

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10285 HOUSE JUDICIARY

130

**HB**

**295**

22-LS1176F  
Ford  
2/11/02

*Adopted  
4.8.02*

**CS FOR HOUSE BILL NO. 295( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE LANCASTER**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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

5 **Sec. 28.35.165. Prohibited use of cellular telephone.** (a) A driver of a  
6 motor vehicle may not use a cellular telephone when driving a motor vehicle on a  
7 public roadway or vehicular way or area unless the cellular telephone is operated

8 (1) as a hands-free telephone or as a hands-free telephone with an  
9 earphone; or

10 (2) during an emergency, including reporting a crime, or in the  
11 performance of a duty by emergency services personnel.

12 (b) A person who violates this section is guilty of an infraction and may be  
13 punished as provided under AS 28.40.050. A fine imposed under this subsection may  
14 be waived if the person completes a driver safety education course.

- 1 (c) In this section, "cellular telephone" does not mean a citizens band radio.
- 2 \* Sec. 2. This Act takes effect July 1, 2002.

# Alaska State Legislature

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## Representative Ken Lancaster District 8

### Sponsor Statement For HOUSE BILL 295

**“An Act prohibiting the use of cellular telephones when operating a motor vehicle; and providing for an effective date”**

House Bill 295 will increase the safety involved with the use of cellular telephones in vehicles. By encouraging the use of “Hands Free” cellular phones, we will help ensure the safety of all people on the roadways. New technologies are available and we have a responsibility to encourage its implementation to help ensure public safety. As with safety belts, simply encouraging their use will not save enough lives. All people must share the road, so we all must share in the safety concerns of the other drivers.

HB 295 includes an exception for hands free phones as well as during an emergency, the reporting of a crime, or in the performance of duty by emergency services personnel. As well, the bill includes a provision for the fine to be waved if the person completes a driver safety course to reflect the importance of educating people about the issue.

SECTIONAL ANALYSIS  
HB 295

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

Prepared by Representative Ken Lancaster

Section 1:

- (a) Prohibits the use of Cellular phones while driving.  
Permits use of Cellular Phone if it is hands free or in the event of an emergency, the reporting of a crime, or in the performance of duties by emergency services personnel.
- (b) Establishes the offence as an infraction punishable under AS 28.40.050  
Provides a waiver for the fine, if the defendant completes a driver safety education course.
- (c) Excludes Citizens Band Radio from the law

Section 2: Provides the effective date

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 295  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Prohibit cellphone use when BRU AST Detachments  
Driving Component AST Detachments  
 Sponsor Representative Lancaster  
 Requester House Judiciary Committee Component No. 2325

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

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

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

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This bill will have no fiscal impact on the Department of Public Safety.

Prepared by: Lt. Julia Grimes Phone 269-4532  
 Division: Division of Alaska State Troopers Date/Time 3/12/02 1:15 PM  
 Approved by: Commissioner Glenn Godfrey Date 3/12/2002  
 Agency: Department of Public Safety

RECEIVED  
FEB 4 - - 2002



Dan Youmans  
Director  
External Affairs  
Washington & Alaska

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206 389-5208  
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daniel.youmans@attws.com

January 30, 2002

The Honorable Rep. Ken Lancaster  
Alaska House of Representatives  
State Capitol  
Room 421  
Juneau, AK 99801

Dear Rep. Lancaster:

I very much enjoyed talking with you yesterday about legislation to regulate the use of wireless phones while driving. As I mentioned, AT&T Wireless takes this issue very seriously. We recognize the potential for wireless phones to create a distraction for the driver, just as other activities in a vehicle, such as tuning the radio or talking with other passengers, can create a distraction. At the same time, wireless phones provide a valuable emergency communications tool. It is our position, therefore, that the best approach to this issue is public education and strict enforcement of negligent or inattentive driving laws.

**Public Education**

To help ensure that wireless phones are used safely and appropriately in vehicles, AT&T Wireless has made educating our customers a top priority. AT&T Wireless is committed to promoting sound judgment, and safe, responsible phone use. Through promotional materials and user guides, we urge our customers not to place calls or have conversations when traffic conditions render such actions unsafe.

We also recommend that drivers allow calls to go to voice mail or have a passenger answer a call if it would not be safe for the driver to do so. Our AT&T Wireless store employees also are trained to talk about safe driving with customers.

Finally, we recognize that some wireless phone users find that hands free devices help them manage their wireless phone use. For that reason, AT&T Wireless provides an "earbud" free of charge with every new phone that is sold to our customers nationwide, and we make ear pieces available to our existing customers - free of charge. In short, we believe and advocate that safe driving should be the number one consideration for our customers.

Page 2

### **Law Enforcement**

For those people who do not drive safely due to distractions in the car, there is a body of existing law that allows the police to cite drivers and enforce safe driving practices. A driver who drives irresponsibly for any reason, including while a wireless phone is being used, should be penalized.

If existing laws are not adequate, AT&T Wireless supports the adoption of inattentive driving laws that require drivers to drive responsibly and punishes those who don't. We believe it is wiser to have one law covering all distractions, as opposed to a new law for every distraction facing drivers. Laws that recognize existing, as well as future driver distractions – technology based or not – would truly address the safety concerns of all the citizenry.

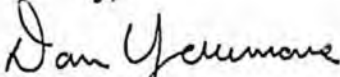
We hope you will take these issues into account as you consider new laws on driving with wireless phones. We want our customers to have every opportunity to continue using wireless phones in their cars and believe that the vast majority of them have demonstrated that they are able to do so safely and sensibly.

To assist you in your deliberations on this issue, I have included these documents:

- A summary of a recent distracted driving study commissioned by AAA and performed by the University of North Carolina Highway Safety Research Center;
- The veto message from Gov. Lincoln Almond, State of Rhode Island, of legislation that would have mandated the use of hands free devices while driving;
- A copy of the inattentive driving bill now being considered by the California Legislature, which recently rejected a proposal to require a hands free device; and
- The "Arrive Safely" brochure, which AT&T Wireless uses to educate customers about the safe and appropriate use of wireless phones in automobiles.

Please feel free to contact me if you have any questions. I look forward to talking with you about this issue at your earliest convenience.

Sincerely,



Dan Youmans  
Director, External Affairs  
AT&T Wireless

[home > news](#)

[Press Release](#)

[Outline of Results,  
Methodology, and  
Data Limitations](#)

[Downloadable  
Photos & Images](#)

[Congressional  
Testimony](#)

[Full Report  
\(pdf format, 831 kb\)](#)

## Distracted drivers pose safety hazard, according to new UNC Highway Safety Research Center study

Press Release - for immediate use

May 8, 2001

CHAPEL HILL - Each year, an estimated 284,000 distracted drivers are involved in serious crashes, according to a new study by the University of North Carolina Highway Safety Research Center.

"We found that 15 percent of drivers in the study were not paying attention and just over half of these (8.3 percent) were distracted by something inside or outside the vehicle," said Dr. Jane Stutts, manager of epidemiological studies at the UNC center and author of the study.

When drivers with unknown attention status were removed from the data, the percentage of distracted drivers rose to 12.9 percent.

Stutts will testify about the study, funded by the AAA Foundation for Traffic Safety, at a congressional hearing in Washington, D.C., on Wednesday (May 9). She will testify before the House Transportation and Infrastructure Committee's Subcommittee on Highways and Transit at 10 a.m.

The study found that drivers were most often distracted by something outside their vehicle (29.4 percent) followed by adjusting a radio or CD player (11.4 percent). Other distractions included talking with other occupants (10.9 percent), adjusting vehicle or climate controls (2.8 percent), eating or drinking (1.7 percent), cell-phone use (1.5 percent) and smoking (0.9 percent).

"Different age groups appear to be distracted by different things," Stutts said.

Drivers under age 20 were especially likely to be distracted by tuning the radio or changing CDs, while young adults (ages 20-29) seemed to be more distracted by other passengers. Drivers over age 65 were more distracted by objects or events happening outside the vehicle.

Most of the distracted drivers were male (63 percent), in part because as a group, males drive more than females and are more likely to be involved in serious crashes.

Researchers used the National Highway Traffic Safety Administration's Crashworthiness Data System for the study. The CDS examines a sample of approximately 5,000 crashes a year in which at least one vehicle was damaged enough to require towing. Federal investigators collect detailed information about each crash, including examination of the vehicle and crash scene and interviews with drivers and witnesses. The UNC center's study used data from 1995 through 1999 and included 32,303 vehicles.

The UNC Highway Safety Research Center conducts interdisciplinary research aimed at reducing deaths, injuries and related societal costs of roadway crashes in North Carolina and the nation. The center's research addresses crashes involving motor vehicles, bicyclists and pedestrians and takes into account the various human, vehicular, roadway and environmental components of these risks.

The AAA Foundation for Traffic Safety is an independent, publicly funded charitable research and educational organization founded by the American

Automobile Association in 1947. The AAA Foundation's mission is to prevent traffic deaths and injuries by conducting research into their causes and by educating the public about strategies to prevent crashes.

-- 30 --

**UNC Highway Safety Research Center contact: Emily Smith, (919) 962-7803**

**UNC News Services contact: Deb Saine, (919) 962-8415**

**AAA Foundation for Traffic Safety contact: Stephanie Faul, (202) 638-5944  
(Ext. 4)**

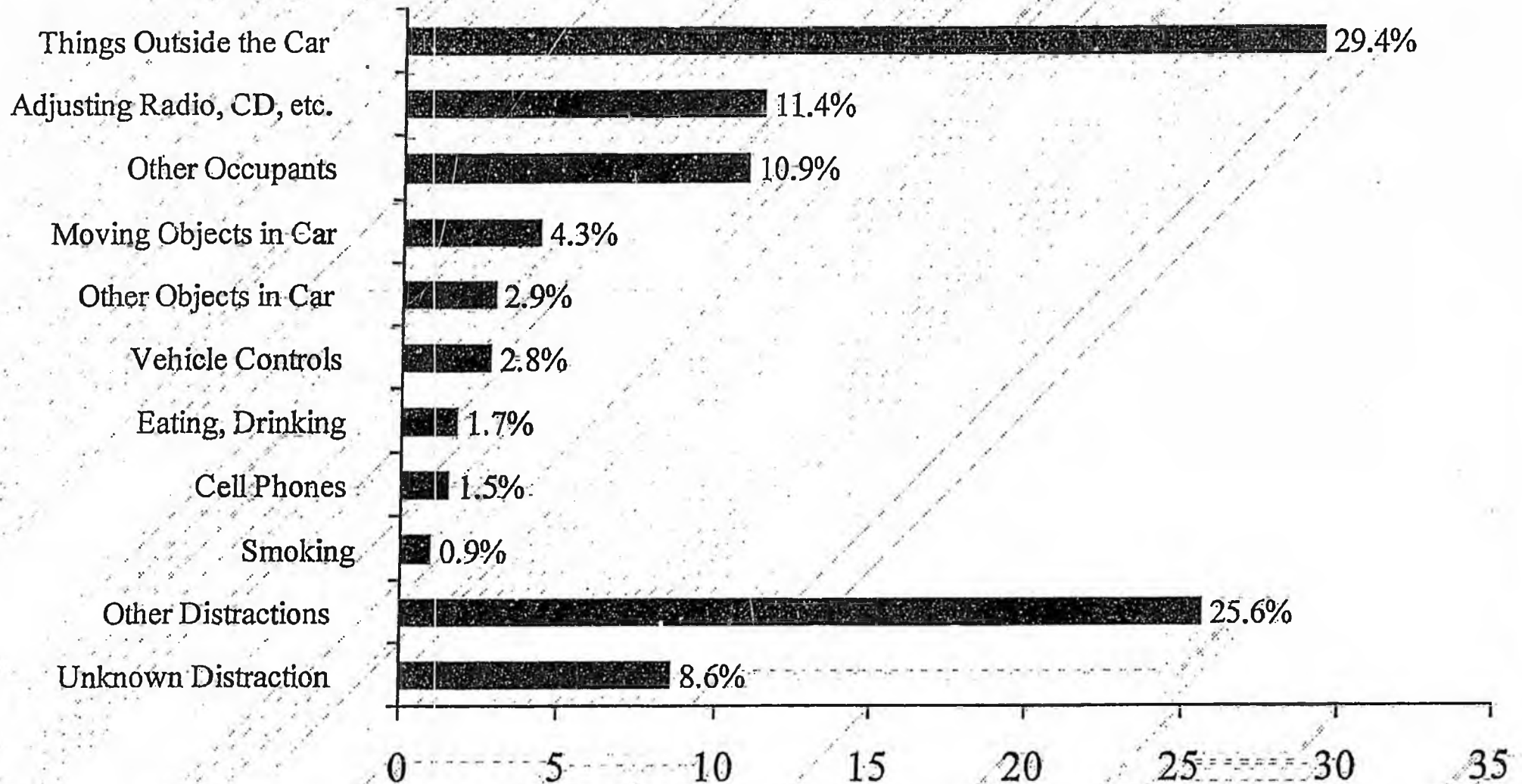
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[sitemap](#)

The University of North Carolina Highway Safety Research Center: CB# 3430, Chapel Hill, NC 27599

Phone: 919-962-2202 or (in NC) 800-672-4527 Fax: 919-962-8710

[email webmaster](#)

# What distracts drivers?



Source: 1995-1999 NASS CDS



**State of Rhode Island and Providence Plantations**  
State House  
Providence, Rhode Island 02903-1196  
401-222-2080

LINCOLN ALMOND  
Governor

July 11, 2001

TO THE HONORABLE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES:

In accordance with the provisions of Rhode Island General Laws § 43-1-4, I am transmitting herewith, with my disapproval, 2001-H 5757 Substitute A, "An Act Relating to Motor and Other Vehicles – Use of Electronic Devices."

