

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10286 HOUSE JUDICIARY

131

1 AS 11.56.740;

2 (2) five years has elapsed from the person's unconditional discharge  
3 due to a conviction or adjudication as a delinquent for any of the following offenses or  
4 a law or ordinance from another jurisdiction with similar elements:

5 (A) a felony violation or a felony attempt to commit a violation  
6 of AS 11.41; or

7 (B) a misdemeanor violation of or a misdemeanor attempt to  
8 violate a provision in this title; or

9 (3) 10 years has elapsed from the person's unconditional discharge due  
10 to a conviction or adjudication as a delinquent for a felony violation or a felony  
11 attempt to violate a provision of this title or a law or ordinance from another  
12 jurisdiction with similar elements.

13 \* Sec. 2. AS 11.56.740(a) is amended to read:

14 (a) A person commits the crime of violating a protective order or injunction  
15 if the person

16 (1) is subject to a

17 (A) protective order

18 (i) issued or filed under AS 18.66 and containing a  
19 provision listed in AS 18.66.100(c)(1) - (7); or

20 (ii) issued under AS 18.65.850; or

21 (B) protective injunction issued under AS 47.17.069; and

22 (2) knowingly commits or attempts to commit an act in violation of a  
23 [THAT] provision of the protective order or injunction.

24 \* Sec. 3. AS 12.25.030(b) is amended to read:

25 (b) In addition to the authority granted by (a) of this section, a peace officer

26 (1) shall make an arrest under the circumstances described in  
27 AS 18.65.530;

28 (2) without a warrant, may arrest a person if the officer has probable  
29 cause to believe the person has, either in or outside the presence of the officer,

30 (A) committed a crime involving domestic violence, whether  
31 the crime is a felony or a misdemeanor; in this subparagraph, "crime involving

1 domestic violence" has the meaning given in AS 18.66.990;

2 (B) committed the crime of violating a protective order or  
3 injunction in violation of AS 11.56.740; or

4 (C) violated a condition of release imposed under  
5 AS 12.30.025 or 12.30.027;

6 (3) without a warrant, may arrest a person when the peace officer has  
7 reasonable cause for believing that the person has

8 (A) committed a crime under or violated conditions imposed as  
9 part of the person's release before trial on misdemeanor charges brought under  
10 AS 11.41.270;

11 (B) violated AS 04.16.050 or an ordinance with similar  
12 elements; however, unless there is a lawful reason for further detention, a  
13 person who is under the age of 18 and who has been arrested for violating  
14 AS 04.16.050 or an ordinance with similar elements shall be cited for the  
15 offense and released to the person's parent, guardian, or legal custodian; or

16 (C) violated conditions imposed as part of the person's release  
17 before trial on felony charges brought under AS 11.41.410 - 11.41.458.

18 \* Sec. 4. AS 18.65.530(a) is amended to read:

19 (a) Except as provided in (b) or (c) of this section, a peace officer, with or  
20 without a warrant, shall arrest a person if the officer has probable cause to believe the  
21 person has, either in or outside the presence of the officer, within the previous 12  
22 hours,

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

25 (2) committed the crime of violating a protective order or injunction  
26 in violation of AS 11.56.740;

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

28 \* Sec. 5. AS 18.65 is amended by adding new sections to read:

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

30 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably  
31 believes that the crime of stalking, that is not a crime involving domestic violence, is

1 being committed against the person by another may petition the district or superior  
2 court for a protective order directing the person who is allegedly committing the  
3 stalking to

4 (1) stay away from the home, school, business, or place of employment  
5 of the petitioner and any other location specifically named by the court;

6 (2) refrain from contacting, intimidating, threatening, or otherwise  
7 interfering with the petitioner or a family member of the petitioner specifically named  
8 by the court.

