

**SB**

**201**

<TARGET><BILL>SB 201</BILL><SUBJECT>SB  
201</SUBJECT><COMM>SJUD28</COMM></TARGET>

# ALASKA STATE LEGISLATURE

## SESSION

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**SENATOR BERT K. STEDMAN**

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## Sponsor Statement

### **SB 201 - Criminal Trespass on Private Property**

As a landowner, you have the right to regulate activities on your property. However, in Alaska, current state law gives a person the privilege to enter and remain on unimproved or apparently unused land that isn't posted with "no trespassing" signs. Furthermore, a sign must be placed at each roadway or access point onto the property. Many Alaskans own private property in remote locations with inclement weather. No trespassing signs can be blown down, removed by vandals, or covered by snow. The lack of visible signage should not absolve trespassers of guilt.

Senate Bill 201 would repeal Alaska Statute 11.46.350(b) and (c), thereby removing the requirement that private property be posted in order for criminal trespass laws to be enforced. It should be the responsibility of the individual to know who owns the property that they want to access. Today's technology allows many options for individuals to identify public and private property boundaries such as topo maps that can be downloaded on a smart phone or GPS. In addition, the public can access maps showing property boundaries from the state Department of Natural Resources, the U.S. Geological Survey, as well as municipal plats available at city hall.

#### District Q

*Ketchikan • Sitka • Wrangell • Haines • Metlakatla • Craig  
Klawock • Hoonah • Kake • Thorne Bay • Angoon • Saxman • Hydaburg • Coffman Cove • Naukati • Hollis  
Klukwan • Hyder • Pelican • Kasaan • Port Alexander • Port Protection • Edna Bay • Whale Pass • Elfin Cove • Point Baker • Meyers Chuck*

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
Fiscal Note Number: 1  
(S) Publish Date: 3/31/14

Identifier: SB201-DOA-OPA-03-14-2014  
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
Sponsor: STEDMAN  
Requester: Senate Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Office of Public Advocacy  
OMB Component Number: 43

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None								
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time								
Part-time								
Temporary								

<b>Change in Revenues</b>								
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By: Richard Allen, Director  
Division: Office of Public Advocacy  
Approved By: Curtis Thayer, Commissioner  
Agency: Department of Administration

Phone: (907)269-3504  
Date: 03/14/2014 11:15 PM  
Date: 03/14/14

**FISCAL NOTE ANALYSIS #1**

**STATE OF ALASKA  
2014 LEGISLATIVE SESSION**

**BILL NO.** CSSB 201(JUD)

**Analysis**

This legislation repeals AS 11.46.350(b) and (c). Those provisions prescribe a limited privilege for trespassing upon private property under certain circumstances and also prescribe methods of notice and posting by landowners which negate that limited privilege.

By repealing those provisions, SB201 would strengthen the criminal trespass law at AS 11.46.300-.330 and eliminate potential or possible defenses to a charge of criminal trespass based upon (b) and (c). The bill would impact the general public, landowners, prosecutors and defendants charged with criminal trespass.

This bill would not likely have any material impact upon OPA operations, administration or budget and therefore, OPA submits a zero fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
Fiscal Note Number: 2  
(S) Publish Date: 3/31/14

Identifier: SB201-DOA-PDA-03-14-14  
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
Sponsor: STEDMAN  
Requester: Senate Judiciary

Department: Department of Administration  
Appropriation: Legal and Advocacy Services  
Allocation: Public Defender Agency  
OMB Component Number: 1631

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates				
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>	***	0.0	***	***	***	***	***
Personal Services	***		***	***	***	***	***
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	***	0.0	***	***	***	***	***

**Fund Source (Operating Only)**

None							
<b>Total</b>	***	0.0	***	***	***	***	***

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 (separate supplemental appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**Estimated CAPITAL (FY2015) cost:** 0.0 (separate capital appropriation required)  
(discuss reasons and fund source(s) in analysis section)

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version
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Prepared By:	Quinlan Steiner, Public Defender	Phone:	(907)334-4414
Division:	Public Defender Agency	Date:	03/14/2014 11:53 AM
Approved By:	Curtis Thayer, Commissioner	Date:	03/14/14
Agency:	Department of Administration		

FISCAL NOTE ANALYSIS #2

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

**Analysis**

SB201 repeals the privilege given to parties who trespass on unimproved and unused land with no criminal intention and without notice against trespass.

