
Juneau, AK 99801

The only study that has evaluated a cell phone law pertaining to teen drivers (it does not track accidents) was co-authored by Dr. McCartt. Entitled, "Short-term Effects of a Teenage Driver Cell Phone Restriction," the study was conducted jointly by the Insurance Institute for Highway Safety and the Highway Safety Research Center at the University of North Carolina. The study examined whether teens in North Carolina changed their driving habits after that state enacted a cell phone ban for drivers younger than 18. The two-part study coupled researchers' observations of teenage drivers with telephone surveys of teens and their parents. The researchers found that the legislation did not lower the use of cell phone by teen drivers. One to two months *prior* to the ban's December 2006 start, 11 percent of teen drivers were observed using cell phone as they left school while driving automobiles. Five months *after* the ban took effect, almost 12 percent of teen drivers were observed using phones.[5] Clearly the law did not produce the intended effects. We include a copy of the study as Attachment B.

The study further found that lack of enforcement plays a significant role in the poor results observed in North Carolina. Most of the parents and teenagers surveyed for the study reported that they believed enforcement was rare or non-existent. Dr. McCartt asserts that law enforcement is supportive of legislative efforts to limit cell phone use by drivers but enforcing these laws is highly problematic. She puts it this way

> Cell phone bans for teen drivers are difficult to enforce. Drivers with phones to their ears aren't hard to spot, but it's nearly impossible for police officers to see hands-free devices or correctly guess how old drivers are.

The survey also found that about only around two-thirds of all teenagers and around 40 percent of adults even knew that the law had been enacted. Perhaps better public education would have improved compliance with the law.

Arthur Goodwin, Senior Research Associate at the Highway Safety Research Center, concurs with Dr. McCartt that the North Carolina study (in which he participated) clearly shows that the state's cell phone ban was not effective.[6] He does not believe such laws are without merit, however. Mr. Goodwin likened the situation to when seat belt laws came to the fore in the United States; it took quite a while to educate the public and for people to change their habits but eventually most did. He believes this may be the case with cell phone laws—that it will take time and continued efforts for these laws to become solidified in our national consciousness. Another aspect Mr. Goodwin stresses is the need for parents, rather than law enforcement, to be the prime enforcers of cell phone restrictions. This can be tricky, however, as parents generally *want* their sons and daughters to have cell phones with them for safety reasons, which of course allows them the opportunity to use the phones while driving. Legislating greater parental involvement is likely impossible.

While there are no data linking cell phone bans with lower accident rates, Mr. Goodwin directed us to a 2005 IIHS study from Western Australia that found drivers (not just teen drivers) who use cell phones increased their likelihood of being in a crash *fourfold*. In the study, cell phone billing

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[5] Cell phone use remained steady at about 13 percent during this time period at comparison sites in South Carolina, where teen driver cell phone used is not restricted. Interestingly, although the law was not obeyed in North Carolina, it was supported verbally by 95 percent of parents, and 74 percent of teens when they were interviewed on the telephone.

[6] Arthur Goodwin can be reached at (919) 843-5038.

records were used to verify phone use by drivers who had been in crashes.[7] According to Mr. Goodwin, the accident potential when driving while using a cell phone is roughly equivalent to the risk of a driver operating a vehicle under the influence of alcohol. We include the paper that examines the Australia study as Attachment C.

A 2006 report from the National Highway Traffic Safety Administration (NHTSA) found that drivers who are distracted (i.e. putting on makeup, disciplining children, eating lunch, talking on a cell phone) are three times more likely to be involved in a crash than drivers who are being attentive.[8] According to the study, the use of cell phones was the most common distraction. Additionally, the report found that drivers between 18-20 were four times as likely to be in a crash as drivers over 35. According to Jacqueline Glassman, acting administrator of the NHTSA when the study was released,

> This important research illustrates the potentially dire consequences that can occur while driving distracted or drowsy. It's crucial that drivers always be alert when on the road.

We include, as Attachment D, a bulleted summary from NHTSA that highlights the study's findings.[9]

Notwithstanding the lack of specific statistical evidence, all the experts with whom we spoke, and literature we reviewed, support states enacting laws restricting the use of cell phones while driving. While such legislation is difficult to enforce, it does send a message that the behavior is unsafe. It is clear from the Australian and NHTSA studies that restricting not just teenagers but all drivers from using cell phones while driving is likely to reduce roadway accidents.

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We hope you find this information to be useful. Please let us know if you have questions or need additional information.

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[7] According to our sources, the Australian study was consistent with a 1997 study from Canada that also utilized cell phone billing records. There have been no similar studies in the United States in part because law enforcement agencies (short of a subpoena) cannot access cell phone records to verify that a driver was using his or her call phone at the time of an accident.

[8] The Transportation Institute at Virginia Tech University was also involved in the study.

[9] The entire 224 page NHTSA report can be viewed at *www-nrd.dot.gov/departments/nrd-13/81059/810594.html.*

**Number of Crashes Involving Cell Phone Use, By Age of Driver Using Cell Phone, Alaska 2002-2006**

| Age of Driver using Cell Phone | 2002 | 2003 | 2004 | 2005 | 2006 | TOTAL |
|---|---|---|---|---|---|---|
| under 10 | | | | | | 0 |
| 10-15 | | | 1 | | | 1 |
| 16-20 | 17 | 20 | 22 | 24 | 16 | 99 |
| 21-25 | 8 | 9 | 8 | 6 | 12 | 43 |
| 26-30 | 7 | 5 | 6 | 8 | 5 | 31 |
| 31-35 | 9 | 7 | 6 | 6 | 2 | 30 |
| 36-40 | 7 | 3 | 6 | 3 | 7 | 26 |
| 41-45 | 4 | 6 | 3 | 6 | 4 | 23 |
| 46-50 | 3 | 7 | 6 | 5 | 1 | 22 |
| 51-55 | | 1 | 1 | 1 | | 3 |
| 56-60 | 1 | | 2 | 1 | | 4 |
| 61-65 | | 1 | | 1 | | 2 |
| 66-70 | 1 | | | 1 | | 2 |
| 71-75 | 1 | | | | | 1 |
| 76-80 | | | | | | 0 |
| 81+ | | | | | 1 | 1 |
| Unknown | 1 | | | | | 1 |
| TOTAL | 59 | 59 | 61 | 62 | 48 | 289 |

Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

**Number of Crashes Involving Cell phone Use, Alaska 2002-2006**

| | Property Damage Only | Minor Injury | Major Injury | Fatal | TOTAL |
|---|---|---|---|---|---|
| **2002** | 38 | 16 | 5 | 0 | 59 |
| **2003** | 34 | 24 | 1 | 0 | 59 |
| **2004** | 33 | 22 | 6 | 0 | 61 |
| **2005** | 38 | 21 | 3 | 0 | 62 |
| **2006** | 24 | 21 | 3 | 0 | 48 |
| **TOTAL** | 167 | 104 | 18 | 0 | 289 |

Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

**Number of Occupant Injuries in Crashes Involving Cell Phone Use, Alaska 2002-2006**

| | No Injuries | Minor Injury | Major Injury | Fatalities | TOTAL |
|---|---|---|---|---|---|
| **2002** | 132 | 30 | 6 | 0 | 168 |
| **2003** | 140 | 39 | 1 | 0 | 180 |
| **2004** | 121 | 32 | 6 | 0 | 159 |
| **2005** | 109 | 32 | 3 | 0 | 144 |
| **2006** | 94 | 38 | 3 | 0 | 135 |
| **TOTAL** | 596 | 171 | 19 | 0 | 786 |

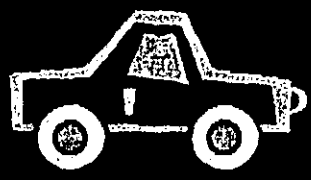
Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

PDSR144P
DATE: 02/15/08

VALID LICENSED DRIVERS AS OF
FEBRUARY 15, 2008

| CLASS | AGE | FEMALE | MALE | UNKNOWN | TOTAL |
|---|---|---|---|---|---|
| D | | | | | |
| | 14 | | 1 | | 1 |
| | 15 | | | | |
| | 16 | 1,377 | 1,508 | | 2,885 |
| | 17 | 2,665 | 2,746 | | 5,411 |
| | 18 | 3,303 | 3,727 | | 7,030 |
| | 19 | 3,883 | 4,340 | | 8,223 |
| | 20 | 4,250 | 4,641 | | 8,891 |
| | 21 | 4,325 | 4,728 | | 9,053 |
| | 22 | 4,821 | 4,843 | | 9,664 |
| | 23 | 4,733 | 4,889 | 1 | 9,623 |
| | 24 | 5,031 | 5,087 | | 10,118 |
| | 25 - 29 | 23,906 | 22,977 | 4 | 46,887 |
| | 30 - 34 | 21,153 | 18,428 | 1 | 39,582 |
| | 35 - 39 | 21,512 | 18,513 | 2 | 40,027 |
| | 40 - 44 | 21,744 | 17,914 | | 39,658 |
| | 45 - 49 | 24,466 | 19,512 | 2 | 43,980 |
| | 50 - 54 | 23,875 | 18,830 | 3 | 42,708 |
| | 55 - 59 | 19,329 | 16,979 | | 36,308 |
| | 60 - 64 | 13,141 | 12,747 | | 25,888 |
| | 65 - 69 | 8,131 | 8,265 | | 16,396 |
| | 70 - 74 | 4,890 | 5,285 | | 10,175 |
| | 75 + | 6,281 | 7,036 | | 13,317 |
| | SUB TOTALS: | 222,816 | 202,996 | 13 | 425,825 |
| D/M1 | | | | | |
| | 14 | | | | |
| | 15 | | | | |
| | 16 | 4 | 11 | | 15 |
| | 17 | 6 | 30 | | 36 |
| | 18 | 18 | 59 | | 77 |
| | 19 | 28 | 85 | | 113 |
| | 20 | 21 | 131 | | 152 |
| | 21 | 47 | 162 | | 209 |
| | 22 | 56 | 241 | | 297 |
| | 23 | 55 | 270 | 1 | 326 |
| | 24 | 69 | 337 | | 406 |
| | 25 - 29 | 398 | 1,986 | | 2,384 |
| | 30 - 34 | 476 | 2,279 | 1 | 2,756 |
| | 35 - 39 | 577 | 2,782 | | 3,359 |
| | 40 - 44 | 700 | 3,257 | | 3,957 |
| | 45 - 49 | 898 | 3,705 | | 4,603 |
| | 50 - 54 | 951 | 3,940 | | 4,891 |
| | 55 - 59 | 571 | 3,119 | | 3,690 |
| | 60 - 64 | 282 | 1,896 | | 2,178 |
| | 65 - 69 | 107 | 930 | | 1,037 |
| | 70 - 74 | 44 | 443 | | 487 |
| | 75 + | 50 | 308 | | 358 |
| | SUB TOTALS: | 5,358 | 25,971 | 2 | 31,331 |

# Cell Phones and Highway Safety



National Conference of State Legislatures

2006 State Legislative Update

*By Matt Sundeen*

March 2007

In 2006, cell phones in motor vehicles continued to be a significant traffic safety concern for state legislatures. However, although phones in cars grabbed the most headlines, many state lawmakers now have broadened the topic to include a wider variety of driver distractions and potential regulations. This report provides information about cell phones and driving and the larger driver distraction debate. It examines the latest statistics and studies, details relevant laws and legislative activity, and analyzes the most critical issues.

## Driver Distraction and Cell Phones

Most experts agree that distracted driving is a substantial problem. According to the National Highway Traffic Safety Administration (NHTSA), in 2005, 43,443 people died and approximately 2.7 million people were injured in an estimated 6.16 million police-reported motor vehicle traffic crashes.[1] NHTSA estimates that each year, motor vehicle crashes cost Americans approximately $230 billion in economic damages.[2] Driver inattention is a leading factor in these crashes. A 2006 study published by NHTSA and the Virginia Tech Transportation Institute (VTTI) estimated that nearly 80 percent of crashes and 65 percent of near crashes involve some form of driver inattention.[3] As a percentage of national statistics, the NHTSA and VTTI estimate would mean that driver inattention causes as many as 4.9 million crashes, 34,000 fatalities and 2.1 million injuries each year and as much as $184 billion in economic damage.

Although many agree that driver awareness—or lack thereof—is a significant concern, there is little agreement over which distractions pose the most significant threat or what should be done about them. Driver distraction has been a potential problem since cars were invented. A virtually limitless number of events, activities and objects, both inside and outside the motor vehicle, can divert a driver from his or her primary task—the safe operation of the vehicle. A January 2007 survey by Nationwide Mutual Insurance found that 31 percent of respondents admitted they daydream while driving; 19 percent acknowledge that they fix their hair, text or instant message; 14 percent comfort or discipline children; and 8 percent drive with a pet in their lap. Surveyed drivers also confessed to changing seats with passengers, reading books, watching movies, writing grocery lists, nursing babies, putting in contact lenses, painting toenails, urinating out the car window, changing shoes and shaving while driving.