9 (b) After receiving a petition under (a) of this section, a court may grant

10 (1) an emergency protective order if the court finds that

11 (A) the petition establishes probable cause that the respondent  
12 has committed the crime of stalking against the petitioner;

13 (B) the protective order is necessary to protect the petitioner  
14 from further stalking; and

15 (C) the petition does not order the respondent to stay away  
16 from the respondent's own home, school, business, or place of employment;

17 (2) a temporary protective order if the court finds that

18 (A) the petition establishes probable cause that the respondent  
19 has committed the crime of stalking against the petitioner;

20 (B) the protective order is necessary to protect the petitioner  
21 from further stalking;

22 (C) the respondent has been served with or otherwise provided  
23 notice of the petition; and

24 (D) the petition does not order the alleged stalker to stay away  
25 from the alleged stalker's own home, school, business, or place of employment  
26 unless the alleged stalker has been provided an opportunity to be heard on the  
27 petition; or

28 (3) an extended protective order if the court finds, after a hearing, that

29 (A) by a preponderance of evidence, the respondent has  
30 committed the crime of stalking against the petitioner;

31 (B) the protective order is necessary to protect the petitioner

1 from further stalking; and

2 (C) the respondent has been provided at least 10 days' notice of  
3 the hearing and of the alleged stalker's right to appear and be heard, either in  
4 person or by an attorney.

5 (c) A protective order is not effective until served upon the respondent. An  
6 emergency protective order expires 72 hours after the date the order is issued. A  
7 temporary protective order expires 20 days after the date the order is served on the  
8 respondent. An extended protective order expires six months after the order is served  
9 on the respondent.

10 (d) A parent or guardian may file a petition for a protective order under this  
11 section on behalf of a minor. A peace officer may make a written or oral application  
12 for an emergency protective order under this section on behalf of, and with the consent  
13 of, the stalking victim.

14 (e) Either the petitioner or the respondent may request modification of a  
15 protective order. The court may not grant a modification unless notice of the request  
16 has been provided to the adverse party and the adverse party has been granted a  
17 reasonable opportunity to be heard. A modified order issued under this subsection  
18 replaces the protective order it modifies.

19 (f) A protective order issued by a court under this section shall be delivered to  
20 the appropriate law enforcement agency for service on the respondent. Service of  
21 process shall be as provided in AS 18.66.160 for service of process of domestic  
22 violence protective orders.

23 (g) The Alaska Court System shall prepare forms for petitions and protective  
24 orders and instructions for their use by a person seeking a protective order under this  
25 section. Each protective order form must contain the following warning in boldface  
26 type: "Violation of this order may be a misdemeanor, punishable by up to one year of  
27 incarceration and up to a \$5,000 fine." Filing fees may not be charged for the filing of  
28 a petition under this section."

29 (h) In this section, "crime involving domestic violence" has the meaning given  
30 in AS 18.66.990.

31 **Sec. 18.65.855. Notification to stalking victims.** The Department of Public

1 Safety shall develop and make available to law enforcement agencies in the state a  
2 notice that details the rights of victims of stalking, that is not a crime involving  
3 domestic violence, and the services available to them. The form must be similar to  
4 that provided to victims of domestic violence under AS 18.65.520. A peace officer  
5 investigating a stalking offense shall provide the form to the victim. In this section,  
6 "crime involving domestic violence" has the meaning given in AS 18.66.990.

7 \* Sec. 6. AS 18.66.990(3) is amended to read:

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

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

13 (B) burglary under AS 11.46.300 - 11.46.310;

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

15 (D) arson or criminally negligent burning under AS 11.46.400 -

16 11.46.430;

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

18 (F) terroristic threatening under AS 11.56.810;

19 (G) violating a protective [DOMESTIC VIOLENCE] order or

20 injunction under AS 11.56.740; or

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

22 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
23 read:

24 INDIRECT COURT RULE AMENDMENTS. AS 18.65.850(f), added by sec. 5 of  
25 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,  
26 Alaska Rules of Administration, relating to service of process for protective orders for victims  
27 of stalking.

22-LS1258F  
Luckhaupt  
2/14/02

Crawford  
2-14-02

**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 injunction under

1 AS 11.56.740;

2 (2) five years has elapsed from the person's unconditional discharge  
3 due to a conviction or adjudication as a delinquent for any of the following offenses or  
4 a law or ordinance from another jurisdiction with similar elements:

5 (A) a felony violation or a felony attempt to commit a violation  
6 of AS 11.41; or

7 (B) a misdemeanor violation of or a misdemeanor attempt to  
8 violate a provision in this title; or

9 (3) 10 years has elapsed from the person's unconditional discharge due  
10 to a conviction or adjudication as a delinquent for a felony violation or a felony  
11 attempt to violate a provision of this title or a law or ordinance from another  
12 jurisdiction with similar elements.