Repealing this privilege may result in increased charges for trespass. The Public Defender Agency cannot reliably predict the number of new cases this may generate. The agency, therefore, submits a n indeterminate fiscal note.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
Fiscal Note Number: 3  
(S) Publish Date: 3/31/14

Identifier: SB201-DOC-OC-03-14-14  
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
Sponsor: STEDMAN  
Requester: Senate Judiciary

Department: Department of Corrections  
Appropriation: Administration and Support  
Allocation: Office of the Commissioner  
OMB Component Number: 694

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

This is the original version of the bill.

Prepared By: April Wilkerson, Director	Phone: (907)465-3460
Division: Administrative Services - Department of Corrections	Date: 03/14/2014 04:00 PM
Approved By: Leslie Houston, Deputy Commissioner	Date: 03/14/14
Agency: Department of Corrections	

FISCAL NOTE ANALYSIS #3

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

**Analysis**

This bill repeals the sections of law which allow a person to enter and remain on apparently unused and unimproved land unless they have notice that they are trespassing. This removes the property owner's responsibility to provide notice of trespass in a reasonably conspicuous manner. It also makes any action of entering and remaining on property without the privilege to do so criminal trespass.

Criminal trespass in the second degree is a class B misdemeanor and is punishable by a term of imprisonment of not more than 90 days. At this time it is not known how many individuals would be incarcerated as a result of this legislation. However, the Department could see a fiscal impact of \$0 (no days served) to \$14,280.30 (90 days served) for each class B misdemeanor conviction under this legislation. The Department will continue to monitor the future impacts of this legislation.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
 Fiscal Note Number: 4  
 (S) Publish Date: 3/31/14

Identifier: SB201-DPS-AWT-03-14-14  
 Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
 Sponsor: STEDMAN  
 Requester: Senate Judiciary

Department: Department of Public Safety  
 Appropriation: Alaska State Troopers  
 Allocation: Alaska Wildlife Troopers  
 OMB Component Number: 2746

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>					
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
 If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By:	Captain Burke Waldron	Phone:	(907)761-7139
Division:	Alaska Wildlife Troopers	Date:	03/14/2014 03:30 PM
Approved By:	Gary Folger, Commissioner	Date:	03/14/14
Agency:	Department of Public Safety		

FISCAL NOTE ANALYSIS #4

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

**Analysis**

This bill proposes to repeal subsections (b) and (c) from AS 11.46.350 relating to the definition of terms used in burglary and criminal trespass laws; essentially removing the exception (privilege) that allows a person to remain on private property that is unimproved and apparently unused land unless notice is given. This specifically relates to criminal trespass in the second degree under AS 11.46.330.

Criminal trespass in the second degree has a default culpable mental state of "knowingly" per AS 11.81.610. The definitions contained in AS 11.46.350(b) and (c) give parameters of what constitutes "knowingly" for the purposes of trespassing onto private property that is unimproved and apparently unused. If (b) and (c) are removed, "knowingly" will default to the definition given in AS 11.81.900 which is more ambiguous than the necessary conduct described in (b) and (c).

Though it is anticipated that the Alaska Wildlife Troopers may spend more time investigating reported trespass cases on unimproved land trying to establish whether the conduct would constitute "knowingly" trespassed, this is part of the normal job duties of a trooper and would therefore not result in a fiscal impact. Consequently, a zero fiscal note is being submitted.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
Fiscal Note Number: 5  
(S) Publish Date: 3/31/14

Identifier: SB201-DPS-DET-03-14-14  
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
Sponsor: STEDMAN  
Requester: Senate Judiciary

Department: Department of Public Safety  
Appropriation: Alaska State Troopers  
Allocation: Alaska State Trooper Detachments  
OMB Component Number: 2325

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2015 Request	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
<b>OPERATING EXPENDITURES</b>	<b>FY 2015</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants & Benefits							
Miscellaneous							
<b>Total Operating</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Fund Source (Operating Only)**

None							
<b>Total</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**Positions**

Full-time							
Part-time							
Temporary							

<b>Change in Revenues</b>							
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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency?  No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Not applicable, initial version.