This bill would require drivers of motor vehicles and bicycles to employ a hands-free device when using a mobile telephone, except when reporting emergencies to 911, state and local police or fire departments. This bill would also clarify the existing ban on the operation of bicycles and motor vehicles while wearing earphones or a headset. The bill would not take effect until July 1, 2002, nearly a year from now.

Available statistics show that tuning a radio, eating, speaking to other people in the car, reaching for something within the vehicle, reading, writing and using the glove compartment have all been found to be more distracting to drivers than is the use of a cell phone. According to a working paper of the AEI-Brookings Joint Center for Regulatory Studies, cell phone use contributes to just 0.2% of total accidents. Only three states have collected information on the issue long enough to report any findings. In Oklahoma, phones were related to only 0.1% of accidents in each of 1998 and 1999; in Minnesota, either a phone or a CB radio contributed to merely 0.05% of accidents in 1999; and in Tennessee, phones were involved in less than 0.2% of crashes in 1999. None of these states has yet enacted a cell phone ban.

Additionally, the AAA Foundation for Traffic Safety recently examined 26,000 traffic accidents. Only 1.5% of those accidents involved wireless phone use, a small percentage compared to other distractions, including eating and (nonalcohol) drinking (18.8%); adjusting music selection (11.4%); other occupants in the vehicle (9.4%); and moving objects in the vehicle (3.2%). According to this AAA Foundation study, the percentage of accidents which involved wireless phone use was similar to the percentage of accidents that involved the adjustment of climate controls (1.2%) or smoking (1.2%).

Such evidence, in my view, does not end the debate, but it does mean that such a ban should come only in the context of other distracted driving issues and receive further study. Supporters of a ban, while acknowledging that other distracted driving may significantly contribute to accidents, point to other studies showing that accidents resulting from hand held cell phone use is not insubstantial. The statistics are inconclusive. That is why the head of the National Highway Traffic Safety Administration has urged Congress to be patient and not enact any ban until definitive data on cell phone usage can be assembled and assessed.

Nearly every state agrees. To date, although various hand-held cell phone ban bills have been introduced in at least 40 states, only New York has enacted such a ban. Even that law is substantially different than this bill. New York provides a 30 day period where motorists will receive only a warning and then for the next three months, a judge can waive the fine if the driver can prove that he or she has bought a headset or speakerphone.

Any legislation must also take into account concerns voiced by the Division of State Police (the "Division"). The Division receives a significant number of calls from drivers on their cell phones reporting drunk driving, highway debris, disabled vehicles and incidents of road rage, among other violations. The Division is concerned that the enactment of this bill could have a chilling effect on the willingness of drivers to report such dangerous occurrences, since they are not emergencies. In fact, there was much debate in the General Assembly on the definition of "emergency" contained in the bill, and whether that definition was too narrow. A floor amendment that nearly passed the Senate would have broadened the definition to account for emergency calls that were not made to law enforcement. The Division has also questioned how the hand-held cell phone ban could be enforced. Concerns were also raised over a lack of an exception in this bill for law enforcement, emergency workers or undercover agents, among others.

I raise the question of whether any new legislation should mandate that a hands-free headset be sold with all new cell phones. Presently, it is my understanding that a compatible headset can be purchased with virtually all new cell phones. Soon an inexpensive headset will be available for every cell phone sold. We should investigate whether requiring that one be sold makes sense.

MAT 504 60000 303-837-0269

In the next General Assembly session results will be available of studies presently underway by authorities such as the National Conference of State Legislatures. In addition, New York's new law will be on the books and its effect available. The new information should assist in guiding any Rhode Island legislation, and legislation in sister states and in Congress.

Given that this bill would not have taken effect until July 1, 2002 this veto has no effect until a year from now.

2001-H 5757 Substitute A, Veto Message  
July 11, 2001  
Page 3

I would point out that we have made great strides in highway safety during my tenure, but we have a ways to go. Two important and necessary traffic safety bills died this year: one, a primary seatbelt law; and two, the ability of law enforcement to obtain blood alcohol samples (with a warrant) for drunk drivers involved in serious auto accidents. While continuing to contemplate a hand held cell phone ban, I hope and expect that we can enact these crucial highway safety bills into law next year.

For these reasons, I disapprove of this legislation and respectfully urge your support of this veto.

Sincerely,

Lincoln Almond

**ASSEMBLY BILL**

**No. 1783**

Introduced by Assembly Members Firebaugh and Rod Pacheco

January 14, 2002

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An act to add Section 23101 to the Vehicle Code, relating to driving.

LEGISLATIVE COUNSEL'S DIGEST

AB 1783, as introduced, Firebaugh. Driving.

Under existing law, motor vehicle operation is closely regulated, and drivers must follow myriad legal requirements or face criminal sanction. Under existing law, driving to the left of a double yellow line, making an unsafe lane change, or driving faster than is reasonable and prudent under the circumstances, or at a speed which endangers the safety of persons or property are all infractions. In addition, it is a misdemeanor to drive any vehicle upon a highway in willful or wanton disregard for the safety of persons or property.

This bill would make it an infraction to drive a motor vehicle in an unsafe manner that results from engaging in any distracting activity that interferes with the safe operation of the vehicle. By creating a new infraction, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 23101 is added to the Vehicle Code, to  
2 read:

3 23101. Any person who drives a motor vehicle in an unsafe  
4 manner that results from engaging in any distracting activity that  
5 interferes with the safe operation of the vehicle is guilty of  
6 inattentive driving, an infraction. For purposes of this section,  
7 "distracting activity" includes, but is not limited to, responding to  
8 events, persons or objects outside the motor vehicle not related to  
9 the safe operation of the vehicle, personal grooming, food  
10 consumption, use of an electronic device such as a radio, personal  
11 digital assistant, or wireless telephone, reading, or interactions  
12 with passengers or pets.

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.





# Driving Wireless Safety

**Your wireless phone gives you the freedom and flexibility to stay in touch when you travel.**

However, the safe and responsible use of the phone depends entirely on you. Avoid accidents by not reaching for the phone or talking on the phone if that distracts you from driving safely. Your life and the lives of others are at stake. Arrive safely.



Wireless from AT&T.  
Your World. Close at Hand.

**Ensure your safety and the safety of others:**

- Always buckle up.
- Keep your hands on the wheel and your eyes on the road.
- Don't let a phone call distract you from driving safely.

**Carefully consider whether you should use your wireless phone while driving.**

Factors to consider include driving skill and experience, familiarity with the vehicle, and traffic and weather conditions. Consider your alternatives:

- Allow voice mail to handle your calls and return them at your convenience.
- Pull off the roadway if safe and legal to do so.
- Ask a passenger to make or take the call.

**If you do use your wireless phone while driving, use good judgment.**

- Tell the caller that you are driving and may have to suspend the conversation.
- Position your phone within easy reach.
- Use a hands-free device.
- Use memory dial and automatic redial features.
- Memorize your keypad.
- Dial numbers while you are not moving.
- Do not engage in stressful or emotional conversations while driving.
- Never take notes or look up numbers while driving.
- Do not use data functions such as text messaging or Web browsing while driving.
- Please respect all applicable laws concerning the use of wireless phones. Some states or municipalities may not allow the use of earbuds or headsets and some may require hands-free use.

**A message for parents: Review the options for responsible use with your new driver and establish guidelines for phone use in the car.**

**Emergency 911:** If an emergency occurs, dial 911. Where 911 is not available, you will need to identify the appropriate local emergency service number to call for assistance.

**Important:** If you are in an area where your phone is searching or scanning for a signal or there is no signal, it is highly probable that a call to 911 will not go through. If your wireless 911 call is not going through, locate the nearest landline phone and call for help. Also, TTYs (text telephone devices) are currently not compatible with digital wireless phones and should not be used for 911 calls.

Wireless 911 calls do not automatically provide emergency personnel with your name, phone number or location. Tell the dispatcher:

- Your name and wireless phone number, including area code;
- The nature of the emergency;
- Whether police, fire or medical assistance is needed;
- The exact location of the emergency, including cross streets, mileposts or landmarks.

**Remember:** Lock your keypad to prevent unintended calls to 911.

For more information, visit the AT&T Wireless Services Web site at [http://www.attws.com/general/our\\_company/awareness/](http://www.attws.com/general/our_company/awareness/)

O470

♻️ Printed on recycled paper



**Subject: Constituent Feedback on two HB issues**

**Date: Wed, 20 Feb 2002 11:58:59 -0900**

**From: "Chris Spoerhase" <cspoerhase@allcom.ws>**

**To: "Randy Phillips" <Senator\_Randy\_Phillips@legis.state.ak.us>**

Honorable Senator Phillips,

Our FCC attorneys recently sent me a note on HB295 which would propose restrictions on the use of cellular phones while driving. Their comments indicated that the language was very vague but in my view there are greater issues.

With the evolving "faster" life styles that American citizens have found themselves in today there are a multitude of factors that are possibly affecting driving safety which I feel that HB295 does not address. Unfortunately, it misses the actual point of focusing the drivers attention on driving safely no matter what you are doing while operating a motorized vehicle and singles out only one thing that drivers do. If we are going to start trying to legislate activities while in a motorized vehicle I suggest that we blanket all distractions to driving which I think you will agree include the following partial list: Driving while eating fast food and beverages especially hot coffee which you might spill and create a distraction; Ban installation of all the new electronic digital TV's that people are installing in their dash boards so that they can watch movies and television while driving; Prohibit drivers of motor vehicles from applying make up or grooming themselves while driving and the list goes on as you can imagine.

The point that I think is important is that no matter what you are doing while driving the most important responsibility is safe operation of the vehicle and that you can't single out one activity. This is especially true with cell phones which: Report drunk driving incidents while driving which currently results in the most effective control of this activity according to law enforcement statistics; report 911 calls by the millions every year for all sorts of crimes and accidents which has resulted in faster response to injured people in the critical first minutes of injury and catching criminals in the act. In addition to these facts the cell phone industry to my knowledge is the only one that actually promotes safe driving to the users of its products through national programs like the Safe Driving Its Your Call program. I see no programs from the fast food industry, electronics industry, or the make up industry.

Please don't hesitate to contact me if I can be of any help to you on this matter as I may be able to point to some solutions and most certainly the wireless carriers would be happy to contribute their efforts I'm sure.

~~The second issue I wanted to give input on is a very difficult issue for the State and that is balancing the budget. I have talked with a number of residents on the subject and at least from those talked with there is no appetite for new revenue into the State coffers in any form from both the business community and individuals. The general perception is that we have a very inefficient government that is over compensated in terms of wages and benefits than non government sectors. They want no new taxes and cuts in government spending.~~

~~So how to solve the problem: 1) Across the board cuts of all depts. in an equal percentage to balance the budget; 2) Privatize those services that can be privatized i.e. collecting money from dead beat dads, dept. of transportation, work on roads and highways; 3) Accelerate retirement of the highest paid workers and replace them with lesser paid workers; 4) Renegotiate labor agreements and let them be part of the solution and don't fear the results of having to replace them; 5) Develop our resources as we are a resource state even if we face the vocal environmentalists who are~~

~~would work their way into government agencies to promote their private agendas instead of serving the needs and desires of the people.~~

~~Those are just a few ideas. My position as a voter is for no additional taxes of the citizen. The government is not the place to place more money as it is not efficiently put to use and to further cut the size and cost of state government.~~

~~Thanks for your continued representation of Eagle River and to the attention of my comments. Hope all is well for you and your family! Always feel free to call if I can be of assistance.~~

Yours truly,

Chris Spoerhase  
10618 Tradition Ave.  
Eagle River, AK 99577

Office (907) 929 8000  
Mobile (907) 244 2292

**Subject: HB295**

**Date:** Thu, 24 Jan 2002 14:27:48 -0500

**From:** "Taylor, Russ C." <RCTaylor@mintz.com>

**To:** <Representative\_Ken\_Lancaster@legis.state.ak.us>

We represent AllCom, LLC, a company that is building a digital mobile wireless network in Alaska. We are very interested in HB295 and would like to know if there is someone on your staff to whom we could communicate our views on the pending legislation. In particular, our client is concerned that HB295 be worded to exclude digital two-way radio technologies that are used by mobile businesses (e.g., taxi and ambulance services) and public safety agencies, where operation of the two-way communications device is often necessary while driving. The term "cellular telephone" is actually quite vague and could wrongly be construed to cover devices that include two-way radio (dispatch) technology.