13 \* Sec. 2. AS 11.56.740(a) is amended to read:

14 (a) A person commits the crime of violating a protective order or injunction  
15 if the person

16 (1) is subject to a

17 (A) protective order

18 (i) issued or filed under AS 18.66 and containing a  
19 provision listed in AS 18.66.100(c)(1) - (7); or

20 (ii) issued under AS 18.65.850; or

21 (B) protective injunction issued under AS 47.17.069; and

22 (2) knowingly commits or attempts to commit an act with reckless  
23 disregard that the act violates or would violate a [IN VIOLATION OF THAT]  
24 provision of the protective order or injunction.

25 \* Sec. 3. AS 12.25.030(b) is amended to read:

26 (b) In addition to the authority granted by (a) of this section, a peace officer

27 (1) shall make an arrest under the circumstances described in  
28 AS 18.65.530;

29 (2) without a warrant, may arrest a person if the officer has probable  
30 cause to believe the person has, either in or outside the presence of the officer,

31 (A) committed a crime involving domestic violence, whether

1 the crime is a felony or a misdemeanor; in this subparagraph, "crime involving  
2 domestic violence" has the meaning given in AS 18.66.990;

3 (B) committed the crime of violating a protective order or  
4 injunction in violation of AS 11.56.740; or

5 (C) violated a condition of release imposed under  
6 AS 12.30.025 or 12.30.027;

7 (3) without a warrant, may arrest a person when the peace officer has  
8 reasonable cause for believing that the person has

9 (A) committed a crime under or violated conditions imposed as  
10 part of the person's release before trial on misdemeanor charges brought under  
11 AS 11.41.270;

12 (B) violated AS 04.16.050 or an ordinance with similar  
13 elements; however, unless there is a lawful reason for further detention, a  
14 person who is under the age of 18 and who has been arrested for violating  
15 AS 04.16.050 or an ordinance with similar elements shall be cited for the  
16 offense and released to the person's parent, guardian, or legal custodian; or

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18 before trial on felony charges brought under AS 11.41.410 - 11.41.458.

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22 person has, either in or outside the presence of the officer, within the previous 12  
23 hours,

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

26 (2) committed the crime of violating a protective order or injunction  
27 in violation of AS 11.56.740;

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29 \* Sec. 5. AS 18.65 is amended by adding new sections to read:

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31 **Sec. 18.65.850. Protective orders for stalking.** (a) A person who reasonably

1 believes that the crime of stalking, that is not a crime involving domestic violence, is  
2 being committed against the person by another may petition the district or superior  
3 court for an order directing the person who is allegedly committing the stalking to

4 (1) stay away from the home, school, business, or place of employment  
5 of the petitioner and any other location specifically named by the court;

6 (2) refrain from contacting, intimidating, threatening, or otherwise  
7 interfering with the petitioner or a family member of the petitioner specifically named  
8 by the court.

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28 a petition under this section."

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 9 one or more of the following offenses or an offense under a law or ordinance of  
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- 14 (C) criminal trespass under AS 11.46.320 - 11.46.330;
- 15 (D) arson or criminally negligent burning under AS 11.46.400 -  
 16 11.46.430;
- 17 (E) criminal mischief under AS 11.46.480 - 11.46.486;
- 18 (F) terroristic threatening under AS 11.56.810;
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 20 injunction under AS 11.56.740; or
- 21 (H) harassment under AS 11.61.120(a)(2) - (4);

22 \* Sec. 7. The uncodified law of the State of Alaska is amended by adding a new section to  
 23 read:

24 **INDIRECT COURT RULE AMENDMENTS.** AS 18.65.850(f), added by sec. 5 of  
 25 this Act, has the effect of amending Rule 4, Alaska Rules of Civil Procedure, and Rule 9,  
 26 Alaska Rules of Administration, relating to service of process for protective orders for victims  
 27 of stalking.