Recent interest in driver focus seems to stem almost exclusively from the introduction of cell phones into the driving environment. Two decades ago, cell phones were a novelty item in cars and a non-factor in traffic safety. Less than 900,000 people in the United States subscribed to wireless services, few people lugged around the pricey, shoebox-sized devices, and few traffic safety experts mentioned driver distraction as a safety concern.

Much has changed in 20 years. According to the wireless industry association, CTIA, the number of wireless subscribers in the United States has grown to more than 230 million.[4] Recent studies confirm something most of us already know—many people are using their phones in the driving environment, and their popularity in the car continues to grow. A December 2005 NHTSA observational survey estimated that, at any given daylight moment, approximately 10 percent of U.S. drivers are using some type of phone, whether hand-

Cell phone use by younger drivers also continues to be a popular target for state legislators. Lawmakers in 13 states—Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, North Carolina, Rhode Island, Tennessee, Texas and West Virginia—and the District of Columbia currently prohibit or restrict novice driver cell phone use. All current novice driver laws prohibit young drivers—those under age 18 or 21—who only hold a learner's or instructional driving permit from using any type of wireless device while operating a motor vehicle, except in emergency situations. In 2006, legislators in 28 states considered similar proposals, with new laws passing in Minnesota, North Carolina, Rhode Island and West Virginia. Although most of the 2006 bills linked novice driver restrictions to a learner's permit or intermediate license, several bills would have prohibited all teen drivers, regardless of license status, from using wireless devices.

Eleven states—Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, Rhode Island, Tennessee and Texas—and the District of Columbia prohibit school bus drivers from using phones while operating a school bus. Legislators in five states proposed school bus driver phone restrictions in 2004, while legislatures in seven states considered such measures in 2005.

State legislatures also are taking an active role in improving the collection of data and information about the involvement of cell phones and other wireless devices in crashes. At least 27 states and the District of Columbia now require some or all law enforcement officers to collect information about cell phone involvement in crashes, up from just two states in 1998 (see table 1). In many states, such data collection is required by statute. In addition, legislatures or individual legislators in at least nine states—California, Delaware, Louisiana, Minnesota, New Jersey, New York, Pennsylvania, Virginia and Wisconsin—approved or asked for studies about the effects of wireless phones on traffic safety in their jurisdictions. The Pennsylvania General Assembly's Joint State Government Commission published a report on driver distraction and public safety in December 2001,[21] and a special legislative task force in Delaware published a report on driver distractions in 2003.[22] Washington passed a bill in 2005 that requires state police to track in accident report forms information about the involvement of wireless communication devices in motor vehicle crashes. The measure also requires the state police to include this information in its annual report of traffic safety statistics.

States also are moving to assert authority over the distracted driving issue. Legislatures in 10 states have moved to restrict local cell phone laws. Florida, Kentucky, Louisiana, Mississippi, Nevada, New Jersey, New York, Oklahoma, Oregon and Utah preempt local jurisdictions from restricting cell phone use while driving. This move was significant in Florida, where several local communities, including Miami-Dade County, had prohibited the use of hand-held phones while driving. Utah's law, enacted in 2006, pre-empted a prohibition on hand-held phones in Sandy, Utah.

Four other states—California, Florida, Illinois and Massachusetts—have enacted measures related to cell phone use while driving. California requires that rental cars with embedded cell phone equipment provide written instructions on the safe use of the cell phone. Florida and Illinois require that drivers who use headsets with their phones can use only a headset that blocks sound to one ear. Massachusetts generally allows cell phone use, provided the driver keeps at least one hand on the steering wheel at all times. Other states have considered legislation to increase driver negligence for being involved in a crash while using a cell phone; however, no state has passed such a proposal.

An emerging trend in legislation is to address multiple behaviors—not only cell phone use—on the road. Washington, D.C., prohibits several potential distracted driver behaviors, including reading, writing, personal grooming, interacting with pets or unsecured cargo, using personal communications technologies, or engaging in other activities that cause distractions. Connecticut's cell phone law, enacted in June 2005, includes a broad distraction provision that prohibits drivers from engaging in any activity not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such vehicle on any highway. Seven other states considered broad distraction bills in 2006.

Other state legislatures have examined driver use of televisions and DVD players (see appendix B). At least 38 states restrict or prohibit televisions in motor vehicles. California and Louisiana restrict the placement of DVD players and similar entertainment devices to locations out of the vision of the driver. Illinois prohibits any visual media technology, other than a navigational system, to be located at points forward of the driver's seat. Tennessee and Virginia forbid the display of

pornographic videos in cars. In addition, Virginia prohibits the display of a video or motion picture in front of the driver's seat or within view of the driver. Legislatures in 14 states in 2006 considered legislation related to the use of televisions, DVD players or videos in cars.

## Federal Action

As of February, 2007 the federal government had not acted on the distracted driving issue. Legislation considered by Congress in 2003 and 2001 failed to make it out of committee. Several federal agencies have studied the effects of wireless phones on traffic safety. In June 2003, the National Transportation Safety Board (NTSB) issued a report about a 2002 crash in Maryland that involved a young driver who was using a cell phone. According to the NTSB analysis, the crash involved multiple risk factors, and the NTSB could not determine the exact extent of the role of distraction due to wireless phone use. However, NTSB concluded that, " ... current State laws are inadequate to protect young, novice drivers from distractions that can lead to accidents."[23] The NTSB recommended that the states that do not have restrictions for young drivers enact legislation to prohibit holders of learner's permits and intermediate licenses from using interactive wireless communication devices while driving.

In the same report, NTSB recommended improvements in driver education. The NTSB concluded that the public may not be aware of the risks associated with using the wireless phone while driving. NTSB urged that, " ... all drivers should be educated about the risks of distracted driving, including the cognitive demands associated with use of interactive communication devices."[24] NTSB also urged states to improve data collection by including codes for interactive wireless communications devices on their traffic accident investigation forms.

NHTSA has long studied driver distraction and traffic safety but has not issued any regulations to address the topic. In 1997, NHTSA published a report—*An Investigation of the Safety Implications of Wireless Communications in Vehicles*—that summarized driver distraction research. In 2000, NHTSA conducted a driver distraction online forum and accepted public comments on driver distraction issues. NHTSA also has published several observational surveys in an attempt to document driver cell phone use.

A policy statement regarding cellular phone use while driving, posted on NHTSA's website, warned drivers of potential cell phone risks. According to the statement, " ... the primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."[25]

Several federal agencies, national organizations, and state and local government agencies also have worked to improve data collection. In June 2003, the national Governors' Highway Safety Association released a revised edition of the Model Minimum Uniform Crash Criteria (MMUCC), which included changes intended to help gauge the effects of driver distractions. The criteria, which were developed in collaboration with NHTSA, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, and numerous state and local agencies, describe what kinds of information states need to collect at crash scenes. The changes to the MMUCC are intended to help policymakers paint a more accurate picture of the role of cell phones and other distractions in motor vehicle crashes.

## Local Action

Many counties, cities, towns and municipalities across the United States have considered restrictions on cell phone use while driving. The largest community—Chicago, Illinois—prohibits motorists from using hand-held phones while driving. More than two dozen local jurisdictions—in Florida, Illinois, Massachusetts, Michigan, New Jersey, New Mexico, New York, Ohio, Pennsylvania and Utah—have enacted similar restrictions. Local jurisdictions that have passed ordinances include: •

**USA states breakdown**

| State | Banned? | Notes |
|---|---|---|
| Alabama | No | |
| Alaska | No | |
| Arkansas | Partial | School bus drivers are banned from using a cell phone. |
| Arizona | Partial | A bill to introduce a ban was lost by a 4-3 vote in the Senate Transportation Committee. Bus drivers are banned from using a cell phone |
| California | Yes | Beginning July 1, 2008, violators face a US$20 fine for a first offense and a US$50 ticket for subsequent infractions. Law passed Sept 2007 bans all under-18s from using a phone at all, even with handsfree kit. Text messaging while driving (inc emails) banned with effect from Jan 1st 2009. |
| Colorado | No | Teens with restricted licenses are banned - but can only be stopped for another violation first |
| Connecticut | Yes | Banned with effect from Oct. 2005 - teens are also forbidden from using handsfree kits while moving |
| Delaware | No | A driver can already be prosecuted for "inattentive driving" - which can include using a cell phone. Studies into the issue have been requested |
| District of Columbia | Yes | Banned from July 2004 |
| Florida | Partial | State Attorney General said that cities can set local regulations - July 2001. Overturned by Governor Bush.. |
| Georgia | Partial | School bus drivers banned from using cell phones while driving. DeKalb County has fines when crashes can be attributed to driving while using a cellphone. |
| Hawaii | Being debated | A bill has been introduced in Hawaii's legislature by Sen. Joseph Souki, D-Wailuku-Waiehu. |
| Idaho | No | |
| Illinois | Partial | School bus drivers are banned - Chicago and Gary City Council have passed local laws banning driving without a hands-free kit. |
| Indiana | No | Ban proposed by State Sen. Rose Antich Carr - Jan 2004 |
| Iowa | Being debated | |
| Kansas | No | Bill to introduce ban failed in 2000 |

| | | |
|---|---|---|
| Kentucky | No | |
| Louisiana | Partial | Teenagers and new drivers are banned - all drivers banned from text messaging only. |
| Maine | Partial | Minors and those on learner driving licenses may not use a cell phone while driving |
| Maryland | No | Bill to ban dropped Feb. 2001. New proposal in the House, proposed by Delegates Arnick and Mandel |
| Massachusetts | Partial | Bill for most users pending - but bus drivers already banned. Drivers required to keep at least one hand on the steering wheel while holding a phone. |
| Michigan | No | |
| Minnesota | Partial | Teenagers and provisional drivers are banned - $100 fine plus delays in license upgrades for offenders |
| Mississippi | No | Legislation prevents local councils enacting their own ban. |
| Missouri | No | |
| Montana | No | |
| Nebraska | No | Bill planned by State Sen. Jim Cudaback - Jan 2004 |
| Nevada | No | State bill to introduce ban failed April 1999. Local bill in Clark County also blocked Nov. 2001. Nevada state passed bill banning local regulations, March 2003. |
| New Hampshire | Partial | Not explicitly banned, but you can be prosecuted if using a cellphone when involved in an driving accident. |
| New Jersey | Yes | Banned from 2004, updated from March 2008 - fine US$100. Bill extended June 2008 to include text messaging. |
| New Mexico | Partial | Being debated - local ban in the cities of Santa Fe, Albuquerque, Taos, and Las Vegas |
| New York | Yes | Ban effective from Nov. 2001 |
| North Carolina | Being debated | Study into the effects of cell phone usage while driving being carried out. |
| North Dakota | Being debated | Bill proposed by Sen. Harvey Tallackson, D-Grafton, Feb 2005 |
| Ohio | Partial | The City of Cleveland is discussing a ban. Ban in place in Brooklyn. |
| Oklahoma | No | Bill to introduce ban failed in May 1999. Legislation prevents local councils enacting their own ban. |
| Oregon | Partial | Ban applies to teenagers only. |
| Pennsylvania | Partial | Local cities have their own laws - state legislation pending |
| Rhode Island | No | Governor Almond rejected a ban - July 2001. School buses are banned from using a cell phone. Proposal for a ban being |

| | | |
|---|---|---|
| | | debated, April 2004. |
| South Carolina | Partial | Bill to ban holders of a beginner's permit, conditional or special restricted driver's license passed by House committee, April 2008 |
| South Dakota | No | |
| Tennessee | Partial | School buses are banned from using a cell phone |
| Texas | No | Senate Bill 154 proposed. If passed would come into effect from 2008. A previous attempt in 2005 failed |
| Utah | No | Bill to introduce ban failed March 1998. Highland city planning a ban - Feb 2005 |
| Vermont | No | |
| Virginia | Partial | Bill banning minors passed Jan 2005. Bill banning 16-17yr olds with conditional licenses passed March 2007 |
| Washington | Yes | Ban imposed, to come into effect from July 2008. Driving while sending text messages separately banned with effect from Jan 1st 2008 |
| West Virginia | No | Bill proposed in 1999, but never debated |
| Wisconsin | No | Bill to introduce ban failed in April 1998. Bill to ban younger drivers only being debated. |
| Wyoming | No | Bill proposed by Rep. Floyd Esquibel but not debated |

# Q&As: Cellphones and driving

**February 2009**

Show all answers

### 1 | How many people use cellphones?

Cellphone use in the United States has grown quickly during the past decade. There were more than 262 million wireless cellphone subscribers, representing 84 percent of the US population, as of June 2008, according to the Cellular Telecommunications and Internet Association.[1] That's up 35 percent from 194 million in June 2005 and nearly three times more than the 97 million wireless subscribers in June 2000. Minutes of use have surged to more than 1 trillion in June 2008 from 195 billion in June 2000.