We would also like to learn the best method by which we can present AllCom's views to your office and other interested parties, especially with regard to timing and the likelihood that this legislation will move forward. Thanks.

Russ Taylor  
Mintz Levin Cohn Ferris Glovsky & Popeo, P.C.  
701 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2608  
Direct Dial: 202-661-8717  
Fax: 202-434-7400  
Email: [rtaylor@mintz.com](mailto:rtaylor@mintz.com)

**Subject: HB 295**

**Date: Mon, 28 Jan 2002 09:09:03 -0900**

**From: Justin Carro <Justin\_Carro@Legis.state.ak.us>**

**Organization: Alaska State Legislature**

**To: RDTaylor@mintz.com**

Hello,

I am writing on behalf of Rep. Lancaster. He received your E-Mail and wanted me to get back with you regarding HB295. I have been delegated the task of corresponding and researching the Cell Phone Legislation. I understand your concerns about the exclusion of two-way radio, and have added it to the list of changes to discuss. As well, I have added your correspondence to our file. We are still in the process of evaluating the legislation and as I'm sure you are aware these things are evolutionary. If you have any other concerns or views you would like to communicate, feel free to contact me at the above e-mail address.

Thanks,  
Justin Carro, Staff for Re. Lancaster

---

Justin Carro <[Justin\\_Carro@legis.state.ak.us](mailto:Justin_Carro@legis.state.ak.us)>  
Intern  
Rep. Lancaster

**Subject: HB 295**

**Date: Sat, 19 Jan 2002 10:09:40 -0900**

**From: Ron Johnson <eralaska@alaska.net>**

**To: Representative\_Ken\_Lancaster@legis.state.ak.us**

>  
>Hello from beautiful downtown Kenai. . .it's back to work time. . .and  
>that's a good thing. . .I would like to cast my humble vote against the  
>cell phone legislation. . .you and I know that there are folks that are  
>just gonna keep on keeping on. . I would guess if the numbers were known,  
>designer coffee causes more problems. . after all if you drop your cell  
>phone in your lap at least it's not hot. . . Thanks for listening. . rj

>  
>Ron Johnson, Broker  
>610 Attla Way, Suite 10  
>Kenai, AK 99611  
>In state 800 478 7755  
>Out of state 800 372 2527  
>direct 907 398 3721  
>

Cell phone ban.

**Subject: Cell phone ban.**

**Date:** Mon, 07 Jan 2002 13:07:18 -0900

**From:** Kermit Whittemore <kdetroit@ptialaska.net>

**To:** Representative\_Ken\_Lancaster@legis.state.ak.us

Greetings Representative Lancaster,

I heard part of a news story on Alaska Public Radio Network this morning about 'cell phone ban while driving legislation' you are sponsoring. Yea... and good for you.

I pursued getting 'cell phone ban while driving legislation' put on the local city ballot as an advisory question in October's city elections in Sitka.

I did nothing more than pursue getting it on the ballot. I did not buy any advertising nor organize a lot of people either way except for possibly one letter to the editor of the local newspaper. I relied on common sense.

The vote went down by a 55% to 45% vote. Pretty close really. What is more significant is I have had people tell me that since the vote, being made aware that there could be a problem they have significantly curtailed use of their phone while driving.

I see in the news that New Jersey is now considering the ban.

Check out this web page for great information and ammunition:

<http://www.geocities.com/morganleepena/rebuttal.htm>

And thanks for thinking about the safety of the people of Alaska.

Kermit Whittemore  
Sitka

**Subject:** [Fwd: Cell phone questions]

**Date:** Wed, 30 Jan 2002 14:17:14 -0900

**From:** Justin Carro <Justin\_Carro@Legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Representative Ken Lancaster <Representative\_Ken\_Lancaster@Legis.state.ak.us>

Hey Ken,

I got with the troopers and asked them the question regarding inattentive driving. I spoke with Lt. Laveque. He got back with me on the requested information. The web address for Statute Sec. 28.35.040, Reckless driving. And Sec. 28.35.045, Negligent driving. is [http://old-www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx01/query=\\*/doc/{@10319}?](http://old-www.legis.state.ak.us/cgi-bin/folioisa.dll/stattx01/query=*/doc/{@10319}?)

---

**Subject:** Cell phone questions

**Date:** Wed, 30 Jan 2002 13:58:14 -0900

**From:** Matt Leveque <matthew\_leveque@dps.state.ak.us>

**Organization:** Department of Public Safety

**To:** Justin Carro <Justin\_Carro@Legis.state.ak.us>

**CC:** Royce B Weller <royce\_weller@dps.state.ak.us>, Julia P Grimes <julia\_grimes@dps.state.ak.us>, Donald H Bowman <donald\_bowman@dps.state.ak.us>, Randy Crawford <randy\_crawford@dps.state.ak.us>

Mr. Carro:

Here is the information for Representative Lancaster:

- 1) Data regarding motor vehicle collisions related to cellular phone usage has not been captured in the past. The old form (12-208) didn't have any blocks related to cell phones.
- 2) Starting in 2002, a new form (12-200) was introduced. It does permit the listing of cell phone usage as a human related causal factor. Data from calendar year 2002 will not likely be available (per Alaska Highway Safety Planning Agency) until late 2003.
- 3) Current statutes and regulations permit troopers / officers to cite individuals for inattentive driving a variety of ways depending on the severity of a collision or other circumstances:

AS 28.35.040      Reckless Driving  
AS 28.35.045      Negligent Driving  
13 AAC 02.545    Drivers to Exercise Care

I am sure there are other regulations that might apply but which don't come immediately to mind. Nevertheless, there is one clear additional option. We might cite someone for their bad driving while they were distracted. For example, if a person drove through a stop sign, we might not be able to do anything related to the cell phone; but we could cite them for the behavior (running the stop sign) caused by any distraction related to cell phone usage.

Please let me know if you would like more information. I can fax you a copy of the new accident investigation form if you need it.

[Fwd: Cell phone questions]

matt

--

Lt. Matt Leveque, Alaska State Troopers  
Commander, Department of Public Safety Training Academy  
877 Sawmill Creek Highway, Sitka, AK 99835  
desk: (907) 747-6611 ext. 223  
fax: (907) 747-5606  
email: matthew\_leveque@dps.state.ak.us

---

Justin Carro <[Justin\\_Carro@legis.state.ak.us](mailto:Justin_Carro@legis.state.ak.us)>

Intern

Rep. Lancaster

*Col. Crawford*

# MEMORANDUM

# State of Alaska

**TO:** Colonel Crawford  
Director  
Department of Public Safety

**DATE:** January 17, 2002

**TELEPHONE:** (907) 747-6611 x 222

**FAX:** (907) 747-4555

**FROM:** Sgt. Lee R. Oly  
Deputy Commander  
Public Safety Academy

**SUBJECT:** Cell Phone Usage

Lt. Roberts is at the Academy today and he and I came up with the below statement:

**"Not to operate a cellular phone while in transit and on the normal travel portion of the roadway"**

Ms. Reynolds and I extensively researched numerous internet sites and found that only three states (Florida, California, and Massachusetts) have cell phone usage laws. I conversed directly with the first community to initiate cell phone usage laws, Brooklyn, Ohio and later contacted Dade County, Florida. There are numerous other states that have legislation pending. In all cases the language used in the bill(s) referred to violation of cell phone use when "driving" not "operating." By using the term "driving" they avoided the same or similar conflict we would have by using "operate" and its connotation of being in control, even if the vehicle is turned off and along side the roadway.

**Definitions:**

**TRANSIT:** "An act, process, or instance of passing through or over" (Webster's Dictionary). ... "significance of activity and motion and direction". (Black's Law Dictionary, 5<sup>th</sup> ed.) [If they were parked along side the road, they would have activity and direction, but not motion]

**ROADWAY:** "The part of the roadway intended for vehicular travel". "It does not include paved or otherwise improved shoulders or what is sometimes called the breakdown lane." (The Traffic Accident Investigation Manual, 9<sup>th</sup> ed.) \*\*

\*\*Keeping in mind that if the cellular phone user is permitted to pull onto the shoulder of the road he/she could be in violation of 13AAC 02.34C, where "stopping, standing or parking on a highway and other locations is not permitted unless it is greater than eight feet from the roadway, unless roadway is of sufficient width to allow parking without interfering with normal flow of traffic...." (Alaska Criminal and Traffic Law Manual)

*LT. ROBERTS  
JANUARY 18  
LAW*

JON S. CORZINE  
NEW JERSEY

# United States Senate

WASHINGTON, DC 20510-3004

SENATOR JON CORZINE  
FAX COVER SHEET

DATE: \_\_\_\_\_

TO: Justin

FROM: Bob

FAX NUMBER: (907) 465-3835

NUMBER OF PAGES (INCLUDING COVER): 2

RE: 1 page on 5.927

Please call (202) 224-4744 if you experience problems with this transmission. Thank you.

**S. 927 – “The Mobile Telephone Driving Safety Act of 2001”**  
**Sponsored by Senator Jon S. Corzine (D-NJ)**

S. 927 would require states to enact laws that restrict the use of mobile telephones during the operation of a motor vehicle. The bill is pending in the Senate Committee on Environment and Public Works.

**Bill Summary**

1. **General Rule:** The bill would require states to prohibit an individual from operating a mobile telephone while driving, except in the case of an emergency or other “exceptional circumstances”.
  - **Exceptional circumstances:** States would define such exceptional circumstances, which could include, for example, calls to 911, or calls to report accidents.
  - **“Hands-free” phones:** The bill would allow the use of a cell phone with “hands-free” technology if the state determines that this does not pose a threat to public safety.
  
2. **Enforcement:** States that do not enact such restrictions face the loss of federal highway funds.
  - For the first year a state does not enact such a law, the Secretary of the DOT shall withhold five percent of highway funds.
  - For each subsequent year of noncompliance, the Secretary shall withhold 10 percent of funds.
  - For up to four years after the initial withholding, any withheld funds can be reclaimed if the state complies by enacting a cell phone safety law. After that, any funds withheld would be distributed to states that are in compliance.

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**Mobile Telephone Driving Safety Act of 2001 (Introduced in the Senate)**

S 927 IS

107th CONGRESS

1st Session

**S. 927**

To amend title 23, United States Code, to provide for a prohibition on use of mobile telephones while operating a motor vehicle.

**IN THE SENATE OF THE UNITED STATES**

**May 22, 2001**

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

**A BILL**

To amend title 23, United States Code, to provide for a prohibition on use of mobile telephones while operating a motor vehicle.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Mobile Telephone Driving Safety Act of 2001'.

**SEC 2. MOBILE TELEPHONE USE WHILE OPERATING MOTOR VEHICLES.**

(a) IN GENERAL- Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

**Sec. 165. Mobile telephone use while operating motor vehicles**

**(a) DEFINITION OF MOTOR VEHICLE-** In this section, the term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

**(h) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE-**

**(1) FISCAL YEAR 2004-** The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2003, if the State does not meet the requirements of paragraph (3) on that date.

**(2) SUBSEQUENT FISCAL YEARS-** The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

**(3) REQUIREMENTS-**

**(A) IN GENERAL-** A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that prohibits an individual from using a mobile telephone (other than a mobile telephone used as described in subparagraph (B)) while operating a motor vehicle, except in the case of an emergency or other exceptional circumstance (as determined by the State).

**(B) HANDS-FREE DEVICES-** A State law described in subparagraph (A) may permit an individual operating a motor vehicle to use a mobile telephone with a device that permits hands-free operation of the telephone if the State determines that such use does not pose a threat to public safety.