Alaska State Legislature  
House of Representatives

Alaska State Capitol  
Juneau, Alaska 99801-1182  
1-907-465-3438 (phone)  
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Interim Address  
716 West Fourth Avenue  
Anchorage, Alaska 99501-2133  
(phone) 1-907-269-0100  
(fax) 1-907-269-0105

Representative Harry Crawford  
District 22

**REPRESENTATIVE HARRY CRAWFORD  
SPONSOR STATEMENT FOR HB 317**

HB 317 closes a dangerous loophole in the Alaska statutes, by allowing unacquainted victims of stalking to enjoy the security of a judicial protective order. Current law provides protection to those in domestic situations and minor children, but enjoins the victims of strangers from equal protection of the law. HB 317 allows the victims of stalking to seek and obtain a protective order in cases of stalking that are not crimes involving domestic violence. The bill streamlines the process for public safety and judicial practitioners by harmonizing the arrest and notification procedures to mirror those already in place for domestic violence situations. The bill adds the crime of violation of a child protective order and of a violation of a stalking protective order, these changes also reflect existing practitioner procedures.

I urge your support for this necessary change in the law.

# 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

February 20, 2002

**SUBJECT:** Sectional Summary (CSHB 317( ), "F" Version, Draft,  
Dated 2/14/02, Work Order No. 22-LS1258\F)

**TO:** Representative Harry Crawford  
Attn: Dave

**FROM:** Gerald P. Luckhaupt   
Legal Counsel

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

**Section 1.** Amends AS 04.11.494(e)(1)(B) to provide a conforming change to the change made in sec. 2 of the CS( ).

**Section 2.** Amends the existing crime of violating a protective order, AS 11.56.740(a), by adding violations of stalking protective orders, sec. 5 of the CS( ), and child protective injunctions under AS 47.17.069 as alternative ways to commit this crime.

**Section 3.** Amends AS 12.25.030(b) to provide a conforming change to the change made in sec. 2 of the CS( ).

**Section 4.** Amends AS 18.65.530(a) to provide a conforming change to the change made in sec. 2 of the CS( ).

**Section 5.** Amends AS 18.65 by adding new sections that provide for the issuance of protective orders in cases of stalking, that are not crimes involving domestic violence.

**Section 6.** Amends AS 18.66.990(3) to provide a conforming change to the change made in sec. 2 of the CS( ).

**Section 7.** Provides notice that sec. 5 includes an indirect amendment to a court rule.

GPL:lmb  
02-029.lmb

**Sec. 47.17.069. Protective injunctions.**

(a) A court may enjoin or limit a person from contact with a child if the attorney general establishes by a preponderance of the evidence that the person

(1) has sexually abused a child;

(2) has physically abused a child; or

(3) has engaged in conduct that constitutes a clear and present danger to the mental, emotional, or physical welfare of a child.

(b) This section does not limit the authority of the attorney general or the court to act to protect a child.

(§ 14 ch 39 SLA 1985)

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 317  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "An Act relating to stalking and amending Rule BRU Criminal Division  
4, Alaska Rules of Civil Procedure, and Rule 9 . . ." Component 1st-4th Judicial Districts; Criminal  
 Sponsor Representative Crawford Appeals/Special Litigation  
 Requester House Judiciary Committee Component No. 2198-99;2201/03/61/79

**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)*  
 HB 317 would allow a person who believes they are a stalking victim to petition the court to grant a protective order to keep the alleged stalker away from them.  
  
 While passage of this bill will create new prosecutions, the Department of Law does not anticipate a significant fiscal impact.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division: Attorney General's Office Date/Time 3/1/02 1:18 PM  
 Approved by: Kathryn Daughhettee for Bruce M. Botelho, Attorney General Date 3/1/2002  
 Agency: Department of Law

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 317  
 () Publish Date: \_\_\_\_\_

Revision Date/Title (Note if correction): \_\_\_\_\_ Dept. Affected: DPS  
 Title An Act relating to stalking . . . BRU Statewide Support  
 Component APSIN  
 Sponsor Representative Crawford  
 Requester House Judiciary Component No. 528

**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	7.6	0.0	0.0	0.0	0.0	0.0
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>7.6</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	7.6	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>7.6</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)

The bill requires police to enter a new type of protective order ("non-domestic") into a central registry maintained by DPS. DPS will contract for programming services to modify the Alaska Public Safety Information Network (APSIN) to allow entry of the new type of protective order and archival and retrieval of expired orders:

90 hours programming X \$84 per hour = \$7,560.