### 2 | Do drivers frequently use phones behind the wheel?

Yes, though it's hard to accurately determine just how many drivers use phones. Observational data from the federal government indicate that 6 percent of drivers in 2007 were using hand-held phones at any moment during the day. The 2007 use rate means that about 1 million passenger vehicles on the road at any moment during the day are driven by people talking on hand-held phones.[2]

### 3 | Who is most likely to talk on a cellphone while driving?

Female drivers across all age groups more frequently use hand-held cellphones than male drivers (8 percent vs. 5 percent), according to daytime observational surveys of drivers conducted nationwide in 2007. Young drivers ages 16-24 also are much more likely than other drivers to talk on hand-held cellphones. Nine percent of drivers ages 16-24 were observed talking on hand-held phones, compared with 6 percent of those ages 25-69 and 1 percent of drivers 70 and older.[2]

### 4 | Does using a cellphone while driving increase crash risk?

Yes. Two controlled studies now link talking on a cellphone directly to increased crash risk. A 2005 Institute study of drivers in Western Australia found cellphone users four times as likely to get into crashes serious enough to injure themselves.[3] The study used cellphone billing records to verify phone use of crash-involved drivers. Increased risk was similar for males and females, drivers younger than 30 and those 30 and older, and hands-free and hand-held phones. The findings were consistent with 1997 research that showed phone use among Canadian drivers was associated with a fourfold increase in the risk of a property damage crash. This study also used cellphone billing records.[4]

### 5 | Are hands-free cellphones safer?

No, at least not after the conversation begins. Both studies of crashes using cellphone billing records to verify phone use found about a fourfold increase in crash risk with conversing on both hands-free and hand-held phones.[3,4] The studies were unable to estimate crash risk from different types of hands-free devices. They also were unable to determine whether there was any benefit associated with hands-free devices while placing the call. Experimental research using driving simulators indicates that phone conversation tasks, whether using hand-held or hands-free devices, affect some measures of driving performance.[5,6] Hands-free phones may eliminate some of the physical distraction of handling phones, but the cognitive distraction from phone conversations remains.

### 6 | How does cellphone use affect driving performance?

An Institute review of more than 120 cellphone studies, about half of which were experimental studies using driving simulators or instrumented vehicles, found that nearly all reported that some measures of driver performance were affected by the cognitive distractions associated with cellphone tasks.[5] Phone conversation tasks typically decreased

limiting nighttime driving and the number of passengers a novice driver can carry. Cellphone bans are being added to those restrictions.

See Q&A: Teenagers — graduated driver licensing

More about the licensing law in your state, or any state

### 10 | Do teenagers comply with cellphone bans?

Young drivers often ignore cellphone restrictions, according to a 2008 Institute study of North Carolina's cellphone ban for young beginning drivers. The state bans the use of any telecommunications device by drivers younger than 18 under its graduated licensing system. Observed cellphone use by teenagers leaving high schools in the afternoon changed little from 1-2 months before and 5 months after the restriction took effect on Dec. 1, 2006. About 11 percent of teenage drivers were seen using phones before the law. That percentage rose slightly to 12 percent in the postlaw survey. Cellphone use remained steady at about 13 percent at comparison sites in South Carolina, which doesn't restrict teenage drivers' phone use. When observed postlaw, less than 1 percent of teenage drivers in North Carolina were using hands-free phones. About 2 percent were observed dialing or texting and about 9 percent were holding a phone to their ear.

The study coupled driver observations with telephone surveys of North Carolina parents and their teenagers. In postlaw surveys, about two-thirds of teenagers said they knew about their state's law, compared with 39 percent of parents. Three-quarters of teenagers and 95 percent of parents said they approved of the law. The proportion of teenagers who reported using phones while driving declined somewhat following the law. However, of those who owned a phone and admitted to ever talking on the phone while driving, about half admitted they used their phones, if they had driven, on the day prior to the interview. There was no evidence of focused enforcement or publicity of the law. Only 22 percent of teenagers and 13 percent of parents believed the ban was being enforced fairly often or a lot.[17]

### 11 | Is cellphone use more distracting to drivers than other tasks?

Evidence is mixed. For example, some experimental studies found that phone conversations are more disruptive than conversations with passengers or adjusting a radio.[6] However, two statistical analyses combining the results of multiple experimental studies found similar decrements in reaction time for conversation tasks with passengers and with hand-held or hands-free phones.[5,7] Two studies suggest that talking on cellphones or having a 0.08 percent blood alcohol concentration (BAC) — the legal threshold for impairment — has a comparable effect on some simulated driving tasks.[18,19] However, the risks associated with alcohol impairment accumulate over the entire duration of a trip, whereas the risks of cellphone use generally apply for only a portion of a trip. In addition, crash risk increases substantially at very high BACs, and the implications of the experimental studies for drivers in their own vehicles is unknown.

### 12 | Is texting while driving a problem?

Over 600 billion text messages were sent in 2008. This is up nearly 4 times from the number sent in 2006, according to the Cellular Telecommunications and Internet Association.[1] Among drivers 30 and younger who own cell phones, nearly 40 percent said they send or read text messages while driving, based on the findings from a survey by Nationwide Insurance. There hasn't been a lot of research on texting and driving, but two studies of young drivers using driving simulators all found that receiving, and especially sending, text messages, led to decrements in driving behavior, particularly reaction time and lane keeping ability.[20,21]

### References

[1]Cellular Telecommunications and Internet Association. 2008. CTIA's semi-annual wireless industry survey results, June 1985-June 2008. Washington, DC.

[2]National Highway Traffic Safety Administration, 2008. Driver electronic device use in 2007. Report no. DOT HS-810-963. Washington, DC: US Department of Transportation.

[3]McEvoy, S.P.; Stevenson, M.R.; McCartt, A.T.; Woodward, M.; Haworth, C.; Palamara, P.; and Cercarelli, R. 2005. Role of mobile phones in

NHTSA
www.nhtsa.gov
National Highway Traffic Safety Administration
Our Mission: Save lives, prevent injuries, reduce vehicle-related crashes





## Teen Drivers

### A Comprehensive Approach to Teen Driver Safety

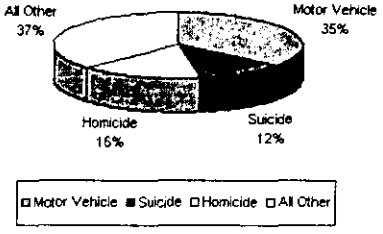
NHTSA has developed a three-tiered strategy to prevent motor-vehicle-related deaths and injuries for teens: increasing seat belt use, implementing graduated driver licensing, and reducing teens' access to alcohol.




**Leading Cause of Death for Teens**

The heart of the National Highway Traffic Safety Administration's (NHTSA's) mission is keeping families safe on America's roadways. Young drivers, ages 15- to 20-years old, are especially vulnerable to death and injury on our roadways – traffic crashes are the leading cause of death for teenagers in America. Mile for mile, teenagers are involved in three times as many fatal crashes as all other drivers.

### Leading Causes of Death for Teens




**We Know the Causes**

Research shows which behaviors contribute to teen-related crashes. Inexperience and immaturity combined with speed, drinking and driving, not wearing seat belts, distracted driving (cell phone use, loud music, other teen passengers, etc.), drowsy driving, nighttime driving, and other drug use aggravate this problem.

**The Objective of this Site**

We've designed this site to provide you with the fundamental resources and information you'll need to help promote what research clearly shows reduces teen crashes –

- Increasing seat belt use,
- Implementing graduated driver licensing, and
- Reducing teens' access to alcohol.

We've designed the template materials so they are quick and easy to customize to promote your teen program. You'll find talking points, earned media tools, collateral materials and various other marketing materials designed to be tailored to maximize your local outreach efforts to various key audiences.





washingtonpost.com

# Va. House To Teens: 'Hang Up And Drive'

## Lawmakers Pass Ban on Cellphones

By Tim Craig and Amy Gardner
Washington Post Staff Writers
Thursday, February 22, 2007; A01

RICHMOND, Feb. 21 -- The Virginia House of Delegates approved a bill Wednesday that would prohibit teenagers from using their cellphones while driving, which safety advocates say would reduce accidents.

The Senate has approved a nearly identical measure, meaning that the cellphone ban proposal is likely headed to Gov. Timothy M. Kaine (D), who is expected to sign it, aides said. If Kaine does approve the ban, Virginia will join the District, Maryland and 11 other states that bar teens from using a phone while driving.

Under the bill, drivers ages 15, 16 and 17 would not be able to talk, send text messages or snap photos with a phone while on Virginia roads. The ban would also apply to hands-free devices but would allow teens to use a phone during an emergency.

The legislation originated with lawmakers in Northern Virginia.

"We are saying, 'Hang up and drive,' " said Del. Timothy D. Hugo (R-Fairfax).

Like Virginia's seat-belt law, the teenage cellphone ban would be considered a secondary offense, so an officer could cite a teenage driver only if he or she were pulled over for another moving violation.

Even so, safety advocates said that the 86 to 10 vote in the House was a milestone in Virginia, where legislators have historically been slow to embrace new traffic safety laws.

The proposal, sponsored by Sen. James K. "Jay" O'Brien Jr. (R-Fairfax), gained momentum after a spate of fatal accidents involving teenagers on Washington area highways.

Though the accidents were not necessarily caused by teens talking on cellphones, they spurred a regionwide debate about teen driving safety. Maryland passed a series of teen driving bills two years ago. The District requires all drivers to use hands-free devices to talk on the phone. O'Brien resisted efforts in Virginia to make exceptions for teenagers using hands-free devices.

"It doesn't matter if the phone is in their hands or hands-free," O'Brien said. "The distraction for the teen is the same. They're taking their concentration off the road and giving it to a conversation during a period when they have zero driving experience."

Some teenagers were split on their opinion of the ban. Pape Diop, 17, a senior at Annandale High

School in Fairfax County who often chats on the phone while he's behind the wheel, said he thinks the ban would make him and his friends safer drivers.

"I think it's pretty reasonable, because we do have a tendency to talk on our phones a lot, and a lot of accidents happen," Diop said. "Even if I'm in the car with an adult, I see it distracts them."

But Andrew Supanich, 16, a sophomore at Stonewall Jackson High School in Prince William County, said he thinks that the ban is a bad idea but that if it does go forward, it should include adults. "It's not fair for them to take it away from teenagers when adults could be on the cellphone and could get in a car accident just as well," he said.

Supanich said he would use the phone for legitimate purposes. "If I was ever on my cellphone while driving, it wouldn't be just, 'I'm bored, and I want to talk to someone.' It would be if I was going to someone else's house and needed directions, or if my mom calls me to go to the grocery store," he said.

Several lawmakers said they were influenced by images of young drivers paying more attention to phone calls and text messages than the road. "It's a simple premise: Young people who do not have experience endanger not only themselves but other drivers," said Del. Adam P. Ebbin (D-Alexandria).

A few conservative lawmakers said they opposed the bill because parents -- not the state -- should be making rules for their children. Del. Terry G. Kilgore (R-Scott) said that there might be many items in a car that could distract a driver, such as a radio or purse. "I am the parent of a young driver, and the thing about this bill that concerns me is I can't call my daughter," he said. "There are a lot of times my wife and I would like to know where she is at."

Ebbin responded, "If parents have trouble reaching their kids, they should leave a message."

According to AAA Mid-Atlantic, which lobbied for the bill, the bans can greatly reduce the odds of a teenager being in an accident. A University of Utah study found that "young drivers who use cellphones at the wheel drive like the elderly -- with slower reaction times and an increased risk of accidents," according to AAA.

Kaine prohibits his 17-year-old son, Nat, from using a cellphone while driving. "It is the rule in the Kaine household," said Kevin Hall, spokesman for the governor. "Regardless of what he decides to do with this bill, the governor thinks this is a conversation that every parent should have with their teen driver."

*Staff writers Maria Glod and Ian Shapira contributed to this report.*

Army Regulation 190–5
OPNAV 11200.5D
AFI 31-218(I)
MCO 5110.1D
DLAR 5720.1

Military Police

# Motor Vehicle Traffic Supervision

Headquarters
Departments of the Army,
the Navy,
the Air Force,
Marine Corps,
Defense Logistics Agency
Washington, DC
22 May 2006

UNCLASSIFIED

(2) Complete studies of traffic operations of entire installations. (This can include long–range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

*e.* Installation commanders should submit requests for traffic engineering services in accordance with applicable Service or agency directives.

### 4–2. Installation traffic codes

*a.* Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this regulation, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 USC 402).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances.

*b.* The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(5) Violators are responsible for all costs of towing, storage, and impounding of vehicles for other than evidentiary reasons.

*c.* Installation traffic codes will also contain the provisions discussed below. (Army users, see AR 385–55.)

(1) *Motorcycles and mopeds.* For motorcycles and other self–propelled, open, 2–wheel, 3–wheel, and 4–wheel vehicles powered by a motorcycle–type engine, the following traffic rules apply:

*(a)* Headlights will be on at all times when in operation.