**(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE-**

**(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS-** Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

**(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE-** If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

**(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS-**

**(A) IN GENERAL-** Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

`(B) TREATMENT OF CERTAIN FUNDS- Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

`(4) EFFECT OF NONCOMPLIANCE- If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3).'

(b) CONFORMING AMENDMENT- The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

`165. Mobile telephone use while operating motor vehicles.'

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## Motorola offers hands-free car phone device

January 8, 2002 Posted: 8:43 AM EST (1343 GMT)



**LAS VEGAS, California (Reuters) --** Wireless technology giant Motorola Inc. Monday introduced a new hands-free phone system for cars that will allow drivers to make calls from their regular cell phones using voice commands.

Motorola's product uses a new technology called Bluetooth, which provides a wireless connection to a cell phone. The technology is incorporated into a car kit that includes a speaker, microphone and control panel and is installed into a car dashboard.

- SAVE THIS
- EMAIL THIS
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The Chicago area-based firm said consumers will be able to activate the phone system by just starting the car. The activated system will then automatically connect to the cell phone, making hands-free calls possible.

The cell phone can be anywhere in the car, within 30 feet of the car kit, in order to be connected.

Drivers can use simple verbal commands to place calls.

The hands free carkit system, which is expected to be available in the second quarter, offers 100 voice activation numbers and is compatible with phones that don't support voice recognition.

Motorola said that it will also introduce a headset incorporating the same Bluetooth technology, allowing cell phone users to make hands free calls from any location. The headset is expected to be available in the first quarter with a suggested retail price of \$199.

The ability to make phone calls hands-free while driving has become important as dozens of states are considering bans on using handheld cell phones while driving. New York state was the first state to put such a ban into effect late last year.

Separately, Motorola also unveiled its first cell phone model in the United States for Qualcomm Inc.'s next generation wireless network called CDMA 2000 1X. CDMA 1X offers high-speed, always-on Internet connectivity.

Motorola has already introduced three CDMA 1X cell phones in Korea.

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INHI

INHI

## CELLPHONES AND DRIVERS: AN ALMANAC

**5 million** – approximate number of U.S. cellphone subscribers, 1990.

**110 million** – approximate number, 2000.

**\$81** – average monthly cellphone bill, 1990.

**\$45** – average bill, 2000.

**21,000** – people employed by the cellphone industry, 1990.

**185,000** – number employed, 2000.

**500,000** – estimated number of drivers of passenger vehicles on U.S. roads talking on a hand-held cellphone at any one time during daylight hours. This equates to about 3 percent of all drivers of passenger vehicles and is higher on weekdays than weekends.

**4.7** – percentage of drivers of vans and SUVs on American roads talking on a hand-held cellphone during rush hours.

**8** – percentage of drivers of vans and SUVs talking on a cellphone during non-rush hours. This is the highest rate of hand-held-cellphone use by all vehicle drivers and is highest particularly in the Midwest and South.

**3.2** – percentage of male drivers of vans and SUVs talking on a hand-held cellphone at any one moment.

**6.1** – percentage of female drivers. The comparable rates for all vehicles are 2.7 percent for males, 3.4 for females.

**2.3** – percentage of black drivers talking on a hand-held cellphone while driving a passenger vehicle.

**3.7** – percentage of white drivers (1.7 percent for other races).

**15** – number of states that collect data on whether a hand-held cellphone was present in a vehicle involved in a crash (Alaska not among them).

**8** – number of states where a state or city government has enacted restrictions on the use of hand-held cellphones by drivers (Alaska not among them).

**1** – number of states that completely ban the use of hand-held cellphones by vehicle drivers except in emergencies (New York).

**24** – countries that restrict or ban the use of hand-held cellphones by vehicle drivers.

■ Sources: "Statistical Abstract of the United States: 2001," released Thursday by the U.S. Commerce Department's Census Bureau; the National Highway Traffic Safety Administration; the National Association of Governors' Highway Safety Representatives.



■ Selected data from the "Statistical Abstract of the United States: 2001," which was released Thursday, are available on the Web site of the U.S. Census Bureau.

[www.census.gov/statab/www](http://www.census.gov/statab/www)

■ The National Association of Governors' Highway Safety Representatives offers a summary of laws passed by 14 states governing cellphone use by drivers.

[www.statehighwaysafety.org/htm/state\\_info/cellphone\\_laws.htm](http://www.statehighwaysafety.org/htm/state_info/cellphone_laws.htm)

■ The National Highway Traffic Safety Administration offers "Passenger Vehicle Driver: Cell Phone Use," the results from a fall 2000 survey (which has a sampling error). To download the survey, go to the "Research Notes" menu at the following location:

[www.nrd.nhtsa.dot.gov/departments/nrd30/ncsa/AvailInf.htm](http://www.nrd.nhtsa.dot.gov/departments/nrd30/ncsa/AvailInf.htm)

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AUCHE DAILY

**Subject:** Driver on Phone At Time of Crash (washingtonpost.com)

**Date:** Mon, 04 Feb 2002 09:06:05 -0900

**From:** Matt Gill <Matt\_Gill@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Representative Ken Lancaster <Representative\_Ken\_Lancaster@legis.state.ak.us>

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## Driver on Phone At Time of Crash

### NTSB Investigation Widens In Fatal Beltway Accident

By Avis Thomas-Lester  
 Washington Post Staff Writer  
 Monday, February 4, 2002; Page A01

The driver of the Ford Explorer that caused Friday's five-fatality crash on the Capital Beltway was on a cell phone with her boyfriend, from whom she had become separated in traffic, when she lost control of the vehicle and hurdled over a guardrail into oncoming traffic, National Transportation Safety Board investigators said yesterday.

NTSB officials said that Dawn Richardson, 20, of Arlington, one of those killed, purchased the 1998 Ford Explorer on Friday and was driving it for the first time as she followed her boyfriend to his parents' home in Prince George's County, a route unfamiliar to her.

A source familiar with the investigation said that the boyfriend, who was not identified, heard Richardson yell and that the call then disconnected. The source said the man then drove back to find out what had happened and came upon the accident scene.

NTSB spokesman Ted Lopatkiewicz said the crash is the first in which the federal agency has singled out the use of a cell phone as a possible factor. The board is also looking into whether there were design flaws in



NTSB engineers survey traffic section of I-95 where the accident occurred. (Michael Robinson-Chavez - The Washington Post)

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factor. The board is also looking into whether there were design flaws in the Beltway's median guardrails, which failed to stop the Explorer as it crossed the 55-foot median and may have helped launch the sport-utility vehicle onto an oncoming minivan.

"Some of the issues we are looking at are the fact that the [Explorer] crossed the median and overrode the barrier," said Dave Rayburn, the NTSB's investigator in charge of the case. "The other is cell phone use. Witnesses said the victim was on a phone conversation two or three minutes at the time of the crash."

Most states have considered or are considering some ban on drivers using cell phones; New York has banned the use of hand-held cell phones while driving. The first criminal case involving a traffic accident blamed on cell phone use was tried in Prince George's 14 months ago. The defendant in the case, who was charged with two counts of vehicular manslaughter, was found guilty of negligent driving but not responsible for the deaths of a Long Island couple.

Lopatkiewicz said NTSB investigators instituted protocols for considering cell phone use after responding to a fatal crash in Illinois a month ago; a man believed to have been on a phone drove into the path of a truck and was killed.

"This is the first major accident we are investigating where cell phone use will be an issue. We expect down the road to investigate more crashes involving cell phones as they come up," he said.

Also yesterday, Maryland State Police officials identified the four Canadians killed when Richardson's Explorer crashed into their white 2001 Ford Windstar minivan at 8:07 p.m. Friday.

They were Julien Laliberte, 67, the driver; his brother Laurent, 66, the front-seat passenger; Laurent's wife, Huguette, 62; and Yolande Rogers, 62, Julien Laliberte's girlfriend.

Julien Laliberte, the only one in the van not wearing a seat belt, was ejected, officials said. Laurent and Huguette Laliberte lived in Sorel-Tracy, Quebec, about 40 miles north of Montreal. Julien Laliberte and Yolande Rogers lived in Pierrefonds, about 20 miles west of Montreal, authorities said.

Ann Sheridan, the daughter-in-law of Laurent and Huguette Laliberte, said the couples left Montreal on Friday morning bound for a three-week vacation in St. Petersburg, Fla. They were scheduled to arrive in Florida on Saturday night and were not expected to check in with relatives for several days.

"They were very excited about going where it was warm and playing golf and just enjoying retirement," Sheridan said. "The brothers were very close. They spent a lot of time together. They had both recently



retired and started playing golf last year."

Sheridan said she was home alone Saturday when Sorel-Tracy police came to her house.

She said she called a friend who was with her husband, Martin, at a pool tournament and told him to bring him home. "Martin did not know what had happened, but he knew something was wrong, because I had told the friend the police were here. He did not know it was both his parents."

Laurent Laliberte had worked in a hardware store, and Huguette stayed home to raise their three children. They had six grandchildren. Julien Laliberte, who had worked in construction, had five children and several grandchildren.

Sheridan said the brothers were from a family of 14 children. Two of their brothers lived in Florida. Their father turned 100 this year and lives in Quebec, Sheridan said.

At a news conference yesterday, Rayburn said that a team of eight investigators is expected to conclude the local investigation within six days and file its report within a year. At that time, the NTSB may issue a recommendation on the use of cell phones by drivers, he said.

The investigators include automotive, human performance and psychology experts. They are reviewing maintenance records and Richardson's driving and medical records. Results of toxicology tests, done by the Maryland state medical examiner, will also be used. A preliminary inquiry showed "no history of serious [driving] violations" by Richardson, Rayburn said.

Rayburn said that Richardson purchased the vehicle Friday from an Alexandria dealership and was talking to her boyfriend -- who was some distance ahead of her -- after they became separated in traffic on the Beltway.

Just south of Central Avenue, the Explorer made "an abrupt maneuver . . . steering and/or braking, and lost control in the median," he said. The Explorer traveled "sideways through the median" and then "vaulted and . . . collided with the Windstar," he said.

NTSB investigators said Richardson's Explorer jumped one guardrail and crossed the grassy median, the dip of which caused the vehicle to vault into the air. It then hit four posts of the guardrail on the southbound side and careered into the top of the minivan.

Investigators are looking into why the guardrail didn't stop the SUV. Rayburn said that national guidelines do not require a guardrail in a median the size of the one at the crash site, which he estimated at 55 feet wide. They will review state median barrier requirements with Maryland

transportation officials.

When asked whether the guardrail should have stopped the Explorer, Rayburn responded: "Not the way it is designed right now."

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# Alaska State Legislature

Please enter into the record my testimony to the 17 Judiciary committee name

Committee on H 295 Cell phones, dated 03/18/02  
bill # / subject

I oppose this bill.

Cell phones are very useful. They are also a major distraction.

If we wish to outlaw all distractions then we would also have to outlaw car radios, food heaters, stereos, CD players, children and other passengers in a vehicle.

We would also have to outlaw outside distractions such as Moose, whales, eagles and pretty girls.

We already have restrictions against driving inattentively. Please let this bill die a deserved death.

Signed: <sup>Thank you</sup> William R Parker Phillip R Park  
Testifier

Self  
Representing (optional)

35307 Rabbit Run Rd, Soldotna, AK, 99609  
Address

(907) 262-7677  
Phone number

I oppose this bill.

We already have laws on the books making drivers responsible for their actions. This bill is directed at only one possible distraction to driving. If the legislature wishes to outlaw all forms of distraction to driving then eating, drinking (coffee - soft drinks), smoking, listening to sound systems, changing radio stations - CDs - cassettes, adjusting radio - temperature controls - headlights or wipers all must be prohibited inside the vehicle. Pretty girls in sexy clothes/ young guys in tight jeans, moose and other wild life, pretty scenery, antique automobiles, weather of any kind and anything else outside the vehicle that might distract the driver must also be outlawed. There is no way that you can legislate all of the distractions that a driver faces. In a recent report in one of the local papers, cell phones ranked down near the one to two percent range for causing accidents. Changing the radio or a cassette was far higher on the contributing factors. Dropped cigarettes were even higher.

This bill would only saddle us with another unenforceable law. Our troopers and city police are already overloaded with unenforceable and unenforced laws. Do we need any more? I don't think so.

*William R. Parker*  
William R Parker  
35367 Rabbit Run Road  
Soldotna, AK 99669  
907 262-7677

SELF

04/06/02

**Commonwealth of Pennsylvania Joint State Government Commission** December 2001*Driver Distractions and Traffic Safety***Findings: Statutory restriction of phone use in cars is not justified by current data.**

According to the Department of Transportation, wireless phones accounted for only 5.2% of distraction-related crashes, representing 0.4% of all crashes, reported from 1999-2000. The Commission found that the distraction of other occupants accounted for twice as many crashes as phones and concluded that statutory restriction of phone use in cars is not justified by current data. The Commission concluded that a corrective policy is most likely to succeed if it is based on reliable data, which will ensure any regulatory response will actually increase safety.