Prepared by: Diane Schenker, Administrative Manager, CJIS Phone (907) 269-5092  
 Division Administrative Services Date/Time 3/1/02 4:09 PM  
 Approved by: Commissioner Glenn Godfrey Date 3/1/2002  
 Agency Department of Public Safety

**Subject:** [Fwd: HB 317 Re: Stalking]  
**Date:** Tue, 26 Feb 2002 08:10:32 -0900  
**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** HB 317 Re: Stalking  
**Date:** Mon, 25 Feb 2002 17:22:11 -0900  
**From:** "Fay Von Gemmingen" <fayvong@alaska.com>  
**To:** <Representative\_Norman\_Rokeberg@legis.state.ak.us>  
**CC:** <Representative\_Scott\_Ogan@legis.state.ak.us>

Representative Rokeberg:

I am writing in support of HB 317 and urge you to schedule it for a public hearing in Judiciary Committee. In Anchorage, we call it the "Mary Wells Law" because of the terror she and her family went through. She works for a non profit organization, and one of the clients pursued her and terrorized her and her family.

She wanted to file a domestic relations order to try to keep him away, but the judge said she couldn't because there was no relationship. The judge, municipal prosecutors, and Police Chief Monegan urged her to try to get the law changed.

That's how I got involved. She brought her story to me as co-chair of Alaska Municipal League's Local Government and Public Services subcommittee. This committee listened to her story and agreed that something must be done to prevent this horror story from happening again. We added a section to our AML policy to support this legislation.

I'm asking you to give it a chance, give it a public hearing. This issue is too important to women and their families.

Thank you,

Fay

Fay Von Gemmingen

fayvong@alaska.com

**Subject:** [Fwd: Stalking HB 317]

**Date:** Tue, 26 Feb 2002 08:11:09 -0900

**From:** Representative Norman Rokeberg <Representative\_Norman\_Rokeberg@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Heather\_Nobrega@legis.state.ak.us

---

**Subject:** Stalking HB 317

**Date:** Mon, 25 Feb 2002 23:40:27 -0900

**From:** "gary l. wells" <wells1@gci.net>

**To:** Representative\_Norman\_Rokeberg@legis.state.ak.us

Norm, I am a registered Republican and so is the rest of my family on both sides (this, my husband Gary, told me to tell you)!

I work for Bean's Cafe in Anchorage as the Development Director. We provide basic services such as food, day shelter, emergency services, etc. for the Anchorage's poorest, homeless and children between the average age of 7-11 years. I do about two presentations a week from 35 to 1500 people. So I'm always in the public's eye. As such, it took even a long time to figure out who this guy was, where he came from and then to find no one could help. In over 26 years in nonprofit, I have never experienced anything like this. It was a scary time for my husband and kids. As a family, we made a commitment to work through this, not just for us but for all who have committed their life's work to human services. After doing all the research, this stuff happens to a lot of people, good people. And, they can't do anything about it.

There is nothing worse than knowing that I, as their Mom, the police man and the judges could not make the fear go away. My 5 year old became incontinent when the phone or door bell rang. The boys slept in my bed, would not take shower or go to the bathroom unless I was there physically holding them. I discovered that my 12 year old carried a little knife for "just in case" and didn't want me to know about it. This guy tried to befriend my boys on top of that so try to get to me. In the end, I've spent the money in therapy for them and they have come out of it OK.

They also know that a bill is in progress. My hope is that I can tell them that aside from Harry Crawford, Norm Rokeberg is their other hero who will also co-sponsor the bill, a person who cares about other people and to the many other little "gals & guys" that stalking affects.

So, I'm sending you a copy of the letter I sent to everyone and this one is specially for you!

---

Mary A. Wells  
3665 Burl Court  
Anchorage, AK 99504  
Email: wells1@gci.net

February 25, 2002

Representative Norman Rokeberg  
State Capital  
Juneau, AK 99801

Dear Representative Rokeberg:

I want YOU to be a member of a group of HEROES that is together in Juneau to approve a stalking bill (HB 317) so it includes ALL VICTIMS. Currently, Protective Orders (Restraining Orders) are only applicable to member(s) of family(s) or, lived or living under the same roof or, dated or have dated or, have or have had a sexual relationship. This current law excluded my 5 and 12-year sons and myself - he was a stranger.