*(b)* A rear view mirror will be attached to each side of the handlebars.

*(c)* Approved protective helmets, eye protection, hard–soled shoes, long trousers, and brightly colored or reflective outer upper garment will be worn by operators and passengers when in operation.

(2) *Restraint systems.*

*(a)* Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

*(b)* Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

*(c)* Restraint systems will be worn by all military Service members and Reserve Component members on active Federal Service driving or riding in a POV whether on or off the installation.

*(d)* Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

*(e)* Restraint systems are required only in vehicles manufactured after model year 1966.

(3) *Driver distractions.* Vehicle operators on a DOD installation and operators of Government owned vehicles will not use cell phones unless the vehicle is safely parked or unless they are using a hands–free device. The wearing of any other portable headphones, earphones, or other listening devices (except for hands–free cellular phones) while operating a motor vehicle is prohibited. Use of those devices impairs driving and masks or prevents recognition of emergency signals, alarms, announcements, the approach of vehicles, and human speech. The DOD component safety guidance should note the potential for driver distractions such as eating and drinking, operating radios, CD players, global positioning equipment, and so on. Whenever possible this should only be done when the vehicle is safely parked.

*d.* Only administrative actions (reprimand, assessment of points, loss of on–post driving privileges, or other actions) will be initiated against Service members for off–post violations of the installation traffic code.

*e.* In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 USC 13 to military installations having concurrent or exclusive Federal jurisdiction.

*f.* In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 USC, DODD 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. In those States where traffic laws

# Municipality of Anchorage

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*Matt Claman,*
*Acting Mayor*

**Office of the Mayor**


February 5, 2008

Representative Berta Gardner
Alaska House of Representatives
State Capitol Building, RM 422
Juneau, AK 99801-1182

Dear Representative Gardner:

I write to you in support of House Bill 15 (HB 15), an act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle.

As the statistics from the National Highway Transportation Safety Administration indicate, cell phones pose a significant distraction to drivers and distractions cause accidents. From my limited reading on the subject, it appears that cell phone usage by teen drivers is higher than the adult average.

As other states move toward protecting the public from distracted drivers, Alaskans should not be left behind. We, and our children, deserve those same protections. In particular, if we can assist young drivers form healthy driving habits through this measure, we will have started them on a course for a lifetime of safer driving.

Because this does not create a primary offense, I anticipate that it would not dramatically affect law enforcement budgets. In the meantime, it will be helpful in instructing young, impressionable drivers that the driver's seat is not the appropriate place for cell phone calls.

Thanks for your leadership on this important public safety issue.

Sincerely,

Matt Claman
Acting Mayor

cc: Rob Heun, Anchorage Police Department

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VIA HAND DELIVERY

February 5, 2009

The Honorable Berta Gardner
Alaska House of Representatives
State Capitol, Room 424
Juneau, Alaska 99801-1182

Re: State Farm Support for HB 15 - Ban on Cell Phone Use by Minors While Driving

Dear Representative Gardner:

State Farm strongly supports a ban on cell phone use by minors while driving. There is no doubt this bill will in fact immediately begin to save lives and prevent injuries. Drivers between the ages 16 - 19 are four times more likely to be involved in a crash as other drivers. One in five of all auto deaths is attributed to teen driving. The leading causes of teen accidents include inexperience and distraction. A recent Research Report by the Children's Hospital of Philadelphia and State Farm determined that 9 out of 10 teenagers reported teen use of cell phones while driving was common, and 7 out of 10 said they have observed teens driving while being emotionally upset using a cell phone. That same survey indicated legal prohibitions and restrictions were the top motivations teens said would keep them from using a cell phone while driving.

As the insurance industry representative on the Alaska Highway Safety Improvement Program, State Farm thanks you for sponsoring this bill. Through an alliance with Children's Hospital of Philadelphia, State Farm has access to a wealth of information and resources should you or other members of the Legislature desire. If we can provide you any information or assistance, please let me know.

Sincerely,

Sheldon E. Winters
Lobbyist for State Farm Insurance Companies

SEW/eaf
Gardner 2-5-09 letter of support.wpd

**Noah Hanson**

---

**From:** Kristin McCune [kemccune@gmail.com]
**Sent:** Wednesday, January 14, 2009 11:08 AM
**To:** Rep. Berta Gardner
**Subject:** House Bill 15

Dear Rep. Gardner,
I heartily support your bill to limit cell phone use, however, I wish it would extend to all ages.

On a sunny afternoon in late May 2008 I was riding my bicycle in a quiet old Turnagain neighborhood on broad streets with no traffic or parked cars when an 18 year old drove up fom behind me and turned into my immediate path. The vehicle became a wall a few inches in front of me. One of my first thoughts, as I lay on the ground before the ambulance came is that I was somehow invisible to this young woman even though there were no visual obstacles to her seeing me. Cell phone use was denied but is strongly suspected and records wlll be supheaoned in the legal proceedings.
Thank you for introducing this bill. I believe the age should be extended upward. At any rate, this is a very good start. I would hope that data is available in Alaska on cell phone related motor vehicle accidents to support passage of this type of legislation.

Sincerely,
Kristin McCune
Retired Public Health Nurse

**Noah Hanson**

---

**From:** Jim Campbell [jimc_79@msn.com]
**Sent:** Wednesday, January 14, 2009 6:33 AM
**To:** Rep. Berta Gardner
**Subject:** Bravo!!

I applaud your bill to ban cell phone use while driving. I am 48 years old, I drive, and I have a cell phone. The ban should apply to me also. Please work your magic to make driving and cell phone use (and texting, and tittering [what the heck is that?!]) illegal for everyone. I can't believe we have allowed it to continue as long we have; we all know that a person's driving is impaired while driving and talking on the cell phone. Thank you for putting this forth.

Sincerely,

Jim Campbell

---

**Noah Hanson**

---

**From:** Donna Powell [donna@alaskacoachtours.com]
**Sent:** Tuesday, February 17, 2009 9:06 AM
**To:** Rep. Berta Gardner
**Subject:** Cell Phone Bill Support

Good morning Representative Gardner,

I read in the paper today the bill you'll be putting forward about banning teenagers from using cell phones while driving. I fully support cell phone bans for everyone! Too many times I've witness people making careless decisions while driving only to discover – duh, they're on the cell phone. I would happily give up my cell phone while in my car – it is one of the last places for peace and quiet anyway.

Best regards,
Donna Powell
Juneau

STATE OFFICE
# ALASKA PEACE OFFICERS ASSOCIATION

P.O. Box 240106 Anchorage, Alaska 99524-0106 Phone (907) 277-0515 Fax (907) 272-5355



February 17, 2009

Representative Berta Gardner
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Gardner:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 15, an act prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and unanimously decided to offer conditional support of this bill. We'd ask that it be amended to include all drivers and not be restricted to just minors. There is now empirical data showing that cell phone conversations (whether handheld or not) put the driver and other motorists at significant risk. A number of other states have now passed legislation outlawing the practice for all drivers, regardless of age.

We thank you for addressing this issue and urge you to consider expanding the bill to include all drivers. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

**Noah Hanson**

---

**From:** Ted R [htr@ak.net]
**Sent:** Friday, February 20, 2009 1:20 PM
**To:** Rep. Berta Gardner
**Subject:** Cell phone bill

Hi Berta:
I am especially interested in your bill to curb cell phone use while driving because, on February 21, 2006 I was hit by a car while crossing the street as a pedestrian. I had the green "walk" light, and the driver had a red light. She was talking on her cell phone and said that she looked left for oncoming traffic but didn't look right. I don't cross in front of a car at a crosswalk unless I know the driver has seen be -- and she looked right at me -- but said she didn't see me. She got a citation and I got a brain concussion!
Frankly, banning the use of cell phones while driving would suit me just fine. Your bill to prohibit drivers 18 or under from using cell phones is certainly a good first step.
Thank you!
Ted Ryberg

Anchorage
Police
Department
Employees
Association

Phone (907) 561-7500
P.O. Box 230330
Anchorage, Alaska 99523
500 West International Airport Road
Anchorage, Alaska
www.apdea.org

February 20, 2009

Members of the Alaska State Legislature:

The Anchorage Police Department Employees Association represents over 450 rank-and-file employees of the Anchorage Police Department. As President of the APDEA, I am writing in support of HB 15, which would ban the use of cell phones by minors operating a motor vehicle.

APDEA members see first hand the fatalities, injury, and property damage resulting from vehicular cell phone use by minors. Minors not only have the highest crash rates of any drivers, they are also involved in a highly disproportionate number of fatal accidents. When you add to the mix that minors are the most frequent cell phone users, a dangerous combination is created.

There is now a huge body of research on cell phones and driving. Studies both in this country and from places such as Canada and Australia consistently show that talking on cell phones quadruples a driver's chances of being involved in an accident. A recent study in Utah demonstrated that individuals talking on cell phones performed about as well at driving as individuals with a blood alcohol level of .08 percent. Major corporations such as Exxon/Mobil, DuPont, and Shell have become so concerned about safety and liability that they banned on-road use of cell phones by their employees during work hours. The Harvard Center for Risk Analysis estimates that 2,600 deaths and 12,000 serious injuries occur each year in highway crashes caused by cell phone use.

Inexperienced drivers using cell phones only heightens the risk. APDEA members would love to never again respond to a serious accident involving a teenage driver talking on a cell phone. HB 15 would help achieve that goal.

Sincerely,

Derek Hsieh
President
APDEA

**Jane Pierson**

**From:** Michele Czajkowski [mcz@mtaonline.net]

**Sent:** Friday, February 20, 2009 8:54 PM

**To:** Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

**Cc:** Sen. Gene Therriault; Rep. Mike Chenault; Rep. Mark Neuman; Rep. John Harris; Rep. Cathy Munoz; Rep. Berta Gardner; Rep. Les Gara; Rep. Chris Tuck; Rep. Craig Johnson; Rep. Bob Herron

**Subject:** HB 15: Ban Cell Phone Use by Minors When Driving

Dear Mr. Chairman, Madam Vice Chairman, and Members of the House Judiciary Committee:

I am contacting you to express my **strong** opposition to HB 15, "*An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date.*" HB 15 unfairly targets a very small percentage of the cell phone-using drivers in Alaska. Even if HB 15 were amended to include cell phone-using drivers of all ages, it would do nothing to address the real problem: inattentive driving.

I believe that the following position statement (please see below) from the National Motorists Association (http://www.motorists.org/distracted/) states my opinion very eloquently. I hope you will take a moment to read this before taking any action on HB 15.

Thank you for your time and consideration.

Sincerely,
Michele Czajkowski
894 N Angus Loop
Palmer, AK 99645
home phone: (907) 745-2399
cell phone: (907) 715-2291
(mailing address: PO Box 2517, Palmer, AK 99645)

cc: Sponsors of HB 15

# NMA Position On Distracted Driving

Every state, to our knowledge has some form of law that addresses inattentive driving. The cause of the inattentiveness is largely irrelevant.

It doesn't matter that the driver is distracted by a conversation with another vehicle passenger, tuning the radio, eating a snack, or talking on a cell phone. If the level of distraction reaches a point that the driver is no longer safely and responsibly driving his or her car they are guilty of inattentive driving, and other violations that may result from their inattentiveness. Inattentive driving, in all its forms, can best be addressed through educational forums and to a limited degree, enforcement activities.

Ultimately, it has to be recognized that most people do not want to be involved in a traffic accident. If they are sufficiently and frequently forewarned that "inattentiveness" is the leading

cause of all traffic accidents, the message may well take hold. Reinvesting public resources, that are now invested in "speed kills" campaigns and related enforcement excesses, into educational and public relations efforts focused on inattentive driving would be a far more productive use of these funds.

Pre-emptive laws that make otherwise innocent harmless acts illegal are pervasive and endemic in the United States. The girth and range of pre-emptive state and federal statutes are so extensive that it is literally impossible for the average citizen to function from day to day without violating multiple laws and regulations. This is particularly true for those persons driving motor vehicles on public roads.

Most of these pre-emptive laws are put in place for one of two reasons. The first is the belief that by making the innocent and harmless act illegal it will eliminate the possibility that this act will lead to another, actually harmful act. For example, the carrying of a concealed firearm actually harms no one. However, most states and local jurisdictions prohibit the carrying of concealed firearms under the theory that preventing the possession eliminates the possibility that the firearm would be used to cause harm.

The second reason, and the underlying reason for making the harmless use of cell phones illegal by vehicle operators, is ease of enforcement. A blanket prohibition of cell phone use by vehicle drivers is far easier to enforce than are inattentive driving laws. This eliminates the need for exercising thoughtful discretion and reasoned judgment. The issue appears black and white. That the cell phone user was causing no harm and endangering no one does not have to enter the decision making process. The NMA opposes this type of politically expedient enforcement practice. Innocent, harmless behavior, in and of itself, should not be illegal.