**Virginia Commonwealth University Transportation  
Safety Training Center**

December 2001

*Driver Inattention and Driver Distraction Study - [www.vcu.edu/cppweb/tstc/sr15.html](http://www.vcu.edu/cppweb/tstc/sr15.html)***Findings: Insufficient evidence to warrant cell phone restrictions.**

Based on an analysis of crash report forms, "driver inattention" ranks as the top cause of all car crashes in Virginia. The greatest majority (17%) was found to result from driver fatigue/falling asleep. The report concludes that there is insufficient evidence to warrant cell phone restrictions in Virginia. "The findings in this Special Report suggest that further research and analysis are needed before possible remedial action, such as legislative action, can be made."

**George Mason University for the Virginia General Assembly**

November 2001

*Distacted Driving: Review of Current Needs, Efforts and Recommended Strategies - [www.caph.gmu.edu](http://www.caph.gmu.edu)***Findings: Research on distracted driving does not support current legislative initiatives to restrict phone use in cars or to require hands-free use.**

GMU researchers found that available research on distracted driving does not support current legislative initiatives to restrict phone use in cars or to require hands-free use. The report concludes that legislative efforts should focus on increased data collection and education. "Recent media attention to the issue of cellular phone use while driving has generated pressure for state legislators to create laws to protect drivers and other users of roadways from motor vehicle crashes associated with cellular phone use, yet a consistent body of research evidence to support restrictive legislation does not exist."

**Texas Transportation Institute**

February 2001

*The Extent and Effects of Handheld Cellular Telephone Use While Driving - <http://swuttc.tamu.edu/Reports/167706-1.pdf>***Findings: More data and research is necessary to fully understand all sources of driver distraction.**

The report calls for more data and research to fully understand and identify all sources of driver distraction and to gain a clearer picture of the relationship between wireless phone use and car accidents. "Drivers, researchers, device manufacturers, and automobile manufacturers are encouraged not to be cognitively myopic in thinking a decrement in driving performance only occurs when a cellular telephone is used. On the contrary, driving performance can be compromised by the growing number of distractions in and outside of vehicles." Results from simulated driving tests led researchers to conclude that conversation intensity is not a significant factor in driver performance and hands-free devices have no immediate benefit over hand-held wireless phones. "Though expected to be a significant factor, cellular telephone use mode (handheld v. hands-free) was not significant. The hands-free mode showed no immediate benefit over the handheld mode."

**Harvard University Center for Risk Analysis**

July 2000

*Cellular Phones and Driving: Weighing the Risks and Benefits - <http://www.hsph.harvard.edu/pdf/cellphones.pdf>***Findings: "Efforts to make public policy now, based on modest scientific evidence, are likely to produce ill-informed decisions that may do society more harm than good."**

The report found that risks associated with phone use while driving were small compared to other daily risks, while the benefits offer potential improvements in public health and safety. The report concludes that it is premature to enact legislative restrictions, calling for more research to enable an informed, rational policy on phone use while driving. "Before major policy decisions are made about cellular phones, government and industry should work together to produce a richer body of knowledge on both the risks and benefits of using cellular phones while driving. Efforts to make public policy now, based on modest scientific evidence, are likely to produce ill-informed decisions that may do society more harm than good."

Responsible wireless phone use in cars is an issue that AT&T Wireless takes very seriously. We know that wireless phones can make roads and communities safer when people report accidents or hazardous situations. For example, in 2000 nearly 140,000 9-1-1 calls were made each day from wireless phones. We also recognize that wireless phones can be distracting if used irresponsibly while driving and that a driver's first priority behind the wheel must be the safe operation of that vehicle.

Driver distraction is a complex issue with no single solution. However, AT&T Wireless believes a three-pronged approach is most effective: 1) public education; 2) technological advancements; and 3) laws that deter and penalize irresponsible driving, regardless of the cause.

### Public Education

AT&T Wireless is actively engaged in several important educational and public awareness initiatives designed to promote the responsible use of phones in cars. For example:

- AT&T Wireless provides guidelines for responsible use through paid advertising; media outreach; public service announcements; wireless service guides, manuals and product packaging; bill inserts; point of purchase displays; and an interactive website ([www.attwireless.com](http://www.attwireless.com)) that provides information about distracted driving and tips for responsible phone use while driving.
- In 2001, AT&T Wireless spent more than 7 million dollars on dedicated driver safety efforts. These efforts included nationwide radio traffic sponsorships that provide tips to help drivers manage phone use responsibly, community outreach activities on the state and local level, and an outdoor advertising campaign featuring our "Arrive Safely" message on billboards located on Interstates/expressways and major arteries across the country. *(Note: In addition, the AT&T Wireless "Arrive Safely" logo is integrated into all AT&T Wireless print advertising, wireless service guides, manuals, product packaging, brochures and bill inserts.)*

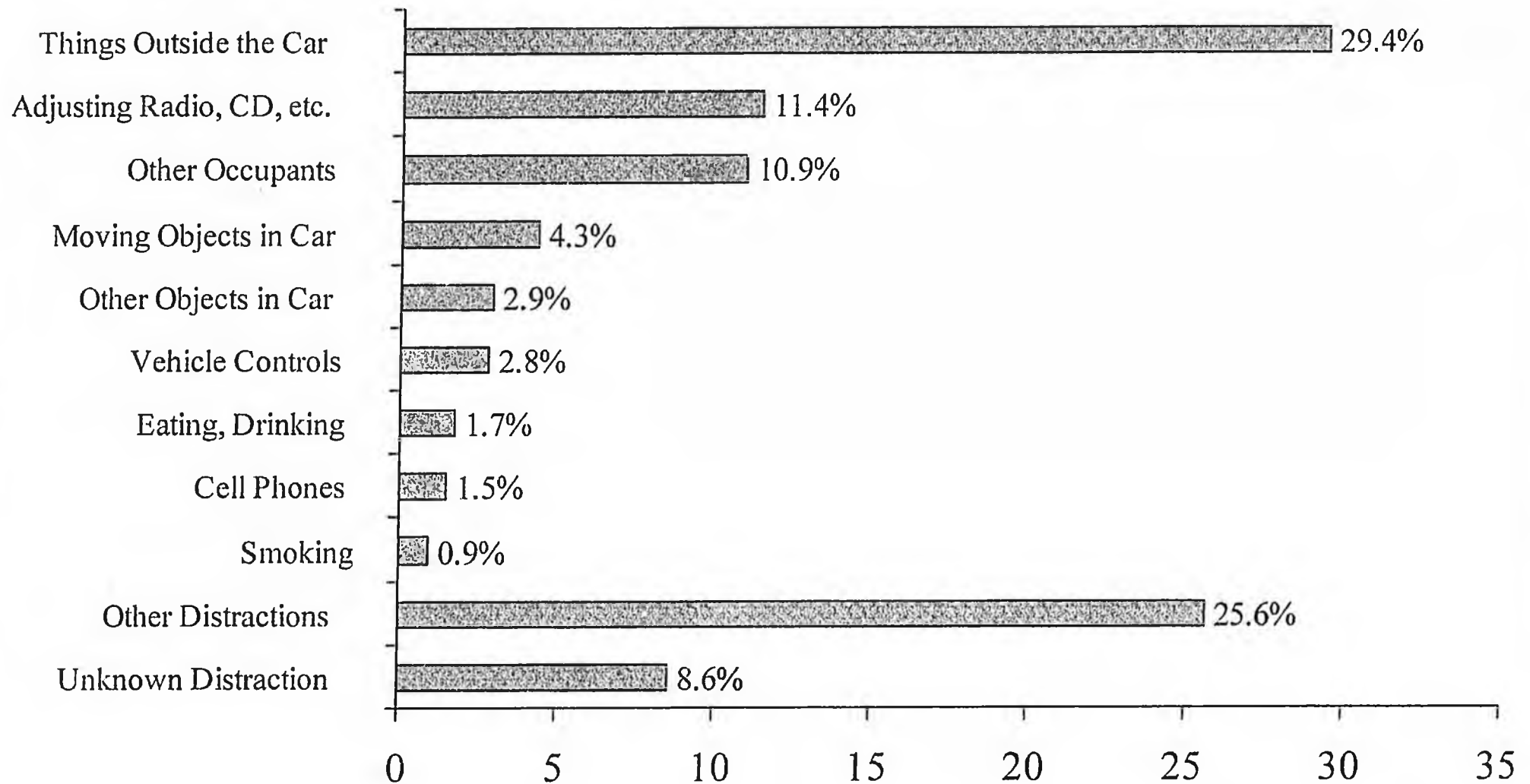
### Technology

- Technology plays a key role in addressing safety concerns raised by wireless phone use in vehicles. AT&T Wireless offers a range of services and products, such as voice mail, hands-free devices and one-touch dialing to help customers manage their phone use responsibly.
- AT&T Wireless now includes a hands-free earpiece with all phones we sell. In September 2001, AT&T Wireless became the first company in the United States to offer customers nationwide the choice and convenience of using their wireless phones hands-free, with a coupon for a free earpiece.
- AT&T Wireless is exploring new and improved technologies and services, such as voice activation, to help customers more conveniently manage phone use.

### Law

- AT&T Wireless believes that people who drive irresponsibly for any reason, including while using their wireless phone, should be penalized. For this reason, we support vigorous enforcement of existing reckless and careless driving laws.
- AT&T Wireless agrees with the traffic safety professionals and researchers who have found that education, not regulation, is the most effective way to improve drivers' habits behind the wheel and manage potential distractions. To that end, AT&T Wireless supports statewide legislation that prohibits inattentive driving caused by people using electronic devices, including wireless phones, or other distractions. By adopting such laws, states will be better prepared to address the safety concerns raised by the ongoing deployment of new technologies in vehicles.

# What distracts drivers?



Source: AAA Study: The Role of Driver Distraction in Traffic Crashes, May 2001

**HB**

**297**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 14, 2002

FURTHER REFERRALS: Finance

Date of Committee Action: 2.16.02

The JUDICIARY Committee considered:

HB 297

HOUSE BILL NO. 297

AGGRAVATOR FOR SEXUAL OFFENSES

"An Act related to aggravating factors at sentencing."

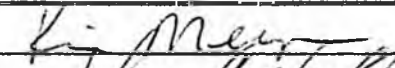
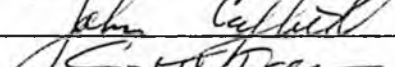
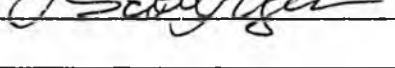
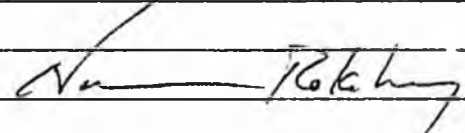
Recommends it be replaced with CS HB 297 (JUD)  Same Title  New Title  
 For Senate Bills with new title:  Technical Title  New Title: HCR \_\_\_\_\_

- attach amendments
- add new referral to \_\_\_\_\_ Committee
- Letter of Intent \_\_\_\_\_ Committee

List of Abbrev. for Depts.:  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LAA  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

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

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

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	Meyer	✓			
	Cochill	✓			
	JOGAN	✓			
Chair: 	ROKEBERG	✓			
Chair:					

22-LS1186L  
Luckhaupt  
1/31/02

ADOPTED

**CS FOR HOUSE BILL NO. 297( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY**

**Offered:**

**Referred:**

**Sponsor(s): REPRESENTATIVE MEYER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act related to aggravating factors at sentencing."**

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

3 **\* Section 1. AS 12.55.155(c) is amended by adding a new paragraph to read:**

4 (30) the defendant is convicted of an offense specified in AS 11.41.410  
5 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
6 the victim in furtherance of the offense with the intent to make the victim  
7 incapacitated; in this paragraph, "incapacitated" has the meaning given in  
8 AS 11.41.470;

THE  
FOLLOWING  
DOCUMENT(S)  
ARE  
POOR  
ORIGINAL  
COPIES

- (3) the offense occurs within the observation of a person under 16 years of age.
- (b) Indecent exposure in the first degree is a class C felony. (§ 3 ch 81 SLA 1998)

**Effective dates.** — Section 24, ch. 81, SLA 1998 makes this section effective June 11, 1998, in accordance with AS 01.10.070(c).

**Editor's notes.** — Section 23, ch. 81, SLA 1998 provides that the provisions of this section "apply to offenses committed on or after June 11, 1998."