For almost three months my family was stalked and I kept calling the police. In November of 2001, something in the stalker's behavior, tone and actions changed. The increase in telephone calls day and night, his statements to us of "he was coming, on his way, going to have me, my children and for us to be ready" frightened us. The very day he said my children's names, I lost all fear and I started to prepare for what I needed to do to protect my babies - my sword, my friends, the police and the law.

Judge Murphy denied my boys and I the Protective Order from this person because the law didn't apply to us. His resolution was to protect us by police escort to AWAIC until things could be worked out. Further, Judge Murphy said in court "the law has to change." Fortunately, the Prosecuting Office did their job in identifying other laws broken to obtain sufficient information to arrest him. He pleaded guilty to all charges and was given four years.

Our Governor, Municipal League, Chief of Police, Prosecuting Office and so many folks, supports this bill. But I am learning this is not enough. We need you to immediately and urgently call, write or contact in any way:

Norm Rokeberg, Judiciary & Finance Committee Chair  
Members of the Judiciary & Finance Committee

And say, "We need to pass HB 317"

If you are in public, going shopping, giving public presentations, standing in a public line, perhaps it's someone in your Family, one of your Friends, your Neighbor, this can happen to them and to you too! Please be their HERO too!

Sincerely yours,

Mary A. Wells

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 317  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act relating to stalking..." BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Rep. Crawford  
 Requester (H) JUD 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>						
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<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)  
 See attached.

Prepared by: Barbara Brink, Director Phone (907) 334-4416  
 Division: Public Defender Agency Date/Time 3/6/02 11:18 AM  
 Approved by: Jim Duncan, Commissioner Date 3/6/2002  
 Agency: Department of Administration

FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 317

**ANALYSIS CONTINUATION**

This legislation would create a new section in the protective order statutes to provide for the application and issuance of a protective order for victims of the crime of stalking, that is not a crime of domestic violence. Under the proposed legislation, if a person allegedly violates the protective order, they may be prosecuted for the crime of violating a protective order, a class A misdemeanor.

This legislation will likely have a fiscal impact on the Public Defender Agency, because it broadens the scope of the crime of violating a protective order, which will likely result in more cases, handled by the Agency, charging a violation of this crime. However it is not possible to predict with any certainty the number of new cases this bill will generate, therefore an indeterminate fiscal note is submitted.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 317  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title An Act relating to stalking and amendi BRU Administration and Operations  
 Rule 4, Alaska Rules of Civil Procedure..... Component All  
 Sponsor Representative Crawford  
 Requester House Judiciary Component No. 64

**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>						
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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>***</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 legislation creates a new provision to include protective orders related to non-domestic violence stalking. In addition, it includes a violation of this protective order to AS 11.56.740(a). That creates a new provision to the crime of "violating a protective order".

It is expected that there will be relatively few stalking protective orders. In order to obtain a stalking protective order, the victim essentially has to prove that the stalking occurred, and then the stalker can be arrested which will probably be the preferred response. We do not currently have the availability of the protective orders so we do not know how many will be issued, and then subsequently violated, therefore, we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 465-4652  
 Division Commissioner's Office Date/Time 3/5/02 2:33 PM  
 Approved by: Margaret Pugh, Commissioner Date 3/5/02  
 Agency Department of Corrections.

1 **Approved**

2 Submitted by: Assemblymembers TAYLOR, Tesche,  
3 Von Gemmingen

4 Date: 3/19/02

5 Prepared by: Department of Assembly  
6 For reading: March 19, 2002

7 ANCHORAGE, ALASKA  
8 AR NO. 2002-85

9 **A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY SUPPORTING HOUSE BILL**  
10 **NO. 317, "AN ACT RELATING TO STALKING AND AMENDING RULE 4, ALASKA RULES OF**  
11 **CIVIL PROCEDURE, AND RULE 9, ALASKA RULES OF ADMINISTRATION."**

12 \_\_\_\_\_  
13  
14 WHEREAS, according to the Anchorage Police Department, there were 22 reported cases  
15 of stalking in the year 2000 which may not reflect the number of possible other victims who were  
16 too fearful to come forward; and