# Letter Of Support for HOUSE BILL NO. 15

As a parent and Drivers Education Instructor I support the House Bill Number 15 banning and prohibiting the use of cellular telephones by persons less than 18 years of age when driving a motor vehicle.

Parents should support laws against their teenage children using cell phones while driving, but they will have to do more than expect police to enforce such laws, they have to do some "enforcement" themselves.

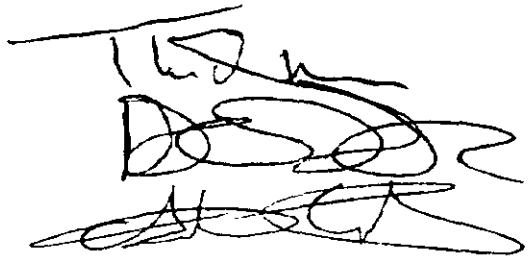
Young people may claim to be more adept at using electronic devices than their elders — and they probably are.

But they are also less experienced at driving, thereby increasing the danger of distractions, whether those distractions are talking on a cell phone, sending text messages, eating or selecting music while driving. In other words, parents can influence their teen's behavior — perhaps more than they realize. Therefore, it is important for parents to talk about phone use while driving, and also impose their own restrictions. Enforce that driving is a privilege not a right.

Motor Vehicle accidents are the fifth leading cause to all deaths in the country. Among teens however, motor vehicle accidents are the leading cause of death.

NSC (National Safety Council) says that while driving and talking on the phone puts drivers at four time's greater risk of a crash. NSC estimates that cell phone use while driving contributes to 6 percent of crashes.

Talking on a cell phone may be less distracting than other activities that people may engage in while driving, but the use of cell phones and texting is much more pervasive, making it more dangerous overall. As a parent I stand for this Bill to pass, we need to educate our teens. Even if that means putting them through a defensive driving course. Our children are the future. This change may not happen overnight but if parents and police enforce this law we will see that day when change has happened.



March 13, 2009

The Honorable Berta Gardner
Alaska State Capitol, Room 424
Juneau, Alaska 99801

Dear Representative Gardner:

We are pleased to offer the National Safety Council's support of HB15, an Act prohibiting the use of cellular telephones by minors while driving a motor vehicle, to be considered by the Alaska Legislature during its 2009 session.

The National Safety Council applauds the Alaska Legislature for considering HB15. This Act's prohibition of cellular telephone use by teens while driving in Alaska would be a major step toward improving the safety of its citizens. As "novice" drivers, teens lack driving experience and tend to ignore risks; consequently, they are proportionately involved in twice as many fatal crashes as drivers 35-74 years of age. This is why the NSC and many other transportation safety leaders advocate that Graduated Driver Licensing (GDL) laws include a ban on teen driver cell phone and text messaging use while driving. At present sixteen states have a similar provision in their teen driver licensing law.

It is estimated that 80% of preventable motor vehicle crashes are caused in part by some form of driver inattention. Scientific research has determined that talking on a cell phone increases a driver's risk of a crash by four times. One study has reported that text messaging while driving increased the odds of a crash by six times. We invite the Alaska legislature to consider further action restricting the use of cell phones for all drivers and offer you the following links to scientifically reliable information for your reference should you wish to consider such action.
http://www.nsc.org/resources/issues/factsheet.aspx
http://www.nsc.org/resources/issues/distracteddriving.aspx

The National Safety Council is a non-profit organization that saves lives at work, at home, in communities and on the roads through leadership, research, education and advocacy. During the last forty years, the NSC has trained over sixty million drivers in defensive driving techniques. Please contact John Ulczycki, NSC's Group Vice President for Research, Communications, and Advocacy (john.ulczycki@nsc.org or 630-775-2160) if we may offer further assistance.

Sincerely,

Janet Froetscher

Janet Froetscher
President & CEO

1025 Connecticut Avenue, N.W., Suite 1200 • Washington D.C. 20036-5405 •202-293-2270 • 202-293-0032 fax
Headquarters 1121 Spring Lake Drive• Itasca, IL 60143 • 630.285.1121 • 630.2851315 fax •www.nsc.org


**Elizabeth Moceri**
Regional Counsel
Northwest Region

March 16, 2009

Berta Gardner
House of Representatives
State Capitol, Room
Juneau, AK 99801-1182

Dear Rep. Gardner:

Thank you for your support of HB 15. Allstate applauds your efforts to keep our teens and all of us safe by removing distractions from the road.

Mounting research indicates – and common sense supports – that that the use of cell phones while driving, especially among young drivers, is highly dangerous. A study published in the British Medical Journal found that cell phone use while driving resulted in a four-fold increase in crashes. Young drivers not only have the least experience but drivers between ages 16 and 24 also display the highest rates of cell phone use while driving, according to a study by the National Highway Traffic Safety Administration (NHTSA).

In 2005, The Allstate Foundation conducted a national survey of teen driving attitudes and behaviors. In the survey, 56 percent of teens said they make and answer cell phone calls while driving, and 13 percent write and/or read text messages. With 12.5 million teen drivers in the U.S., that's 1.62 million drivers writing and/or reading text messages while operating their vehicle.

This is truly an issue where you can make a lifesaving difference for families in Alaska. We look forward to the opportunity to work with you.

Sincerely,

Elizabeth Moceri
Regional Counsel

**Allstate Insurance Company**
18911 North Creek Parkway, Suite 301, Bothell, WA 98011 425-489-5399 emoce@allstate.com

(HB 15)

" BAN Cell / PHONE USE BY MINORS."

MY NAME is ALBERT JUDSON
BOX 1151 HAINES, AK. 99827

ACCORDING TO SOME REPORTS THE USE of Cell PHONES CAUSES CANCER.

AS FOR THE USE OF Cell / PHONES WHILE driving - THERE IS ALREADY A LAW AGAINST driving W/ one HAND. I DON'T KNOW IF THAT'S STILL on THE BOOKS.

IT CAN be AMended TO MEAN Cell PHONE USE BY ANYONE WHILE driving. DOES ANYONE HAVE THE % OF ACCIDENTS WHILE driving & USING Cell PHONES?
I BELIEVE THE USE of Cell PHONES WHILE driving W/ 1 hand should be amended TO mean ANYONE not just minors.
I'd just like to ask why is there a focus on Minors? for example there

553 P.2d 40
553 P.2d 40
**(Cite as: 553 P.2d 40)**



Supreme Court of Alaska.
Elijah **COLEMAN**, Appellant,
v.
**STATE** of Alaska, Appellee.
**No. 2331.**

July 14, 1976.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage District, Peter J. Kalamarides, J., of two counts of rape and one count of robbery, and he appealed. The Supreme Court, Erwin, J., held that police officers acted reasonably in stopping defendant's automobile for investigation and thus evidence in plain view on floor of automobile was properly seized and admitted at defendant's trial; that indictment against defendant was not improper due to alleged irregularities which occurred during grand jury proceedings; and that ten-year sentence imposed by trial court was not excessive.

Affirmed.

Boochever, C. J., concurred with opinion in which Rabinowitz, J., joined.

West Headnotes

**[1] Arrest 35 ⇐63.5(4)**

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(3) Grounds for Stop or Investigation
35k63.5(4) k. Reasonableness; Reasonable or Founded Suspicion, Etc. Most Cited Cases
(Formerly 349k7(1), 35k3.1)

**Arrest 35 ⇐63.5(6)**

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(6) k. Motor Vehicles, Stopping. Most Cited Cases
(Formerly 35k63.1)

**Arrest 35 ⇐63.5(7)**

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(7) k. Mode of Stop; Warnings; Arrest Distinguished. Most Cited Cases
(Formerly 35k63.1)
Police officers, acting on information that strong-arm robbery was in progress or had just occurred near golf course, who, upon arriving at scene less than two minutes later, observed vehicle exiting from vicinity on little-used side road, driven by black man in a T-shirt who matched description of robbery suspect acted reasonably in stopping said vehicle to make investigation, and questioning of defendant by officers was not an arrest but was a reasonable course of action in light of circumstances and thus was lawful under the Fourth Amendment. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

**[2] Arrest 35 ⇐63.5(5)**

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(3) Grounds for Stop or Investigation

35k63.5(5) k. Particular Cases. Most Cited Cases
(Formerly 35k63.1)
Stopping and questioning of defendant who met description of robbery suspect would have been reasonable whether defendant was driving automobile or walking down street in area where crime was committed. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

**[3] Arrest 35 ⚿63.5(1)**

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(1) k. In General. Most Cited Cases
(Formerly 35k63.1)
In determining reasonableness of investigative stop, courts will not distinguish between persons who travel by automobile and those who travel by foot; in fact, there might be more justification for policeman stopping automobile leaving vicinity of suspected crime, for in such a situation, if action is not immediately taken, there is not likely to be another chance. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

**[4] Arrest 35 ⚿63.4(3)**

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(3) k. Suspicion or Rumor. Most Cited Cases
(Formerly 349k7(1))
Rule permitting temporary detention of suspects for questioning in certain cases, i. e., cases where police officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred, does not conflict with the Fourth Amendment or the State Constitution. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

**[5] Criminal Law 110 ⚿394.4(12)**

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k394 Evidence Wrongfully Obtained
110k394.4 Unlawful Search or Seizure
110k394.4(12) k. Vehicles. Most Cited Cases

**Searches and Seizures 349 ⚿63**

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k63 k. Plain View. Most Cited Cases
(Formerly 349k3.3(4))
Where police officers' investigatory stop of suspect driving automobile was proper under circumstances, bank bag which was in plain view on automobile's floor was legitimately seized and trial court did not err in refusing to suppress it as evidence at defendant's trial for robbery and rape. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

**[6] Criminal Law 110 ⚿1980**

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)1 In General
110k1980 k. In General. Most Cited Cases
(Formerly 110k700(1), 110k700)

**Grand Jury 193 ⚿34**

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
As officer of state, it is prosecutor's duty to be an advocate; he must exert his best efforts to prosecute successfully those who have violated the criminal law; on the other hand, as an officer of the court, he is required to act as grand jury's legal advisor, to aid but not to interfere in its determination of probability of guilt. Rules of Criminal Procedure, rule 6(i).

**[7] Grand Jury 193 ⚿33**

193 Grand Jury
193k33 k. Conduct of Proceedings in General. Most Cited Cases
Grand jury proceedings cannot be turned into a minitrial; grand jury is an accusatorial body operating without judicial officer to pass on admissibility of evidence, and as such is charged with determination of probability of guilt.

**[8] Grand Jury 193 ⚿34**

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
District attorney's statements to grand jury upon their request for indication of what medical examination of alleged rape victim showed after incident indicating that he did not think calling a doctor was necessary and that he thought jury had heard enough to have person tried and that " * * * we can't go calling in experts on every case." were not an improper attempt by prosecutor to influence grand jury, particularly where assistant district attorney immediately reinstructed grand jurors on standard for determining sufficiency of evidence after exchange. Rules of Criminal Procedure, rules 6(i, r).

**[9] Grand Jury 193 ⚿34**

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
Where not all of grand jurors expressed need to hear additional testimony from examining physician as to victim's condition subsequent to alleged rape, district attorney's failure to subpoena examining physician upon jury foreman's request for information as to results of such examination was not error, particularly in light of fact that district attorney specifically instructed grand jury that they had right to call any witnesses they wanted.

**[10] Criminal Law 110 ⚿2132(1)**

110 Criminal Law
110XXXI Counsel
110XXXI(F) Arguments and Statements by Counsel
110k2129 Comments on Accused's Silence or Failure to Testify
110k2132 Comments on Failure of Accused to Testify
110k2132(1) k. In General. Most Cited Cases
(Formerly 110k721(1))

**Witnesses 410 ⚿297(1)**

410 Witnesses
410III Examination
410III(D) Privilege of Witness
410k297 Self-Incrimination
410k297(1) k. In General. Most Cited Cases
Right not to be compelled in any criminal case to be witness against oneself is secured by the Fifth Amendment, and implicit in this right is notion that when an ac-

cused person chooses to exercise his right to silence, such silence may not be commented upon. Const. art. 1, § 9; U.S.C.A.Const. Amend. 5; Rules of Criminal Procedure, rule 26(b)(6).

**[11] Grand Jury 193 ⚿36.8**

193 Grand Jury
193k36 Witnesses and Evidence
193k36.8 k. Scope of Proof; Admissibility. Most Cited Cases
(Formerly 193k36)
Under compelling circumstances, use of hearsay evidence may be permitted at grand jury proceeding even though such evidence would not be admissible at trial. Rules of Criminal Procedure, rule 6(q, r).

**[12] Grand Jury 193 ⚿34**

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
District attorney did not commit error by inquiring of police officer at grand jury proceeding whether accused had made any statement after arrest even though accused had exercised his Fifth Amendment right to remain silent after arrest. U.S.C.A.Const. Amend. 5; Rules of Criminal Procedure, rule 6(r).