**Sec. 11.41.460. Indecent exposure in the second degree.** (a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor. (§ 4 ch 78 SLA 1983; am § 4 ch 81 SLA 1998)

**Effect of amendments.** — The 1998 amendment, effective June 11, 1998, inserted "in the second degree" throughout, and in subsection (a) substituted "if the offender knowingly exposes the offender's genitals in the presence of another person" for "if the offender intentionally exposes the offender's genitals to an-

other person," and deleted "on that person" from the end.

**Editor's notes.** — Section 23, ch. 81, SLA 1998 provides that the 1998 amendments to this section "apply to offenses committed on or after June 11, 1998."

**Sec. 11.41.470. Definitions.** For purposes of AS 11.41.410 — 11.41.470, unless the context requires otherwise,

(1) "health care worker" includes a person who is or purports to be an anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician's assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;

(2) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act;

(3) "legal guardian" means a person who is under a duty to exercise general supervision over a minor or other person committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 as a result of a court order, statute, or regulation, and includes Department of Health and Social Services employees, foster parents, and staff members and other employees of group homes or youth facilities where the minor or other person is placed as a result of a court order or the action of the Department of Health and Social Services, and police officers, probation officers, and social workers when those persons are exercising custodial control over a minor or other person.

(4) "mentally incapable" means suffering from a mental disease or defect that renders a person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;

(5) "position of authority" means an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor;

(6) "sexual act" means sexual penetration or sexual contact;

(7) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;

(8) "without consent" means that a person

(A) with or without resisting, is coerced by the use of force against a person or property, by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or

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1 § 8 ch 79 SLA

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May 23, 2000, in-  
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App. 1996).

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P.2d 482 (Alaska)

pheld. — See Dorr  
App. 1984).  
52 P.2d 481 (Alaska)  
P.2d 1379 (Alaska)

764 P.2d 318 (Alaska)  
State, 951 P.2d

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1/31/02

**CS FOR HOUSE BILL NO. 297( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY**

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

**Sponsor(s): REPRESENTATIVE MEYER**

**A BILL**  
**FOR AN ACT ENTITLED**

1 **"An Act related to aggravating factors at sentencing."**

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

3 **\* Section 1.** AS 12.55.155(c) is amended by adding a new paragraph to read:

4 (30) the defendant is convicted of an offense specified in AS 11.41.410  
5 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to  
6 the victim in furtherance of the offense with the intent to incapacitate.

MOVED  
ADOPTED AS  
AMENDED

AMENDMENT #1

OFFERED IN THE HOUSE

BY REPRESENTATIVE OGAN

TO: HB 297

Delete lines 4 - 6

Insert new paragraph to read:

1 (30) the defendant is convicted of an offense specified in AS 11.41.410 -  
2 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the  
3 victim in ~~the connection with~~ the offense with the intent to incapacitate.

furtherance of

Conceptual amendment #B  
delete

Conceptual amend. #A  
adopted

FAILS 3-4



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 19

## SPONSOR STATEMENT

### HB 297

**“An Act related to aggravating factors at sentencing.”**

When drugs or alcohol are intentionally used to lower the inhibitions of a person to a point where they become the victim of a premeditated sexual assault, the seriousness of the crime should be elevated in the eye of the court.

House Bill 297 adds an aggravating factor to AS 12.55.155 that declares if a defendant supplied drugs or alcohol to the victim, the defendant may be held to a higher degree of punishment. An aggravating factor is an element or circumstance involved in the commission of a crime that elevates its seriousness; a fact justifying more than the usual measure of damages or punishment.

AS 12.55.125 lists presumptive terms of sentencing. HB 297 will allow a judge to increase a presumptive sentence up to the maximum term of imprisonment for that offense.

For example, the presumptive sentence for a first time offender convicted of a sexual assault in the first degree is eight years. With this new aggravator, the judge could increase the sentence to up to 30 years, which is the maximum allowed.

\*\*\*

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 297  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note If correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act related to aggravating BRU Legal and Advocacy Services  
factors in sentencing." Component Public Defender Agency  
 Sponsor Rep. Meyer  
 Requester House Judiciary Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

<b>CHANGE IN REVENUES ( )</b>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation would add an aggravator in felony sentencing if the defendant is convicted of a sexual offense and supplied alcohol or a controlled substance to the victim in connection with the offense. The Public Defender Agency believes this bill will have a fiscal impact on the workload of the Agency, but not on the caseload of the Agency, but cannot quantify it, and therefore an indeterminate fiscal note is submitted.

Prepared by: Barbara Brink, Director Phone (907) 334-4416  
 Division Public Defender Agency Date/Time 1/29/02 3:42 PM  
 Approved by: Jim Duncan, Commissioner Date 1/29/2002  
 Agency Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 297  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title "An Act relating to aggravating factors BRU Administration and Operations  
sentencing." Component All  
 Sponsor Representative Meyer  
 Requester House Judiciary Committee Component No. 694

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

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

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>	<b>***</b>

<b>CAPITAL EXPENDITURES</b>						
-----------------------------	--	--	--	--	--	--

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

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

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

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 This bill would create a new aggravator in sentencing for offenders who supplied alcohol or controlled substances to the victim in sexual assault offenses. Offenders can already be charged with other crimes in these circumstances, e.g., Misconduct Involving a Controlled Substance or Furnishing Liquor to a Minor, so the Department of Corrections is not anticipating a large impact as a result of this legislation, therefore, we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 465-4652  
 Division Commissioner's Office Date/Time 1/29/02 2:19 PM  
 Approved by: Margaret Pugh, Commissioner Date 1/29/02  
 Agency Department of Corrections

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 297

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected \_\_\_\_\_  
 Title Aggravator for Sexual Offenses BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Meyer  
 Requester House Judiciary Component No. 768

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

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2002) cost: 0.0

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

The Alaska Court System does not anticipate any fiscal impact from the passage of HB 297.

Prepared by: Douglas Wooliver Phone 463-4750  
 Division Alaska Court System Date/Time 1/30/02 12:20 PM  
 Approved by: Stephanie Cole by Douglas Wooliver Date 1/30/02  
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

*Inadvertently not adopted by the committee.*

**Sec. 12.55.155. Factors in aggravation and mitigation.** (a) If a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(4), or (i) and

(1) the presumptive term is four years or less, the court may decrease the presumptive term by an amount as great as the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation;

(2) the presumptive term of imprisonment is more than four years, the court may decrease the presumptive term by an amount as great as 50 percent of the presumptive term for factors in mitigation or may increase the presumptive term up to the maximum term of imprisonment for factors in aggravation.

(b) Sentence increments and decrements under this section shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court and may aggravate the presumptive terms set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking the presumptive terms of this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense pursuant to an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney, law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense  
(A) specified i  
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(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit comprised of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 — 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 — 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang.

(d) The following factors shall be considered by the sentencing court and may mitigate the presumptive terms set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but which significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 — 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 — 11.41.470, the victim provoked the crime to a significant degree;

(8) *[Repealed, § 42 ch 143 SLA 1982.]*

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(11) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(12) the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(13) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(16) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(17) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a presumptive term under AS 12.55.125(c)(2), that factor may not be used to aggravate the presumptive term. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to mitigate the presumptive term.

(f) If the state seeks to establish a factor in aggravation at sentencing or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence. Factors in aggravation and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury. All findings must be set out with specificity.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f). (§ 12 ch 166 SLA 1978; am §§ 39 — 41 ch 102 SLA 1980; am §§ 19, 20 ch 45 SLA 1982; am §§ 36, 38, 39, 42 ch 143 SLA 1982; am §§ 6, 7 ch 92 SLA 1983; am § 19 ch 37 SLA 1986; am § 1 ch 37 SLA 1987; am § 4 ch 69 SLA 1987; am § 1 ch 83 SLA 1987; am § 7 ch 66 SLA 1988; am § 1 ch 10 SLA 1990; am § 13 ch 21 SLA 1991; am § 5 ch 64 SLA 1991; am § 26 ch 79 SLA 1992; am § 1 ch 55 SLA 1995; am § 4 ch 6 SLA 1996; am § 12 ch 7 SLA 1996; am § 9 ch 30 SLA 1996; am § 9 ch 60 SLA 1996; am § 14 ch 81 SLA 1998; am § 7 ch 99 SLA 1998; am § 1 ch 67 SLA 2000)

whereabouts and the child's whereabouts hidden from his wife and the authorities; this conduct was sufficient to constitute that actus reus of the offense of custodial interference: the keeping of the child with no legal right to do so. *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

**Protracted period.** — See note under same catchline, AS 11.41.320, *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

**Sec. 11.41.370. Definitions.** In AS 11.41.300 — 11.41.370, unless the context requires otherwise,

(1) "lawful custodian" means a parent, guardian, or other person responsible by authority of law for the care, custody, or control of another;

(2) "relative" means a parent, stepparent, ancestor, descendant, sibling, uncle, or aunt, including a relative of the same degree through marriage or adoption;

(3) "restrain" means to restrict a person's movements unlawfully and without consent, so as to interfere substantially with the person's liberty by moving the person from one place to another or by confining the person either in the place where the restriction commences or in a place to which the person has been moved; a restraint is "without consent" if it is accomplished

(A) by acquiescence of the restrained person, if the restrained person is under 16 years of age or is incompetent and the restrained person's lawful custodian has not acquiesced in the movement or confinement; or

(B) by force, threat, or deception. (§ 3 ch 166 SLA 1978)

**Cross references.** — For definition of terms used in this title, see AS 11.81.900.

**NOTES TO DECISIONS**

**Restraint by deception.** — The jury could have concluded that defendant had secured victim's presence in his van through deception — by luring her with false promises of information concerning a child custody dispute — thereby committing an act of restraint. *State v. McDonald*, 872 P.2d 627 (Alaska Ct. App. 1994).

**Defense that victim was defendant's relative.** — The new criminal code, which states in AS 11.41.300(b)(1) that it is an affirmative defense that defendant was a relative of the victim, provides for a

broader exemption from the kidnapping statute than the absolute exemption for the abduction of a minor by his parent under former AS 11.15.260. *Crump v. State*, 625 P.2d 857 (Alaska 1981).

**Quoted in** *Alam v. State*, 793 P.2d 1081 (Alaska Ct. App. 1990).

**Stated in** *Strother v. State*, 891 P.2d 214 (Alaska Ct. App. 1995).

**Cited in** *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985).

**Article 4. Sexual Offenses.**

**Section**

- 410. Sexual assault in the first degree
- 420. Sexual assault in the second degree
- 425. Sexual assault in the third degree
- 427. Sexual assault in the fourth degree
- 432. Defenses
- 434. Sexual abuse of a minor in the first degree
- 436. Sexual abuse of a minor in the second degree
- 438. Sexual abuse of a minor in the third degree

**Section**

- 440. Sexual abuse of a minor in the fourth degree
- 445. General provisions
- 450. Incest
- 455. Unlawful exploitation of a minor
- 458. Indecent exposure in the first degree
- 460. Indecent exposure in the second degree
- 470. Definitions

**Cross references.** — For provisions concerning evidence and procedure in certain sexual offense cases, see AS 12.45.045 and 12.45.046.

For authority of court to order a defendant to submit to a blood test when sexual penetration is an element of the offense, see AS 18.15.300.

**NOTES TO DECISIONS**

**Origin.** — The Alaska Revised Code provisions defining sexual offenses are based on a proposed

Michigan Code. *Reynolds v. State*, 664 P.2d 621 (Alaska Ct. App. 1983).

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January 22, 2002

Representative Kevin Meyer  
Alaska State Capitol Rm. # 110  
Juneau, AK 99801-1182

Dear Representative Meyer:

I am writing on behalf of the Board of Directors of Standing Together Against Rape, Inc. (STAR) in Anchorage, Alaska. As you are aware, STAR is a non-profit agency whose mission is to support and advocate for victims of sexual violence and their loved ones.

We are writing today to express our support for House Bill 297 to add *supplying alcohol or a controlled substance to a victim as an aggravating factor for sentencing*. On January 16, at a regular meeting of the Board of Directors, the Board voted to support this bill.

Thank you for your continued efforts on behalf of victims of sexual assault and abuse.

Sincerely,

Karen Bitzer  
Executive Director

**ALASKA NETWORK ON  
DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

130 Seward, Rm 209  
Juneau, Alaska 99801

(907) 586-3650 ph  
(907) 463-4493 fx

To: Representative Meyer  
From: Lauree Hugonin *LH*  
Date: 1/23/02  
Re: HB297

Thank you for introducing HB297, an Act related to aggravating factors at sentencing. The Network supports adding this aggravating factor for judges to consider in sentencing convicted sex offenders.