Prepared By:	Lt. Rodney Dial	Phone:	(907)247-4480
Division:	Alaska State Troopers	Date:	03/14/2014 01:30 PM
Approved By:	Gary Folger, Commissioner	Date:	03/14/14
Agency:	Department of Public Safety		

FISCAL NOTE ANALYSIS #5

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

**Analysis**

This bill proposes to repeal subsections (b) and (c) from AS 11.46.350 relating to the definition of terms used in burglary and criminal trespass laws; essentially removing the exception (privilege) that allows a person to remain on private property that is unimproved and apparently unused land unless notice is given. This specifically relates to criminal trespass in the second degree under AS 11.46.330.

Criminal trespass in the second degree has a default culpable mental state of "knowingly" per AS 11.81.610. The definitions contained in AS 11.46.350(b) and (c) give parameters of what constitutes "knowingly" for the purposes of trespassing onto private property that is unimproved and apparently unused. If (b) and (c) are removed, "knowingly" will default to the definition given in AS 11.81.900 which is more ambiguous than the necessary conduct described in (b) and (c).

Though it is anticipated that the Alaska State Troopers may spend more time investigating reported trespass cases on unimproved land trying to establish whether the conduct would constitute "knowingly" trespassed, this is part of the normal job duties of a trooper and would therefore not result in a fiscal impact. Consequently, a zero fiscal note is being submitted.

# Fiscal Note

State of Alaska  
2014 Legislative Session

Bill Version: CSSB 201(JUD)  
Fiscal Note Number: 6  
(S) Publish Date: 3/31/14

Identifier: SB201-LAW-CRIM-03-14-14  
Title: CRIMINAL TRESPASS ON PRIVATE PROPERTY  
Sponsor: STEDMAN  
Requester: (S) JUDICIARY

Department: Department of Law  
Appropriation: Criminal Division  
Allocation: Criminal Justice Litigation  
OMB Component Number: 2202

**Expenditures/Revenues**

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2015 Appropriation Requested	Included in Governor's FY2015 Request	Out-Year Cost Estimates					
			FY 2015	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
<b>OPERATING EXPENDITURES</b>	***		***	***	***	***	***	***
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
<b>Total Operating</b>	***	0.0	***	***	***	***	***	***

**Fund Source (Operating Only)**

None								
<b>Total</b>	***	0.0	***	***	***	***	***	***

**Positions**

Full-time								
Part-time								
Temporary								

**Change in Revenues**

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**Estimated SUPPLEMENTAL (FY2014) cost:** 0.0 *(separate supplemental appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**Estimated CAPITAL (FY2015) cost:** 0.0 *(separate capital appropriation required)*  
*(discuss reasons and fund source(s) in analysis section)*

**ASSOCIATED REGULATIONS**

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No  
If yes, by what date are the regulations to be adopted, amended or repealed?

**Why this fiscal note differs from previous version:**

Initial version, not applicable.

Prepared By:	Loretta Withington, Division Operations Manager	Phone:	(907)465-5427
Division:	Department of Law	Date:	03/14/2014 05:00 PM
Approved By:	Michael C. Geraghty, Attorney General	Date:	03/14/14
Agency:	Department of Law		

FISCAL NOTE ANALYSIS #6

STATE OF ALASKA  
2014 LEGISLATIVE SESSION

BILL NO. CSSB 201(JUD)

**Analysis**

This bill repeals two portions of the definition of "enters or remains unlawful," an element to the crimes of criminal trespass. AS 11.46.350(b) provides that a person who enters upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so lawfully unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner.

"This provision is designed to expressly exclude from the scope of the offense of criminal trespass, a person who enters upon unimproved and apparently unused land when there is no indication of apparent prohibition against such intrusion. The innocence of a typical trespass where an individual hiker walks without consent upon the unfenced, unposted land of another, and its frequency in a state dominated by wilderness and public land interspersed with private land, prompts the conclusion that such a minimal intrusion upon the land of another should not be a criminal offense unless reasonable notice is given the trespasser not to enter or remain on such property."

Tentative Draft III page 3, Criminal Code Revision Committee page 54, Representative Terry Gardner, Chair.