**[13] Sentencing and Punishment 350H ⚿201**

350H Sentencing and Punishment
350HII Sentencing Proceedings in General
350HII(A) In General
350Hk201 k. Duties of Court or Judge in General. Most Cited Cases
(Formerly 110k977(1))
Primary responsibility for sentencing rests in trial court.

**[14] Rape 321 ⚿64**

321 Rape
321III Sentence and Punishment
321k64 k. Nature and Extent of Punishment. Most Cited Cases

**Robbery 342 ⚿30**

342 Robbery
342k30 k. Sentence and Punishment. Most Cited Cases
Imposition of ten-year sentence on defendant convicted of two counts of rape and one count of robbery was not excessive.
***42** Brian Shortell, Public Defender, and Phillip P. Weidner, Asst. Public Defender, Anchorage, for appellant.

Avrum M. Gross, Atty. Gen., Juneau, and Joseph D. Balfe, Dist. Atty. and Stephen G. Dunning and Ivan Lawner, Asst. Dist. Attys., Anchorage, for appellee.

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, ERWIN and BURKE, JJ.
ERWIN, Justice.

Elijah Coleman appeals from a conviction on two counts of rape and one count or robbery. Three issues are presented in this appeal: first, whether the trial court erred in failing to suppress evidence which was utilized in securing Coleman's conviction; second, whether the indictment against Coleman should have been dismissed because of alleged irregularities which occurred during the grand jury proceedings; and third, whether the sentence imposed by the trial court was excessive.

In August, 1973, Mrs. S. was employed as

a sales clerk in the Salvation Army Store at Sixth and H Streets in Anchorage, Alaska. Because the family car was being repaired, she normally took a bus to her job and, since she usually got off work after the buses had ceased running for the evening, walked to her home near the Russian Jack Springs area.

On the evening of August 15, Mrs. S. left the downtown area at about 7:45 p.m., carrying with her among other items a blue First National Bank money bag with approximately $18.00 of the Salvation Army's money for safekeeping. As she walked along a wooded ski trail through the Russian Jack Springs area, she was attacked from behind by a man, forced off the trial, pushed to the ground, and raped. Subsequently, the assailant asked Mrs. S. whether she had any money, and she surrendered the blue bank bag. Upon being released, she ran home and immediately reported the incident to the Anchorage Police Department by telephone.

The police dispatcher received her call at 9:30 p.m. and immediately relayed it by radio to Officers Walker and Swensen who were riding together on patrol about three-quarters of a mile from the Russian Jack Springs area. The message reached the officers as a 'Code 4' dispatch (indicating a crime in progress or one that has just occurred) to investigate a 'strongarm' robbery, i.e., a robbery accomplished by force but without weapons, which had just taken place near the Russian Jack Springs Golf Course. The dispatch also contained the following information: that the suspect was a short[FN1] black man wearing a white T-shirt and levis, carrying a blue bank bag containing stolen cash, who had left the scene of the crime in a northbound direction. The dispatch did not contain any information concerning the suspect's mode of transportation.

> FN1. Another account was that the dispatch described the suspect as either 5 6 or 5 7 tall, and Coleman states that his height is actually 5 11 .

Although the officers were dispatched to the victim's house, since it was such a short time after the call Officer Walker decided to swing through the Russian Jack Springs area to see if he could intercept the suspect. The officers proceeded to the turnoff to the Russian Jack Springs Golf Course, north of the scene of the crime, and arrived within 1 to 1 1/2 minutes after the police call. There they observed a yellow Fairlane automobile leaving an infrequently used area[FN2] east of the driveway, ***43** headed west. As the two vehicles approached each other from opposite directions, the officers saw that the driver of the automobile, who was operating the car in a legal manner, was black, was wearing a white T-shirt, and 'looked short.' One of the officers noted that the driver's facial expression showed a marked reaction to the officers' observations. The officers then made a U-turn and halted the automobile in the manner of a routine traffic stop. The officers radioed that they had stopped the suspect; it was 9:32 p.m. The officers approached the car and the driver was asked for his driver's license. The suspect exited from his car, whereupon Officer Walker observed a blue bank bag on the front floor of the passenger seat. At that point the suspect, identified as Elijah Coleman, was arrested and the bag was seized as evidence.

> FN2. This area was not a parking lot, but rather a wide spot in the road that was sometimes, but not normally, used as a parking area.

The grand jury indicted Coleman for rape, sodomy and robbery. Prior to trial he brought motions to dismiss the indictment and to suppress the evidence of the stolen property. Both were denied. Coleman was tried by a superior court jury in April, 1974, and was convicted on the rape and robbery counts but acquitted of the charge of sodomy. Thereafter, he entered a plea of guilty to another charge of rape involving a different victim. The trial court sentenced him, in essence, to ten years imprisonment; and he now appeals from his conviction and sentence.

I. THE INVESTIGATIVE STOP

It is not disputed that probable cause to arrest Coleman existed once the police knew of the existence of the blue bank bag in the front seat of his vehicle. Coleman contends, however, that the police used constitutionally impermissible procedures in discovering the bank bag; specifically, he asserts that the officers had no right to stop his automobile in the first place. The State, on the other hand, argues that the officers' actions in halting Coleman's car were justified under the 'investigative stop' doctrine and thus the bag, which was in plain view when Coleman exited the vehicle, was properly seized.

In two previous cases involving investigative detention not at first amounting to an arrest, this court recognized the principle that a police officer with a reasonable suspicion that imminent public danger exists or serious harm that has recently occurred was caused by a particular person may stop that person. In Goss v. State,[FN3] a state police officer on patrol shortly after midnight just outside of Anchorage observed a car drive away from the side of a building where a distributorship business was located and proceed for about half a block without its headlights on. The officer followed the car, and after it had turned around and headed in the opposite direction, stopped it. The court concluded that the officer was in his lawful authority in making the stop:

> FN3. 390 P.2d 220 (Alaska 1964), cert. denied, 379 U.S. 859, 85 S.Ct. 118, 13 L.Ed.2d 62 (1964).

When the officer stopped the car he was doing nothing more than conducting an investigation in response to circumstances that aroused his suspicions. Considering the lateness of the hour, the fact that the car was seen coming from the side of the building rather than from the parking lot in front, and that it was being driven without its headlights on, we believe the police officer had the right and the duty to make a prompt investigation, which required him as a matter of practical necessity to stop the car and question the occupants.[FN4]

> FN4.Id. at 224.

In Maze v. State,[FN5] a city police officer observed the defendant standing on a window sill and holding onto the top of a metal grillwork on the window of a loan company office. The officer shined his flashlight on the defendant, who alighted and walked toward a nightclub. As the defendant neared the entrance of the club, the officer shouted and ran after him. The defendant had run into the club's outside***44** entrance when the officer grabbed him. The officer asked him what he was doing on the window sill of the loan company, and the defendant said he did not know what the officer was talking about. The officer then noted that the window of the loan company office was broken and arrested the defendant. The court noted that

cause existed for the stop and for the arrest, stating:

> FN5. 425 P.2d 235 (Alaska 1967).

In Goss v. State we held that police officers have the right to stop and question a person under suspicious circumstances, and if probable cause is then found to exist, the person may be arrested.[FN6]

> FN6. Id. at 238 (footnote omitted). The reasoning of Goss and Maze was grounded in Art. I, s 14 of the Alaska Constitution.

Subsequent to our decisions in Goss and Maze, the United States Supreme Court in Terry v. Ohio[FN7] likewise adopted the 'investigative stop' concept. In Terry a Cleveland detective with 39 years of experience watched two men alternatively leave a corner on which the other was stationed, walk up a particular street, peer into the window of either a jewelry store or an airline office, and then return to the corner to converse with the other. This procedure was repeated several times by both men. During this time a third man approached the corner, spoke briefly with the two men, and departed. The two men then left the corner and again met the third man on another street. The detective was apprehensive about their actions and suspected them of planning a robbery or burglary. The detective approached the three men, identified himself, and asked for their names. Receiving only a mumbled response, he 'frisked' the men and discovered fully-loaded weapons on two of them. Both men were convicted of the offense of carrying a concealed weapon.

> FN7. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In upholding Terry's conviction[FN8] the court recognized,

> FN8. Following the grant of the writ of certiorari, the other petitioner died.

. . . that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.[FN9]

> FN9. Id. 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906-07 (1968).

The court, however, rejected the notion that such an investigatory stop and limited search was not subject to the requirements of the Fourth Amendment. The court stated that the central inquiry under the Fourth Amendment is to 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'[FN10]Thus the governmental intrusion is subject to the Fourth Amendment, and:

> FN10. Id. 392 U.S. at 19, 88 S.Ct. at 1878, 20 L.Ed.2d at 904.

'Search' and 'seizure' are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or 'full-blown search.'

In this case there can be no question, then that Officer McFadden 'seized' petitioner and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing.[FN11]

FN11.Id.

The court refused to apply the requirement of 'probable cause' contained in the Fourth Amendment to such police actions. The court limited the requirement of probable cause to situations which historically have been and practically are subject to the warrant procedure.

But we deal here with an entire rubric of police conduct-necessarily swift action predicated upon the on-the-spot observations of the officer on the beat-which historically has not been, and as ***45** a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.[FN12]

FN12. Id. 392 U.S. at 20, 88 S.Ct. at 1879, 20 L.Ed.2d at 905 (emphasis added; footnote omitted).

Using the general test of balancing the governmental interest justifying the official intrusion against the invasion of the constitutionally protected interests of the private citizen, the court concluded that:

. . . the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. . . . And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?[FN13]

FN13. Id. 392 U.S. at 21-22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906 (footnote omitted).

Four years later the United States Supreme Court in Adams v. Williams[FN14] devoted some consideration to the justification for a 'stop' as a separate issue. In Adams a police officer was alone early in the morning in a high-crime area when a known informer approached his cruiser and told him that an individual seated in a nearby vehicle was carrying narcotics and a gun at his waist. After calling for assistance on his radio, the officer approached the vehicle to investigate the informant's tip. The officer tapped on the car window and asked the occupant to open the door. When the man rolled down the window instead, the officer reached into the car and removed a fully-loaded revolver from the occupant's waistband. He was then arrested for unlawful possession of the hand gun, and a search incident to the arrest disclosed that he was carrying heroin. The court concluded 'that the policeman's actions . . . conformed to the standards . . . laid down' in Terry.[FN15]

FN14. 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

FN15. Id. 407 U.S. at 145, 92 S.Ct. at 1923,32 L.Ed. at 616.

Noting that

. . . Terry recognizes that it may be the essence of good police work to adopt an intermediate response (between an arrest based on probable cause and simply allowing a crime to occur),

the intermediate response being a 'reasonable investigatory stop,' the court stated:
A brief stop of a suspicious individual, in order to determine his identity or to main-

tain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.[FN16]

> FN16. Id. 407 U.S. at 146, 92 S.Ct. at 1923, 32 L.Ed.2d at 617 (citations omitted).

With the foregoing in mind we proceed to the facts of the case at bar.[FN17]

> FN17. The only other case in which the United States Supreme Court has applied the 'stop and frisk' criteria is United States v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). In Brignoni-Ponce, the only issue presented was whether a roving patrol could stop a vehicle in an area near the border and question its occupants when the only ground for suspicion was that the occupants appeared to be of Mexican ancestry. Although the court ultimately held that the particular stop was unjustified, there was an extended discussion of the purpose and principles of the 'investigative stop' doctrine. The only post-Terry case arising in Alaska wherein the problem of investigative stops is touched upon is that of Mattern v. State, 500 P.2d 228 (Alaska 1972). In Mattern the majority opinion made the following observation at footnote 15:
>
> Our brother Erwin in his concurring opinion concludes that the police action in this case was legitimate under the stop and frisk doctrine enunciated by the Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). We do not feel that this case is a proper vehicle for discussion of the stop and frisk question. There is language in our opinion in Goss v. State, 390 P.2d 220 (Alaska 1964), which approves of the stop and frisk practice. However, we note that, unlike many jurisdictions which allow this practice, Alaska does not have a statute authorizing the police to forcibly stop a citizen on less than probable cause to arrest. It should also be noted that several members of the United States Supreme Court have begun to re-evaluate the Terry opinion. In a recent opinion Justice Brennan expressed the same concern of Judge Friendly that, unless it is held in check, there is a danger that 'Terry will have opened the sluicegates for serious and unintended erosion of the protection of the Fourth Amendment.' Adams v. Williams, 407 U.S. 143, 153, 92 S.Ct. 1921, 1927, 32 L.Ed.2d 612 (1972) (dissenting opinion).
>
> It is noted that the particular concern expressed by Justice Brennan and Judge Friendly, quoted in the Mattern opinion, was that the doctrine of stop and frisk enunciated in Terry should not be extended beyond situations requiring immediate police response to protect the public in serious cases where there is likelihood of imminent danger about to occur or where serious harm has recently been perpetrated to persons or property. While we agree with the view expressed by Justice Brennan and Judge Friendly, their concern is not applicable in the case at bar.