The Alaska Network on Domestic Violence and Sexual Assault (Network) is the statewide coalition of community domestic violence and sexual assault intervention programs for Alaska. Twenty full member and five supporting member programs provide shelter, advocacy, crisis intervention, and, information and referral services to victims seeking assistance in ending the violence being perpetrated against them. The Network works to promote institutional and systemic change necessary to end violence against women.

People who choose to commit sex offenses often look for people who are vulnerable and can offer the least resistance. They often try and increase that vulnerability through the deliberate use of alcohol or controlled substances.

In 1997, the legislature passed legislation to add flunitrazepam (rohypnol) and gamma-hydroxybutrate (GHB) to the schedule 4-A drug list. Both are commonly known as "date rape" drugs and "forget pills". Sex offenders use these drugs to keep victims from being able to resist and as a defense against being caught. Because survivors will have been heavily sedated, they probably will not have complete recall of the sexual assault. They may be uncertain about exactly what happened and who was involved. The inability of a victim to recall facts makes prosecution of a sexual assault where these drugs were used very difficult.

We have heard anecdotally of an increase in GHB use in sexual assaults on the Kenai Peninsula. Well publicized, your bill can send a strong message to those offenders that the penalties they face will be increased and maybe some of them will make the choice not to offend.

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF PUBLIC SAFETY

### COUNCIL ON DOMESTIC VIOLENCE AND SEXUAL ASSAULT

P.O. BOX 111200  
JUNEAU, ALASKA 99811-1200  
PHONE: (907) 485-4358  
FAX: (907) 485-3827  
OFFICE ADDRESS: 450 WHITTIER ST.

January 23, 2002

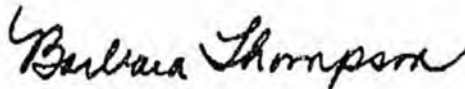
The Honorable Kevin Meyer  
Alaska State House of Representative  
State Capitol, Room  
Juneau, AK 99801-1182

Dear Representative Meyer:

As the state council charged with providing leadership in meeting the needs of victims of domestic violence and sexual assault, the Council on Domestic Violence and Sexual Assault strongly supports House Bill 297, "an Act relating to aggravating factors at sentencing." This bill would allow for stiffer sentences for sexual predators in Alaska, and could be a strong deterrent for perpetrators who intentionally use drugs or alcohol to lower the inhibitions of their victims.

Many sexual assaults in Alaska involve alcohol or other drugs. Victims debilitated by intoxication often present little or no resistance during the assault; nor do they clearly recall the event later. These factors allow the perpetrators to commit serious crimes, seemingly without accountability or punishment. House Bill 297 can help keep Alaskans safe not only by serving as a deterrent, but also by giving courts the option to impose longer sentences for those who commit the crime of sexual assault by intentionally sedating their victims. The Council supports your efforts to increase the penalty for committing this horrible crime in Alaska and appreciates your concern for the protection and safety of Alaskans.

Sincerely,



Barbara Thompson  
Chair

**HB**

**316**

# HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 1, 2002

FURTHER REFERRALS:

Date of Committee Action: 4.9.02

The JUDICIARY Committee considered:

SSHB 316

SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 316

POWERS OF APPOINTMENTS/TRUSTS/CREDITORS

"An Act relating to trusts, including trust protectors, trustee advisors, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment; and providing for an effective date."

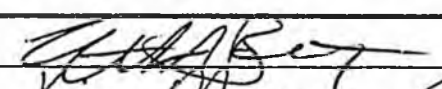
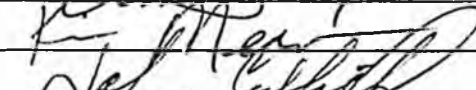
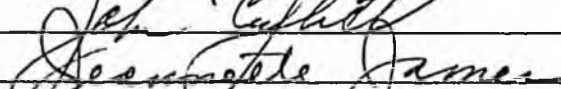
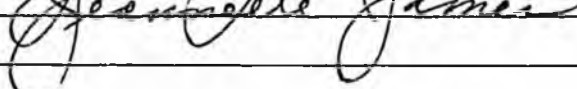
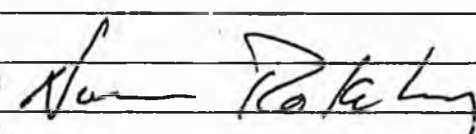
Recommends it be replaced with CS \_\_\_\_\_ ( ) [ ] Same Title [ ] New Title  
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR \_\_\_\_\_*

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

*List of Abbrev. for Depts.:*  
 ADM  
 CED  
 COR  
 CRT  
 EED  
 DEC  
 DFG  
 GOV  
 HSS  
 LAA  
 LAW  
 LWF  
 MVA  
 DNR  
 DPS  
 REV  
 DOT  
 UA

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

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

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
	BERKOWITZ				✓
	MEYER				✓
	CONLEY	DP			
	JAMES	✓			
Chair: 	ROLFSBERG	✓			
Chair:					

# Alaska State Legislature

Session  
State Capitol Building, Room 418  
Juneau, Alaska 99801-1182  
Phone (907) 465-2995  
Fax (907) 465-6592

Interim  
716 West Fourth Avenue, Suite 430  
Anchorage, Alaska 99501  
Phone (907) 269-0250  
Fax 907) 269-0249

Chair, House Special Committee  
on Economic Development, Trade  
and Tourism

Chair, Joint House and Senate  
Administrative Regulation and  
Review Committee

Member  
Resources Committee  
Rules Committee

## Representative Lesil McGuire

*House District 17*

### Sponsor Statement

#### SSHB 316

**"An Act relating to trusts, including trust protectors, trustee advisors, and transfers of trust interests, and to creditors' claims against property subject to a power of appointment; and providing for an effective date."**

Alaska has been in the lead in the development of trust law. Other states have not only enacted similar legislation but have improved on it. This bill fine tunes Alaska's existing trust legislation.

HB 316 provides statutory authority to provisions commonly found in trust instruments. For instance, section 1 of the bill specifically provides for the position of a trust advisor and trust protector and clarifies the manner in which these positions relate to the administration of a trust. Delaware has similar legislation. Many trust instruments allow a trustee to make trust assets available for the use of a beneficiary. Section 2 allows trusts assets consisting of real property and tangible personal property to be used by a beneficiary without the use being considered a distribution which could in turn be subjected to the claims of a beneficiary's creditors

Other sections contained in the bill codify a number of matters which have always been accepted by Alaska trust practitioners as being the common law of this state, but for which there has been no statutory counterpart. Section 4 provides that trust assets can not be attached by a beneficiary's creditor until such time that trust assets are actually distributed to a beneficiary, nor can there be a continuing order against the trustee with respect to future distributions that a trustee would choose to make. Section 6 adds a new subsection (i) to AS 34.40.110 which clarifies that the statute affording spendthrift protection for beneficial interests applies not only to trusts in which a settlor may have a retained interest, but also to the very common third party settled trust where a beneficiary might be serving as sole trustee.

Sections 5 and 6 make amendments AS 34.40.110 which will assist a future court in the interpretation of this statute, something an Alaska court has yet to do. Section 5 clarifies that a fraudulent conveyance action may only be brought against a settlor of a trust and then only as to a specific transfer of assets which are determined to be fraudulent as to that creditor. Section 6, also clarifies the definition of a preexisting creditor who can avail themselves of the time period found in AS 34.40.110(d)(1) for bringing a fraudulent conveyance action against the settlor of a self-settled trust. Subsection (h) as found in Section 6 provides a transfer restriction will be valid with respect to a beneficial interest retained by a settlor even though the settlor serves as a co-trustee, provided the settlor doesn't have control over the manner in which distributions may be made to the settlor. Subsection (k) invalidates any unwritten agreement or understanding between a settlor who is a beneficiary and a trustee which gives the settlor rights greater than those which are permitted to be expressed in the trust instrument.

Last, there are several provisions contained in this bill which have their counterpart in the laws of other states. Section 3 provides the circumstances in which a transfer restriction will continue to be valid even though a settlor retains a unitrust or annuity interest in the trust. These provisions presently exist in Delaware. Section 7 of the bill clarifies when property subject to a power of appointment can be subjected to the claims of a donee's creditors and codifies the common law as it is now found and enunciated in the Restatement 2<sup>nd</sup> of Property. This section has its genesis in a comparable Rhode Island statute. All the provisions found in this bill are necessary additions if Alaska expects our trust industry to remain competitive with other states.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

March 28, 2002

**SUBJECT:** Sectional summary of SSHB 316 relating to trusts and powers of appointment (Work Order No. 22-LS1253\O)

**TO:** Representative Lesil McGuire  
Attn: Sue

**FROM:** *TLB*  
Theresa L. Bannister  
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

### Section 1. Establishes two new sections relating to trusts.

AS 13.36.370. Provides for the appointment of a trust protector. Requires that the trust protector be a disinterested third party. Gives the trust protector the powers, delegations, and functions conferred on the protector by the trust instrument, and identifies some of these powers. Sets a limit on the modifications the trust protector is allowed to make. Subject to the trust's terms, provides that a trust protector is not liable or accountable as a trustee or fiduciary when acting as a trust protector.

AS 13.36.375. Provides for the appointment of an advisor to the trustee with regard to matters relating to a trust's property. Provides that even if an advisor is appointed, the property and management of the trust and the exercise of powers and discretionary acts remain vested in the trustee. States that the trustee is not required to follow the advisor's advice. States that an advisor is not liable as, or considered to be, a trustee when acting as an advisor.

Section 2. Makes various substantive and stylistic changes to the subsection that allows for the establishment of a restriction on the transfer of a beneficiary's trust interests. States that a "beneficiary" can include a beneficiary who is the settlor of the trust. Excludes certain activities from being considered as "payment or delivery" of a trust interest for purposes of applying the subsection.

Section 3. Makes various substantive and stylistic changes to the subsection that applies the transfer restriction against the claims of creditors and other persons. Limits the application of one exception.

Representative Lesil McGuire  
March 28, 2002  
Page 2

**Section 4.** Makes various substantive and stylistic changes to the subsection that addresses the satisfaction of claims of creditors and other persons under (b) of the section. Provides that an attachment or other order may not be made against a trustee with respect to a beneficiary's interest or against property subject to a transfer restriction, except to the extent that the restriction is not allowed under (b) of the section.

**Section 5.** Makes various substantive and stylistic changes to the subsection that identifies which creditors may bring a cause of action or claim for relief for a fraudulent transfer under (b)(1) of the section, or under other law, and within what time frame the action or claim must be brought.

**Section 6.** Adds new subsections to AS 34.40.110.

Subsection (g) limits creditor claims and actions under AS 34.40.110(d)(1) to claims that meet certain burden of proof and timing requirements and to actions that meet certain timing and subject matter requirements.

Subsection (h) applies the transfer restrictions to settlors who are also beneficiaries even if the settlor serves as a co-trustee or an advisor, as long as the settlor does not have trustee power over discretionary distributions.

Subsection (i) applies the transfer restrictions to a beneficiary who is not the settlor, even if serving as a sole trustee, a co-trustee, or an advisor to the trustee.

Subsection (j) allows a transfer restriction even if a settlor has the authority to appoint a trust protector or an advisor to the trustee.

Subsection (k) prohibits a settlor with a beneficial interest subject to a transfer restriction from benefiting from, directing a distribution of, or using trust property except as stated in the trust. Voids an agreement or understanding between the settlor and the trustee that grants greater rights or authority than stated in the trust.

**Section 7.** States that the property that a donee of a power of appointment is authorized to appoint is not subject to the claims of the creditors of the donee unless certain conditions are met.

**Section 8.** Applies this Act to trusts created before, on, or after the effective date of the particular section of the Act that is involved.

**Section 9.** Provides that AS 34.40.110(b), as amended by the Act takes effect immediately.

If I may be of further assistance, please advise.

TLB:med  
02-338.med

# FISCAL NOTE

**STATE OF ALASKA**  
**2002 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 316  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Powers of appointments/Trusts/Creditors BRU Banking Securities & Corporations (115)  
 Component Banking Securities & Corporations  
 Sponsor Representative McGuire  
 Requester House Judiciary Component No. 1233

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

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

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

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

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

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation has no impact on the operations of this division.