This deletion will increase the number of entries onto premises which will be illegal. AS 11.46.350(c) repeals language which set standards of signage for notification against trespass. The number of entries onto land which will become illegal with these sections being repealed is indeterminate and hence the increased cost for prosecuting this new illegal conduct is unknown.

**From:** John M. Kennish [mailto:kennish@live.com]  
**Sent:** Sunday, March 16, 2014 1:48 PM  
**To:** Sen. Bert Stedman  
**Subject:** SB201

I support this bill. I have property in NInilchik and people are always coming on to it without permission. My cabin has been broken into once and I always see signs that someone has driven onto my property with the ATV. It is especially bad when the Salmonstock celebration is ongoing. I respect other people's property and I would appreciate the same in return. Thank you for this effort.

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**From:** Cleve Cowles [mailto:ceejaycee5@yahoo.com]  
**Sent:** Sunday, March 16, 2014 11:04 AM  
**To:** Sen. Fred Dyson  
**Subject:** Please support SB 201; please consider a few other comments on this topic:

As it appears, the SB 201 proposed deletions of AS 11.46.350(b and c) take the burden from the landowner requiring onerous posting requirements. I support these changes.

This would be helpful, but I don't think those changes go far enough or clearly articulate a more fundamental principal: If you haven't acquired prior approval to be on private property, regardless of how the land appears (remote or within sight of a dwelling) you are presumed to be trespassing.

Other comments:

It appears odd to me that this section is buried under the heading of "Vehicle Theft"

More needs to be done on this topic, if it hasn't been: The state code should make it clear that unless you have obtained permission in writing to be on private property, that you are presumptively trespassing. The ignorance excuse doesn't cut it anymore given that modern locational devices (GPS) can tell a person exactly where they are. Also, the law should articulate that the State Police can act forcibly to immediately remove or charge a trespasser if requested to do so by an aggrieved private property owner providing clear evidence of trespass (such as by photo images, including remotely operated or otherwise automated cameras).

Does the Alaska Code have a definition of trespass? If not, it needs one along the lines of the above comment.

Thank you for your consideration.

Cleve Cowles  
Eagle River, Alaska

**Alaska Statutes**

**Title 11 – Criminal Law**

**Chapter 46 – Offenses Against Property**

Sec. 11.46.350. Definition.

(a) As used in AS 11.46.300 - 11.46.350, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so;

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge; or

(3) enter or remain upon premises or in a propelled vehicle in violation of a provision in an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to that person by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances.

(c) A notice against trespass is given if the notice

(1) is printed legibly in English;

(2) is at least 144 square inches in size;

(3) contains the name and address of the person under whose authority the property is posted and the name and address of the person who is authorized to grant permission to enter the property;

(4) is placed at each roadway and at each way of access onto the property that is known to the landowner;

(5) in the case of an island, is placed along the perimeter at each cardinal point of the island; and

(6) states any specific prohibition that the posting is directed against, such as "no trespassing," "no hunting," "no fishing," "no digging," or similar prohibitions.

**ADN.com**

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## Wildlife trooper with traps on private land sued for trespass

By ZAZ HOLLANDER

zhollander@adn.com December 14, 2013

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Land leaseholders Mark Loomis and Nicolene Jordan posted a no trespassing sign at an access point near Colony High School after they discovered snares on the land. Authorities say setting traps or snares on private land isn't illegal unless access points are posted with signs. November 2013.

PHOTO BY MARK LOOMIS

- **Related Stories:**
- [Lazy Mountain turkey killing raises trespass questions](#)
- [State: Snares legal despite lack of landowner permission](#)

WASILLA – An Alaska wildlife trooper has been named the defendant in a lawsuit that claims he and his trapping partner violated the law when they set snares for fox and coyote on private property without permission.

Central Gravel Products owners Nicolene Jordan and Mark Loomis filed the civil lawsuit against Trooper John Cyr for "multiple trespasses and creation of an ongoing nuisance" on land they lease in a suburban area near Colony High School.

The complaint, which Talkeetna attorney Paul Brattan filed Thursday in Palmer Superior Court, also lists as a defendant Rick Ellis, Cyr's trapping partner and a past president of the Alaska Frontier Trappers Association.