***46** Within minutes after receiving information that a strong-arm robbery was in progress or had just occurred near the Russian Jack Springs Golf Course, the officers proceeded to the area in which the crime had been committed. Upon arriving at the scene less than two minutes later, they observed a vehicle exiting from Russian Jack Springs Park on a little-used side road, driven by a black man in a T-shirt who appeared to be short. Having been informed by the radio dispatch that the suspect had these physical characteristics, the officers stopped the car.

[1][2][3] In light of the facts known to the officers, we think that they 'had the right and the duty to make a prompt investigation which required (them) as a matter of practical necessity to stop the car and question'[FN18] Coleman. The stopping and questioning of Coleman by the officers was not an arrest but was a reasonable course of action in light of the circumstances confronting them; and being reasonable, it was lawful under the Fourth Amendment to the United States Constitution and Art. I, s 14 of the State Constitution.[FN19]

> FN18. Goss v. State, 390 P.2d 220, 224 (Alaska 1964), cert. denied, 379 U.S. 859, 85 S.Ct. 118, 13 L.Ed.2d 62 (1964).
>
> FN19. Had Coleman been walking down the same street, we think it would have been reasonable for the officers to take the opportunity to question him about his activities in the area. We are unwilling to distinguish between persons who travel by auto and those who travel by foot. In fact, there might be more justification for a policeman stopping an automobile leaving the vicinity of a suspected crime, for in such a situation, if action is not immediately taken, there is not likely to be another chance.

[4] We do not believe that our rule permitting temporary detention for questioning in certain cases, i.e., cases where the police officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred, conflicts with the Fourth Amendment [FN20] or the State Constitution.

> FN20. The concept of an 'investigative stop' under suspicious circumstances is not a novel one, and there were a number of cases which predated our decisions in Goss v. State, 390 P.2d 220 (Alaska 1964), and Maze v. State, 425 P.2d 235 (Alaska 1967), and the United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). See U. S. v. Rios, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); U. S. v. Vita, 294 F.2d 524 (2nd Cir. 1961); U. S. v. Bonanno, 180 F.Supp. 71 (D.C.N.Y.1960); People v. Mickelson, 59 Cal.2d 448, 30 Cal.Rptr. 18, 380 P.2d 658 (1963); People v. Gibson, 220 Cal.App.2d 15, 33 Cal.Rptr. 775 (1963); State v. Gulczynski, 120 A. 88 (Del.1922); Cornish v. State, 215 Md. 64, 137 A.2d 170 (1957); and State v. Hatfield, 112 W.Va. 424, 164 S.E. 518 (1932). For a survey of recent decisions, see U. S. v. Collins, 532 F.2d 79, 19 Crim.L.Rep. 2008 (8th Cir. 1976); U. S. v. Hall, 525 F.2d 857 (D.C.Cir. 1976); U. S. v. Miller, 468 F.2d 1041 (4th Cir. 1972); State v. Kelly, 543 P.2d 780 (Ariz. 1975); People v. Atmore, 13 Cal.App.3d

244, 91 Cal.Rptr. 311 (1970); and People v. Whalen, 213 N.W.2d 116 (Mich.1973).

It strikes a balance between a person's interest in immunity from police interference and the community's interest in ***47** law enforcement. It wards off pressure to equate reasonable cause to investigate with reasonable cause to arrest, thus protecting the innocent from the risk of arrest when no more than reasonable investigation is justified.[FN21]

FN21. People v. Mickelson, 59 Cal.2d 448, 30 Cal.Rptr. 18, 380 P.2d 658, 660 (1963).

[5] Having found that the investigatory stop was proper under the circumstances, we conclude that the bank bag which was in plain view was legitimately seized and the trial court did not err in refusing to suppress it as evidence.

II. Grand Jury Proceedings

Although no provision of the United States or Alaska Constitutions specifically guarantees the right of an accused to be indicted by a grand jury free of prosecutor instigated prejudice, a strong historical basis exists for holding that the grand jury should operate to control abuses by the government and protect the interests of the accused.[FN22]

FN22. Johnston, 'The Grand Jury-Prosecutorial Abuse of the Indictment Process,' 65 J.Crim.L. and Criminology, 157-69 (1974).

Article I, s 7, of the Alaska Constitution provides that '(n)o person shall be deprived of life, liberty or property without due process of law.'The Hawaii Supreme Court in State v. Joao,[FN23] and the Arizona Court of Appeals in State v. Good,[FN24] have held that a defendant was denied due process of law when indicted by a grand jury prejudiced by the prosecutor.

FN23. 53 Haw. 226, 491 P.2d 1089 (1971).

FN24. 10 Ariz.App. 556, 460 P.2d 662 (1969).

The United States Supreme Court has not ruled on the issue but has inferred that a defendant is entitled to have an indictment returned by an impartial tribunal. In Lawn v. United States,[FN25] the Supreme Court said:

FN25. 355 U.S. 339, 349, 78 S.Ct. 311, 318, 2 L.Ed.2d 321, 330 (1958).

An indictment returned by a legally constituted nonbiased grand jury . . . is enough to call for a trial of the charge on the merits. (Emphasis added)
Then, in Beck v. United States,[FN26] the Supreme Court indicated that it may be willing to extend due process protections to the indictment procedures established by the states:

FN26. 369 U.S. 541, 546, 82 S.Ct. 955, 8 L.Ed.2d 98, 105 (1962).

It may be that the Due Process Clause of the Fourteenth Amendment requires the State, having once resorted to a grand jury procedure, to furnish an unbiased grand jury. . . .

Article I, s 8 of the Alaska Constitution states that '(n)o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.'Alaska Rule of Crim-

inal Procedure 6(i) sets out the duties of the District Attorney during a grand jury proceeding as follows:

The prosecuting attorney shall prepare all indictments and presentments for the grand jury and shall attend to their sittings to advise them of their duties and to examine witnesses in their presence.

The same duties are stated in AS 12.40.070.

[6] It is the prosecutor's function to prepare indictments, present evidence thereon, and advise the grand jury.[FN27] It has been noted that the modern prosecutor in performing this function plays two, sometimes inconsistent, roles.[FN28] As an officer of the State, it is the prosecutor's duty to be an advocate; he must exert his best efforts to prosecute successfully those who had violated the criminal law. On the other hand, as an officer of the court, he is required to act as the grand jury's legal advisor, to aid but not interfere in its determination of the probability of guilt.

FN27. Alaska Criminal Rule 6(i).

FN28. See Comment, Grand Jury Proceedings, The Prosecutor, The Trial Judge, and Undue Influence, 39 U.Chic.L.R. 761-765 (1972).

***48** The American Bar Association Standards characterize the prosecutor's function in the grand jury process as follows:

Relations with Grand Jury

(a) Where the prosecutor is authorized to act as legal advisor to the grand jury he may appropriately explain the law and express his opinion on the legal significance of the evidence but he should give due deference to its status as an independent legal body.

(b) The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.

(c) The prosecutor's communications and presentations to the grand jury should be on the record.[FN29]

FN29. ABA Project on Standards Relating to the Prosecution Function and the Defense Function, s 3.5 at 87 (Approved Draft 1971). The commentary to this section notes that

where the prosecutor must prosecute an indictment returned by the grand jury, it is especially important that he be free to express his opinion. A prosecutor who had conducted an adequate investigation and analyzed the evidence is in a position to furnish guidance to the grand jury on the law and the weight of the evidence and should be free to do so whether this leads to a determination to indict or not to in- dict.

The commentary cautions that the prosecutor should not 'take advantage of his role as an ex parte representative of the State before the grand jury to unduly or unfairly influence it in voting on charges before it.'Id. at 88.

[7] It is apparent that the grand jury proceedings cannot be turned into a minitrial. The grand jury is an accusatorial body operating without a judicial officer to pass on

the admissibility of evidence, and as such is charged with a determination of the probability of guilt.[FN30]

> FN30. See Taggard v. State, 500 P.2d 238 (Alaska 1972); Burkholder v. State, 491 P.2d 754 (Alaska 1971).

[8] In the instant case, the grand jury's deliberation was interrupted by a request from the grand jury foreman to the district attorney. The following exchange took place:

THE FOREMAN: We haven't finished deliberating yet, but our question basically is, was there an examination of the victim in relationship to the rape charge and sodomy charge?

DISTRICT ATTORNEY: Yes.

THE FOREMAN: Can we get-is there anyone here without belaboring and looking for other witnesses, is there anyone here who can tell us what the results of these examinations were?

DISTRICT ATTORNEY: I can't tell you anything. It would have to be the doctor. He can give you the. . . .

THE FOREMAN: Well, it is in the police records?

DISTRICT ATTORNEY: I can give you the records, yes. I don't know if you can read it.

THE FOREMAN: No.

DISTRICT ATTORNEY: I mean you have them for whatever they're worth.

THE FOREMAN: No, but I mean can a-I don't feel during deliberations that the particular question that's being answered would warrant waiting to hear from a doctor. Can't the police department or one of the officers here indicate to us whether by examination there was indication of rape and sodomy or not?

DISTRICT ATTORNEY: No, that would be hearsay.

UNIDENTIFIED JUROR: The doctor is the only one that could present that testimony?

DISTRICT ATTORNEY: Yes. We can give you the lab sheets, but that's not going to tell you anything. I've looked at them.

THE FOREMAN: Can you tell us whether or not there was any indication from the. . . .

***49** DISTRICT ATTORNEY: I can't tell you because that would be hearsay too and I'm not even testifying.

THE FOREMAN: Can you help us out in any manner, ways or means other than calling a doctor in. . . .

DISTRICT ATTORNEY: No.

THE FOREMAN: . . . as to the answering of our question?

DISTRICT ATTORNEY: I don't think calling a doctor is needed. I think you've heard enough to have this person tried. I don't think there's-well, I haven't talked to the doctor. I don't know anything but what I've seen from these reports. (Emphasis added)

UNIDENTIFIED JUROR: I'd like to say something, but I don't know if I should or not. I don't think we're going to have justice in voting-or not justice really-I don't think we're going to get a proper vote if we don't hear from a doctor personally.

DISTRICT ATTORNEY: Well, now you've got to remember you're not trying these people.

UNIDENTIFIED JUROR: Well, I know it but we. . . .

DISTRICT ATTORNEY: And we can't go calling in experts on every case. You've heard a victim tell you this. If you don't-you know what the burden of proof is. If it's unexplained-or uncontradicted, if it would merit a conviction, then you come out with a true bill and you've heard her testimony and you found-you've had an officer testify he found the defendant right where she said he would be and he had the bag and I don't think it. . . .

UNIDENTIFIED JUROR: Then it's up to him to disprove it, right?

DISTRICT ATTORNEY: Well, not that necessarily. We still have to show you enough proof here to warrant the indictment. He never has to come in and prove his innocence, but you can't expect us to put on the trial that we have put on in front of the petit jury. But now. . . .

UNIDENTIFIED JUROR: If there were a trial. . . .

DISTRICT ATTORNEY: . . . you certainly have a right to call any witnesses you want.

UNIDENTIFIED JUROR: If there were a trial the doctor would testify.

DISTRICT ATTORNEY: Oh, yes. (Emphasis added)

Coleman objects to two statements by the district attorney during this exchange: 'I think you've heard enough to have this person tried' and '. . . we can't go calling in experts on every case.'Both of these allegedly improper statements by the district attorney and the whole exchange set out above show undue prosecutorial influence over the grand jury, according to Coleman.

The Alaska case dealing most directly with undue prosecutorial influence is Anthony v. State.[FN31] The court did not rule on the issue since it was not raised at trial but stated in a footnote:

FN31. 521 P.2d 486 (Alaska 1974).

We note with disapproval comments made and solicited by the district attorney before the grand jury, referring to matters which would not have been admissible at trial. The district attorney emphasized Anthony's prior criminal record, adverted to the results of polygraph examinations, expressed his suspicion that Anthony was involved in Fairbanks drug traffic, related evidentiary details of the potential narcotics case being prepared by his office, introduced speculative testimony that a witness fled to New Orleans out of fear of Anthony, and stated, utterly without evidentiary support, that '(W)e know he's been given contracts (to kill). . . .' We cannot condone such conduct, and we direct the district attorney's attention to s ***50** 3.5(b) of the American Bar Association Standards Relating to the Prosecution Function (Approved Draft 1971): 'The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.'[FN32]

FN32. Id. at 496, note 37.

The statements made by the district attorney in the instant case are clearly not as egregious as those condemned by this court in Anthony. After viewing the entire proceeding, we are unable to find the portion

challenged by Coleman was an improper attempt by the prosecutor to influence the grand jury, particularly where the assistant district attorney immediately reinstructed the grand jurors on the standard for determining the sufficiency of the evidence as follows:

. . . You've heard a victim tell you this. If you don't-you know what the burden of proof is. If it is unexplained-or uncontradicted, it would merit a conviction, then you come out with a true bill-[FN33]

> FN33. Alaska Rule of Criminal Procedure 6(q) states in pertinent part: 'The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.'