Prepared by: Franklin T. Elder, Director  
 Division: Banking Securities & Corporations  
 Approved by: Deborah B. Sedwick, Commissioner  
 Agency: Department of Community & Economic Development

Phone: 907-465-2521  
 Date/Time: 3/27/02 4:18 PM  
 Date: 3/27/2002

**HB**

**317**



22-LS1258R  
Luckhaupt  
4/5/02

*Adopted  
4-8-02*

**CS FOR HOUSE BILL NO. 317(JUD)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES CRAWFORD, Guess, Dyson**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to stalking and to violating a protective order; and amending Rules 4**  
2 **and 65, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of Administration."**

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

4 **\* Section 1. AS 11.56.740(a) is amended to read:**

5 (a) A person commits the crime of violating a protective order if the person is  
6 subject to a protective order

7 (1) issued or filed under AS 18.66 and containing a provision listed  
8 in AS 18.66.100(c)(1) - (7) and knowingly commits or attempts to commit an act in  
9 violation of that provision; or

10 (2) issued under AS 18.65.850, 18.65.855, or 18.65.860 and  
11 knowingly commits or attempts to commit an act in violation of the order.

12 **\* Sec. 2. AS 18.65.530(a) is amended to read:**

13 (a) Except as provided in (b) or (c) of this section, a peace officer, with or  
14 without a warrant, shall arrest a person if the officer has probable cause to believe the

1 person has, either in or outside the presence of the officer, within the previous 12  
2 hours,

3 (1) committed domestic violence, except an offense under  
4 AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

5 (2) committed the crime of violating a protective order in violation of  
6 AS 11.56.740(a)(1) [AS 11.56.740];

7 (3) violated a condition of release imposed under AS 12.30.027.

8 \* Sec. 3. AS 18.65 is amended by adding new sections to read:

9 **Article 11. Stalking Protective Orders and Notifications to Stalking Victims.**

10 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably  
11 believes that the person is a victim of stalking that is not a crime involving domestic  
12 violence may file a petition in the district or superior court for a stalking protective  
13 order against a respondent who is alleged to have committed the stalking. A parent or  
14 guardian may file a petition on behalf of a minor.

15 (b) When a petition for a protective order is filed, the court shall schedule a  
16 hearing and provide at least 10 days' notice to the respondent of the hearing and of the  
17 respondent's right to appear and be heard, either in person or through an attorney. If  
18 the court finds by a preponderance of evidence that the respondent has committed  
19 stalking against the petitioner, regardless of whether the respondent appears at the  
20 hearing, the court may order any relief available under (c) of this section. The  
21 provisions of a protective order issued under this section are effective for six months  
22 unless earlier dissolved by the court.

23 (c) A protective order issued under this section may

24 (1) prohibit the respondent from threatening to commit or committing  
25 stalking;

26 (2) prohibit the respondent from telephoning, contacting, or otherwise  
27 communicating directly or indirectly with the petitioner or a designated household  
28 member of the petitioner specifically named by the court;

29 (3) direct the respondent to stay away from the residence, school, or  
30 place of employment of the petitioner, or any specified place frequented by the  
31 petitioner; however, the court may order the respondent to stay away from the

1 respondent's own residence, school, or place of employment only if the respondent has  
2 been provided actual notice of the opportunity to appear and be heard on the petition.

3 (d) If the court issues a protective order under this section, the court shall

4 (1) make reasonable efforts to ensure that the order is understood by  
5 the petitioner and by the respondent, if present; and

6 (2) have the order delivered to the appropriate local law enforcement  
7 agency for expedited service.

8 **Sec. 18.65.855. Ex parte and emergency protective orders for stalking.** (a)

9 A person who reasonably believes that the person is a victim of stalking that is not a  
10 crime involving domestic violence may file a petition under AS 18.65.850 and request  
11 an ex parte protective order. If the court finds that the petition establishes probable  
12 cause that the crime of stalking has occurred, that it is necessary to protect the  
13 petitioner from further stalking, and that the petitioner has certified to the court in  
14 writing the efforts, if any, that have been made to provide notice to the respondent, the  
15 court shall ex parte and without notice to the respondent issue a protective order. An  
16 ex parte protective order under this section may grant the protection provided by  
17 AS 18.65.850(c). An ex parte protective order expires 20 days after it is issued unless  
18 dissolved earlier by the court at the request of either the petitioner or the respondent  
19 after notice and, if requested, a hearing. If the court issues an ex parte protective  
20 order, the court shall have the order delivered to the appropriate law enforcement  
21 agency for expedited service.

22 (b) A peace officer, on behalf of and with the consent of a victim of stalking  
23 that is not a crime involving domestic violence, may request an emergency protective  
24 order from a judicial officer. The request may be made orally or in writing based on  
25 the sworn statement of a peace officer, and in person or by telephone. If the court  
26 finds probable cause to believe that the petitioner is in immediate danger of stalking  
27 based on an allegation of the recent commission of stalking, the court ex parte shall  
28 issue an emergency protective order. An emergency protective order may grant the  
29 protection provided in AS 18.65.850(c). An emergency protective order expires 72  
30 hours after it is issued unless dissolved earlier by the court at the request of the  
31 petitioner. A peace officer who obtains an emergency protective order under this

1 section shall

2 (1) place the provisions of an oral order in writing on a form provided  
3 by the court and file the written order with the issuing court by the end of the judicial  
4 day after the order is issued;

5 (2) provide a copy of the order to the petitioner; and

6 (3) serve a copy of the order on the respondent.

7 **Sec. 18.65.860. Modification of protective orders for stalking.** (a) Either  
8 the petitioner or the respondent may request modification of a protective order issued  
9 under AS 18.65.850 or 18.65.855(a). If a request is made for modification of

10 (1) a protective order, after notice and hearing under AS 18.65.850, the  
11 court shall schedule a hearing within 20 days after the date the request is made, except  
12 that, if the court finds that the request is meritless on its face, the court may deny the  
13 request without a hearing; or

14 (2) an ex parte protective order under AS 18.65.855(a), the court shall  
15 schedule a hearing on three days' notice or on shorter notice as the court may  
16 prescribe.

17 (b) If the court modifies a protective order under this section, the court shall  
18 issue a modified order and shall

19 (1) make reasonable efforts to ensure that the order is understood by  
20 the petitioner and by the respondent, if present at the hearing, and

21 (2) have the order delivered to the appropriate local law enforcement  
22 agency for expedited service.

23 **Sec. 18.65.865. Service of process; forms for petitions and orders; fees;  
24 warnings; and notification.** (a) Service of process of an order issued by the court  
25 under AS 18.65.850 - 18.65.860 shall be as provided in AS 18.66.160 for service of  
26 process of domestic violence protective orders.

27 (b) The Alaska Court System shall prepare forms for petitions and protective  
28 orders and instructions for their use by a person seeking a protective order under  
29 AS 18.65.850 - 18.65.860. The forms must conform to the Alaska Rules of Civil  
30 Procedure, except that information on the forms may be filled in by legible  
31 handwriting. Filing fees may not be charged for filing the petition. Each protective

1 order form must contain the following warning in boldface type: "Violation of this  
2 order may be a misdemeanor punishable by up to one year of incarceration and a fine  
3 of up to \$5,000."

4 (c) The Department of Public Safety shall develop and make available to law  
5 enforcement agencies in the state a notice that details the rights of victims of stalking  
6 and the services available to them. The form must be similar to that provided to  
7 victims of domestic violence under AS 18.65.520. A peace officer investigating a  
8 stalking offense shall provide the form to the victim.

9 **Sec. 18.65.870. Definitions.** In AS 18.65.850 - 18.65.870,

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

12 (2) "household member" has the meaning given in AS 18.66.990;

13 (3) "stalking" means a violation of AS 11.41.260 or 11.41.270.

14 \* **Sec. 4.** AS 18.66.990(3) is amended to read:

15 (3) "domestic violence" and "crime involving domestic violence" mean  
16 one or more of the following offenses or an offense under a law or ordinance of  
17 another jurisdiction having elements similar to these offenses, or an attempt to commit  
18 the offense, by a household member against another household member:

19 (A) a crime against the person under AS 11.41;

20 (B) burglary under AS 11.46.300 - 11.46.310;

21 (C) criminal trespass under AS 11.46.320 - 11.46.330;

22 (D) arson or criminally negligent burning under AS 11.46.400 -  
23 11.46.430;

24 (E) criminal mischief under AS 11.46.480 - 11.46.486;

25 (F) terroristic threatening under AS 11.56.810;

26 (G) violating a protective [DOMESTIC VIOLENCE] order  
27 under AS 11.56.740; or

28 (H) harassment under AS 11.61.120(a)(2) - (4);

29 \* **Sec. 5.** AS 22.15.100(9) is amended to read:

30 (9) to issue a protective order in cases involving

31 (A) domestic violence as provided in AS 18.66.100 -

1 18.66.180; or

2 (B) stalking as provided in AS 18.65.850 - 18.65.870;

3 \* Sec. 6. The uncodified law of the State of Alaska is amended by adding a new section to  
4 read:

5 INDIRECT COURT RULE AMENDMENTS. (a) AS 18.65.865, added by sec. 3 of  
6 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,  
7 Alaska Rules of Administration, relating to fees and service of process for protective orders  
8 for victims of stalking.

9 (b) AS 18.65.850 - 18.65.870, added by sec. 3 of this Act, have the effect of  
10 amending Rule 65, Alaska Rules of Civil Procedure, relating to temporary restraining orders,  
11 the method of obtaining those orders, and the timing of those orders.

Rolled into a — All the amendments  
CS

AMENDMENT 1

OFFERED IN THE HOUSE

BY REPRESENTATIVE CRAWFORD

TO: CSHB 317 (L&C), Draft Version "J"

- 1 Page 4, line 17:
- 2 Remove:
- 3 (2) a temporary
- 4
- 5 Insert:
- 6 (2) an ex-parte

AMENDMENT 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE CRAWFORD

TO:CSHB 317 (L&C), Draft Version "J"

1 Page 5, line 5:  
2 Add:  
3 (D) When a petition is filed under this paragraph,  
4 the court shall schedule a hearing and provide at least 10 days'  
5 notice to the respondent of the hearing and of the respondent's right to  
6 appear and be heard, either in person or by any attorney.  
7

AMENDMENT 3

OFFERED IN THE HOUSE

BY REPRESENTATIVE CRAWFORD

TO:CSHB 317 (L&C), Draft Version "J"

- 1 Page 4, line 9  
2 Delete:  
3 (b) [AFTER RECEIVING A PETITION UNDER (a) OF THIS  
4 SECTION, a ] court may grant  
5  
6 Add:  
7 (b) A court may grant  
8  
9 Page 4, line 10  
10 Add:  
11 (1) an emergency protective order if [THE COURT FINDS], upon  
12 a sworn oral or written application by a peace officer with the  
13 consent of the alleged victim, that  
14  
15  
16 Page 4, line 14:  
17 Add:  
18 (B) the protective order is necessary to protect the petitioner  
19 from **immediate danger of further stalking**

AMENDMENT 4

OFFERED IN THE HOUSE

BY REPRESENTATIVE CRAWFORD

TO:CSHB 317 (L&C), Draft Version "J"

1 Page 5, line 10:

2 Remove:

3 (d) a parent or guardian may file a petition for a protective order  
4 under this section on behalf of a minor. [ A PEACE OFFICER MAY  
5 MAKE A WRITTEN OR ORAL APPLICATION FOR AN  
6 EMERGENCY PROTECTIVE ORDER UNDER THIS SECTION ON  
7 BEHALF OF, AND WITH THE CONSENT OF, THE STALKING  
8 VICTIM].

AMENDMENT 5

OFFERED IN THE HOUSE

BY REPRESENTATIVE CRAWFORD

TO:CSHB 317 (L&C), Draft Version "J"

- 1 Page 4, line 28
- 2 Remove:
- 3 (3) [an extended] protective order
- 4
- 5 Insert:
- 6 (2) a protective order

*Adopted  
3.6.02*

22-LS1258J  
Luckhaupt  
3/5/02

*Crawford  
3502*

**CS FOR HOUSE BILL NO. 317( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVES CRAWFORD, Guess**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to stalking and to violating a protective order or injunction; and**  
2 **amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9, Alaska Rules of**  
3 **Administration."**

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

5 **\* Section 1. AS 04.11.494 (e) is amended to read:**

6 (e) A person is disqualified as described under (b)(9) of this section due to the  
7 person's criminal record if less than

8 (1) two years has elapsed from the person's unconditional discharge  
9 due to a conviction or adjudication as a delinquent for any of the following offenses or  
10 a law or ordinance from another jurisdiction with similar elements:

11 (A) driving while intoxicated under AS 28.35.030 or refusal to  
12 submit to a chemical test under AS 28.35.032; or

13 (B) a crime involving domestic violence, as that term is defined  
14 under AS 18.66.990, or violating a protective order or iniunction under