17  
18 WHEREAS, current law provides protection to those in domestic situations and minor  
19 children, but does not protect victims who are stalked by strangers; and

20  
21 WHEREAS, House Bill No. 317 (HB 317), introduced by Representative Crawford, proposes  
22 to close a dangerous loophole in the current Statues by providing equal protection to those being  
23 stalked by a stranger; and

24  
25 WHEREAS, HB 317 would allow the victims of stalking to seek and obtain a protective order  
26 in cases of stalking that are not crimes involving domestic violence, and would also streamline the  
27 process by integrating the arrest and notification procedures to mirror the current law for domestic  
28 violence situations; and

29  
30 WHEREAS, upon passage, HB 317 would provide three different types of protective orders  
31 to include an emergency order for three days, another order for 20 day, and one for six months and  
32 longer; and

33  
34 WHEREAS, HB 317 represents a long overdue law and it is only fair that any citizen who  
35 believes that their life is threatened, whether by the known or the unknown, are protected and  
36 provided a sense of security within the community.

37  
38 NOW, THEREFORE, the Anchorage Assembly resolves:

39  
40 Section 1: That the Anchorage Assembly supports and urges passage of House Bill No.  
41 317.

42  
43 Section 2: That copies of this resolution be forwarded to the Alaska State Legislature and  
44 the Governor immediately upon passage and approval.

45  
46 PASSED AND APPROVED by the Anchorage Assembly this \_\_\_\_\_ day of \_\_\_\_\_,  
47 2002.

48  
49  
50 \_\_\_\_\_  
51 Chair

52 ATTEST:

53  
54 \_\_\_\_\_  
55  
56 Municipal Clerk

57  
58 EGJ/2002/RESOLUTIONS/AR26

MAR 21 2002

**HB**

**319**



*Amended  
Pg. 3*

**CS FOR HOUSE BILL NO. 319(L&C)**

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

**TWENTY-SECOND LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR AND COMMERCE COMMITTEE**

Offered: 3/15/02  
Referred: Judiciary

Sponsor(s): REPRESENTATIVES KOTT, Dyson

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to civil liability for commercial recreational activities and for guest  
2 passengers on an aircraft or watercraft; and providing for an effective date."

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

4 \* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section  
5 to read:

6 **PURPOSE OF SECTION 2.** It is the purpose of sec. 2 of this Act to establish the  
7 responsibilities of persons who operate commercial recreational activities and persons who  
8 participate in those recreational activities and to decrease uncertainty regarding the legal  
9 responsibility for injuries that result from participation in commercial recreational activities.  
10 It is also the purpose of sec. 2 of this Act to encourage the continued availability of businesses  
11 that offer commercial recreational activities to the public.

12 \* **Sec. 2.** AS 05 is amended by adding a new chapter to read:

13 **Chapter 50. Civil Liability for Commercial**  
14 **Recreational Activities.**

1           **Sec. 05.50.010. Acceptance of inherent risks.** Participation in a commercial  
2 recreational activity constitutes acceptance of the inherent risks of the commercial  
3 recreational activity that are or should be apparent to an ordinarily prudent person.

4           **Sec. 05.50.020. Contributory negligence.** (a) A person who accepts an  
5 inherent risk of a commercial recreational activity as described in AS 05.50.010 is  
6 contributorily negligent to the extent that the inherent risk causes injury, death, or  
7 property damage.

8           (b) In an action seeking to recover damages for injury or death to a person or  
9 harm to property resulting from an inherent risk of a commercial recreational activity,  
10 compensatory damages shall be reduced for contributory negligence as provided under  
11 AS 09.17.060.

12           **Sec. 05.50.030. Responsibilities of participants.** A participant in a  
13 commercial recreational activity has the responsibility to

14                   (1) learn about and expressly accept the risks of the activities;

15                   (2) act within the limits of the person's abilities and as allowed by the  
16 person's health;

17                   (3) heed all warnings regarding participation in the commercial  
18 recreational activity;

19                   (4) maintain control of the participant's person, a minor under the  
20 control of the participant, and any equipment, devices, or animals the participant is  
21 using or that are under the control of the participant;

22                   (5) refrain from acting in a manner that may cause or contribute to  
23 injury of the participant or another person.