UNIDENTIFIED JUROR: Then it's up to him to disprove it, right?

DISTRICT ATTORNEY: Well, not that necessarily. We still have to show you enough proof here to warrant the indictment.

[9] We similarly find that the district attorney's failure to subpoena the examining physician was not error. Not all of the jurors felt the need to hear additional testimony from the examining physician. The jury foreman stated:

No, but I mean-I don't feel during deliberations that the particular question that's being answered would warrant waiting to hear from a doctor.

Furthermore, the district attorney specifically instructed the grand jurors that, 'You certainly have the right to call any witnesses you want.'A fair reading of the grand jury record demonstrates that, while not in the most prudent prosecutorial tradition, the actions of the prosecuting attorney cannot be said to have improperly influenced the grand jury.

[10] Coleman also contends that the district attorney commented to the grand jury on his exercise of his constitutional right to remain silent after arrest. The right not be compelled in any criminal case to be a witness against oneself is secured by the Fifth Amendment of the United States Constitution and Art. I, s 9, of the Alaska Constitution. Implicit in this right is the notion that when an accused person chooses to exercise his right to silence, such silence may not be commented upon.[FN34]

> FN34. See, for example, Alaska Rule of Criminal Procedure 26(b)(6):
>
> If the accused in a criminal action exercises his or her privilege not to testify or to prevent another from testifying.
>
> (i) no person shall make any comment thereon, and
>
> (ii) no presumption shall arise with respect to the exercise of the privilege, and
>
> (iii) no adverse inference shall be drawn therefrom by the trier of fact.

The disputed comment arose in the following context when the district attorney was interrogating Officer Walker, the policeman who arrested Coleman:

DISTRICT ATTORNEY: Did the man make any statement to you?

WALKER: No, he didn't say a word during

the entire contact.

DISTRICT ATTORNEY: I have no further questions.

THE FOREMAN: Do any of the grand jurors have any questions?

By Unidentified Jurors:

Q: He said what?

WALKER: He didn't say anything. Not-during the whole time I talked to ***51** him. He didn't give me his name, didn't give me his address, nothing. I advised him of his rights and he didn't even acknowledge having been advised of them, just sat in the car.

Q: Was there ever a statement made?

WALKER: Not to my knowledge. Another officer transported him to the jail and booked him in and he didn't talk to that officer, wouldn't give him his address in there either.

Q: I don't quite understand. You mean the man has never been questioned on this charge?

WALKER: I didn't question him that night and there's nothing in the entire report to indicate that the investigators followed it up and questioned him. He was given an opportunity to talk, but he wouldn't say anything.

THE FOREMAN: What-excuse me. What's the law on that, Chuck, after they're advised of their rights? Apparently they don't have to say anything at all regardless of how much investigating or questioning, am I correct or . . ..

DISTRICT ATTORNEY: That's correct, yes.

THE FOREMAN: In other words he can sit there and not say anything, hum?

WALKER: That's right.

[11] Coleman faults the district attorney for presenting the arresting police officer as a witness without first ascertaining whether the accused had chosen to remain silent after the arrest. If informed that the accused had exercised his Fifth Amendment right to silence, Coleman contends that the prosecutor should not have questioned the officer on this issue before the grand jury. Coleman compares this to the situation where the prosecutor compels the appearance of an accused before the grand jury with prior knowledge that the accused will rely on his privilege not to testify. Standard 3.6(e) of the American Bar Association's Standards Relating to the Prosecution Function addresses itself to this situation:

The prosecutor should not compel the appearance of a witness whose activities are the subject of the (grand jury) inquiry if the witness states in advance that if called he will exercise his constitutional privilege not to testify.[FN35]

> FN35. ABA Project on Standards Relating to the Prosecution Function and the Defense Function, s 3.6 at 88 (Approved Draft 1971).

Coleman claims that by putting information about his silence after arrest before the grand jury, the district attorney prejudiced his case with evidence which would be inadmissible at trial. Coleman points to Alaska Rule of Criminal Procedure 6(r), which provides in part: 'Evidence which would be legally admissible at trial shall be admissible before the grand jury,' and he argues that this rule must be read to imply its inverse: evidence which would not be

legally admissible at trial shall not be admissible before the grand jury. However, this proposition does not seem to be supported by Criminal Rule 6(r) itself:

Hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

Thus, Rule 6(r) permits in compelling circumstances the use of hearsay evidence which would not be admissible at trial. In State v. Parks,[FN36] this court upheld an indictment based entirely on hearsay. In Galauska v. State, [FN37] this court stated that hearsay evidence that would be inadmissible at trial could be introduced to the grand jury when there was a compelling justification. Thus, Alaska Rule of Criminal Procedure 6(r) would not seem to prohibit the admission of evidence of Coleman's***52** silence after arrest on the sole ground that such evidence would not be admissible at trial.

FN36. 437 P.2d 642, 645 (Alaska 1968).

FN37. 527 P.2d 459 (Alaska 1974).

[12] The State argues that the district attorney did not commit error by inquiring of the police officer whether Coleman had made any statement after arrest for the following reasons: Alaska Rule of Criminal Procedure 6(q) provides that the grand jury may require the prosecuting attorney to subpoena witnesses when it has reason to believe that other available evidence will explain away the charge.[FN38] In order to determine whether other available evidence will explain away the charge, the grand jury had the right to know if the defendant had made any exculpatory statements to the police. The district attorney properly questioned the police officer on this matter and immediately dropped the questioning when he was told that no statement had been made. It was the jurors who took up the questioning. Furthermore, questioning of the district attorney by the grand jury foreman showed that the latter understood that a defendant has a right to remain silent upon arrest. This understanding was reinforced for all the jurors by the district attorney.

FN38. Alaska Rule of Criminal Procedure 6(q) states in part:

When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses.

We find, therefore, that there were no such irregularities which occurred during the grand jury proceeding as to warrant reversal.[FN39]

FN39. We take this opportunity to express the view that there is evidence that the grand jury indictment process may no longer be fulfilling its intended functions, and recommendations have been made that it should be replaced by the preliminary hearing procedure. In this regard, see Rubinstein, The Grand Jury in Alaska: Tentative Recommendations to the Judicial Council (1975).

III. Sentence Review

At the conclusion of the sentencing hear-

ing, the trial judge imposed a sentence of ten years on each of the rape counts, and a sentence of seven and one half years on the robbery count, all sentences to run concurrently. Coleman contends that this sentence is excessive.

The presentence report reflects that Coleman was born in 1951, the oldest of four children. His youth was spent in Tuskegee, Alabama, where he was raised by his parents and grandparents. Coleman did not complete high school, having dropped out after the 11th grade, but he subsequently received his General Equivalency Diploma through a course in Alabama. In 1971 he joined the United States Army and received an honorable discharge in 1973. At sentencing, it was disclosed that Coleman, who was unemployed at the time the offenses in question occurred, did not have any prior record, was not a user of drugs, and was only a social drinker.

The presentence report which was furnished to the trial court prior to sentencing contains a written statement by Coleman which provides in part as follows:

I've never raped or robbed anybody in my entire life. But, I was convicted of something I didn't do. I didn't get an honest verdict from my jury. Any honest person could see that. I didn't rape either of those two women and nobody proved in court that I did.

In imposing what was in essence a term of ten years imprisonment, the trial judge stated:

Your attorney indicated that it would take some time for you, perhaps, to be rehabilitated and recommended to the court certain matters in which he felt that you could become rehabilitated and become a good citizen. I hope that you can be. But at the present time, because of the nature of the offense, I find that you are, in fact, a danger to this community. I will tell you that I would have unhesitatingly followed the recommendation made by your attorney if there was ***53** but one count, with your background, your history, and no prior convictions; but we are not faced with merely one count here, we are faced with three. . . . It is further the recommendation of this court in both of these matters that you will be transferred to the Eagle River institution, with the further recommendation that any psychological evaluation be continued, with a view toward teaching you a skill or a craft so that you may become skilled, and that upon rehabilitation, be released from the said institution. As I stated before, I not only consider you at present a danger to the community, but I also feel because of your youth that there is hope for rehabilitation.

[13][14] As we have often stated, the primary responsibility for sentencing rests in the trial court. Our review of the record reveals that the trial judge carefully weighed the Chaney[FN40] objectives before imposing the sentence in question. In light of the nature of the crimes, herein, [FN41] the defendant's character, and the need for protecting society, we are unable to say that the trial judge was clearly mistaken[FN42] in imposing a sentence of ten years.

FN40. State v. Chaney, 477 P.2d 441, 443 (Alaska 1970). For a review of the rules that guide the court in applying the doctrine of Chaney, see Newsom v. State, 533 P.2d 904, 911 (Alaska 1975).

FN41. In State v. Chaney, 477 P.2d 441, 446 (Alaska 1970), we stated

that '(f) orcible rape and robbery rank among the most serious crimes.'

FN42. This court has previously expressed the view that violent crimes involving physical injury to innocent people are to be regarded as our most serious offenses and are not to be treated lightly. See the following for rape cases where long-term sentences were affirmed: Newsom v. State, 533 P.2d 904 (Alaska 1975) (15 years); Ames v. State, 533 P.2d 246 (Alaska 1975) (8 years); Torres v. State, 521 P.2d 386 (Alaska 1974) (20 years); Newsom v. State, 512 P.2d 557 (Alaska 1973) (15 years); Gordon v. State, 501 P.2d 772 (Alaska 1972) (10 years). See also Lancaster v. State, 550 P.2d 1257 (Alaska 1976), where a sentence of two years was disapproved as being too lenient.

The judgment is affirmed.

BOOCHEVER, J., concurred with opinion in which RABINOWITZ, J., joined.BOOCHEVER, Chief Justice, with whom RABINOWITZ, Justice, joins, concurring

I concur in the majority opinion in all respects except for the discussion of the prosecutor's conduct in questioning Mr. Coleman before the grand jury about his silence after arrest. An inference of guilt may not be drawn from a failure to speak or to explain when a person has been arrested,[FN1] and evidence of silence in the face of custodial interrogation by police is not properly admissible in a trial.[FN2] Similarly, a prosecutor should not intentionally elicit evidence before a grand jury of an accused's silence at the time of his arrest.

FN1. Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694, 695-96 (1966); Ivey v. United States, 344 F.2d 770 (5th Cir. 1965).

FN2. Doyle v. Ohio, - U.S. -, 96 S.Ct. 2240, 49 L.Ed.2d 91, 44 U.S.L.W. 4902 (June 17, 1976); United States v. Hale, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed.2d 99 (1975); United States v. Impson, 531 F.2d 274, 19 Cr.L.Rptr. 2172 (5th Cir. 1976); Fowle v. United States, 410 F.2d 48, 50-51 (9th Cir. 1969); United States v. Nolan, 416 F.2d 588, 594 (10th Cir. 1969); United States v. Mullings, 364 F.2d 173, 175 (2nd Cir. 1966). The practice of commenting to a trial jury upon an accused's silence after arrest has been specifically disapproved by this court in Davis v. State, 501 P.2d 1026, 1031 (Alaska 1972).

A prosecuting attorney who has properly prepared his case for the grand jury will know whether the accused remained silent or offered exculpatory statements after arrest. If the district attorney knows of exculpatory statements made by an accused after arrest, it is his duty to bring this information before the grand jury. If he knows that the accused remained silent after arrest, the prosecutor should not seek to bring this out. If any member of the grand jury specifically raises this issue, the ***54** prosecuting attorney should explain the constitutional right to remain silent in such circumstances.

I do not find that the prosecutor's conduct amounted to reversible error in this case because it appears from the transcript that the grand jurors were subsequently made

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aware of the accused's right to remain silent. I cannot agree with the majority, however, that the district attorney acted properly in questioning the police officer about Coleman's response after arrest.

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# HOUSE COMMITTEE REPORT

(7)
**Date Referred to Committee: January 20, 2009** **FURTHER REFERRALS: Finance**

**Date of Committee Action:** 3/19/09

**The JUDICIARY Committee considered:** **HOUSE BILL NO. 15**

**"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."**

**HB 15 BAN CELL PHONE USE BY MINORS WHEN DRIVING**

**Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB15 (JUD)**
***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
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

| List by Dept(s): | *FN# | Fiscal | Indet. | Zero |
|---|---|---|---|---|
| DPS | | | | ✓ |

***PREVIOUS* FISCAL NOTES**

| List by Dept(s): | FN# | Fiscal | Indet. | Zero |
|---|---|---|---|---|
| | | | | |

| Signing with recommendations | Printed Last Name | DP | DNP | NR | AM |
|---|---|---|---|---|---|
| | LYNN | | X | | |
| | Brueneke | - | | | |
| | Coghill | | | ✓ | |
| | Dahlstrom | | | X | |
| | Gatto | X | | | |
| | Holmes | | | X | |
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| Chair: | RAMOS | X | | ✓ | |
| Chair: | | | | | |