Ellis said Friday he hadn't yet been served and declined to comment. Cyr previously instructed a reporter to contact Ellis for any comments. He is a wildlife trooper based out of Palmer.

The lawsuit centers on an incident last month that's sparked a debate about just how far hunters and trappers can go before bumping up against private property rights.

Jordan and Loomis in mid-November discovered at least 38 snares in an old potato field on 160 acres leased for years from landowner Ralph Kircher. Neither they nor Kircher ever gave the trappers permission to enter the property, both said last month.

They also found several moose heads and what looked like the body of a moose calf used as bait, according to the complaint. Boot prints led in and out of the property about 200 feet from a sign marking the entrance to the gravel company.

Cyr's name was on a state permit for the salvaged moose parts.

Loomis pulled the snares and Jordan filed a formal complaint about the trooper's actions with the Department of Public Safety.

A wildlife trooper sergeant came out and investigated the complaint. He found nothing illegal happened because the place the trappers entered the property wasn't posted with a sign prohibiting trespassing or trapping, troopers said at the time.

Under Alaska's criminal trespass statute, property owners must post every road and known access point on their land with signs 144 square inches in size that are inscribed with the landowner or leaseholder's name and contact information.

There was no sign at the point where the trappers entered, authorities said. But there were other signs on the property.

Even if Jordan and Loomis "attempt to post enough signs to convince every potential passing trapper that they have complied with the strict provisions in the Alaska criminal trespass statute, the frequent gale-force winds in the area will soon blow a goodly portion of these signs away," the complaint says.

Ellis said last month that he and Cyr trapped fox and coyote on the land last year. This year, he set the snares but hadn't started trapping yet.

They never asked for permission, he said, because they didn't have to.

Ellis, in a contention echoed numerous times by the troopers, said the trappers did nothing illegal. That's because the place they entered the property -- a pull-out blocked by several logs -- wasn't posted.

"Lacking the presence of any signs, anybody can go anywhere they want," he said last month. "They can trap, they can hunt, they can do whatever."

Several attorneys said in interviews that Ellis' assertion is just not true.

Trapping or hunting on private property that's not properly posted may not be a crime but it's also not legal and could lead to civil lawsuits like the one filed this week by Loomis and Jordan, they said.

"It is a civil wrong," said attorney Sam Fortier, a longtime Anchorage attorney who represents 30 village corporations. "What (the troopers) said was true but that's not the whole story. There's kind of an omission. I think it's wrong to omit material facts as much as it to misstate them."

Civil trespass in Alaska is defined much more simply than its criminal counterpart, according to the Alaska Court System's standard jury instructions: "A trespass is an intrusion onto land possessed by another without consent or other privilege. Trespass includes not only entry onto land, but also remaining on land, or causing a third person or thing to enter or remain."

In a civil trespass case, a landowner or lease holder has the right to damages as well as attorney fees if they can prove someone intentionally entered the land when it wasn't an emergency even if no "harm" was done to the property, according to Doug Pope, another Anchorage attorney with decades of practice who's also a former Board of Game chairman.

"The trappers in your story would be classic examples of that," Pope wrote in an email, referring to an earlier Daily News story about the original incident involving the snares.

Troopers can only enforce criminal statutes, spokeswoman Megan Peters said Friday. "We have to go by the criminal definition of the law."

The complaint against Cyr and Ellis, however, charges that the men also may have violated criminal law.

The document refers to a state statute that defines criminal trespass as "a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land."

But the land in this case was clearly not "unimproved and apparently unused," so it was not necessary to post signs, the complaint charges.

"Snares were set within a dozen feet of excavations and gravel storage piles," it says. "Therefore there could have been no question in any reasonable person's mind about the land being 'apparently unused.'"

Cyr had also bought gravel there in the past, according to the complaint.

Even if the court doesn't find that Cyr and Ellis violated criminal law, they are still liable for civil trespass and creating a nuisance with the snares and carcasses, which could draw animals to the site in close proximity to a school, the complaint says.

Jordan and Loomis are seeking damages to be determined at trial, as well as attorney fees.

Superior Court Judge Eric Smith will hear the case. No hearings have been scheduled yet.

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