24           **Sec. 05.50.040. Responsibilities of operators of commercial recreational**  
25 **activities.** A person who operates a business that offers a commercial recreational  
26 activity shall

27                   (1) explain to a participant

28                           (A) the fundamental inherent risks of the commercial  
29 recreational activity; and

30                           (B) the skills and equipment required to participate in the  
31 commercial recreational activity that are not apparent to an inexperienced

*Conceptual Amend #2*

*narrow scope*

*directly + actually participating in activity*

1 participant;

2 (2) require that employees who are responsible for assisting  
3 participants in the actual performance of a commercial recreational activity have  
4 training in basic first aid and cardiopulmonary resuscitation and explain to those  
5 employees how to use emergency medical services available in the area;

6 (3) maintain recreational equipment and facilities in good repair;

7 (4) provide trained and competent personnel; and

8 (5) act in a reasonably safe and competent manner.

9 **Sec. 05.50.050. Interaction with other laws.** This chapter does not affect the  
10 immunity of an owner of unimproved land under AS 09.65.200 or of a ski area  
11 operator under AS 05.45.

12 **Sec. 05.50.060. Effect of violations.** A person who operates a business that  
13 offers a commercial recreational activity and who violates AS 05.50.040 is negligent  
14 and civilly liable to the extent the violation causes injury to a person or damage to  
15 property.

16 **Sec. 05.50.100. Definitions.** In this chapter,

17 (1) "commercial recreational activity" means a recreational activity for  
18 which the participants pay compensation;

19 (2) "recreational activity" means an outdoor activity undertaken for the  
20 purpose of exercise, education, relaxation, pleasure, sport, or as a hobby.

21 \* **Sec. 3.** AS 09.65 is amended by adding a new section to read:

22 **Sec. 09.65.112. Civil liability for aircraft and watercraft guest passengers.**

23 (a) An owner or operator of an aircraft or watercraft is not liable for the civil damages  
24 of a person being transported in the owner's or operator's aircraft or watercraft if the  
25 owner or operator is not being compensated <sup>or hired</sup> for the transportation. In this subsection,  
26 "compensated" means a substantial payment in money, services, or materials, but does  
27 not include a token payment.

28 (b) This section does not apply to a civil action

29 (1) for damages resulting from

30 (A) gross negligence or reckless or intentional misconduct;

31 (B) an act or omission of an owner or operator of an aircraft or

*Conceptual Amendment #1*

1 watercraft who is a common carrier; or

2 (C) an act or omission of an owner or operator of an aircraft or  
3 watercraft that occurs while demonstrating an aircraft or watercraft to a  
4 prospective buyer; or

5 (2) described under (a) of this section if the owner or operator

6 (A) has insurance that would compensate the claimant for civil  
7 damages awarded against the owner or operator: an owner or operator who is  
8 insured as described in this subparagraph is not liable for civil damages  
9 described in (a) of this section that exceed the applicable insurance; or

10 (B) does not have insurance that would compensate a person  
11 being transported as described under (a) of this section for civil damages  
12 awarded against the owner or operator and, before the person being transported  
13 enters the aircraft or watercraft, the owner or operator fails to provide notice to  
14 the person being transported that the owner or operator is uninsured as  
15 described in this subparagraph.

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

18 **APPLICABILITY.** This Act applies to acts or omissions that occur on or after the  
19 effective date of this Act.

20 \* **Sec. 5.** This Act takes effect July 1, 2002.

# ALASKA STATE LEGISLATURE

REPRESENTATIVE  
PETE KOTT  
10928 Eagle River Rd Ste. 141  
Eagle River, Alaska 99577  
(907) 694-8944  
FAX (907) 694-8945



While in Juneau  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-3777  
FAX (907) 465-2819

House of Representatives  
House District 24

## Sponsor Statement

### HB 319

One of Alaska's major attractions is outdoor adventure opportunities and the businesses that coordinate access to them. They are synonymous with Alaska lifestyles and visitor expectations, yet the associated liability insurance costs continue to be a tremendous obstacle for Alaska's businessmen and women that provide these commercial recreation opportunities.

HB 319 establishes the responsibilities of commercial recreation businesses and the responsibilities of persons who elect to participate in recreation activities. It addresses specific guidelines operators and participants must follow to minimize the possibility of accidents. Commercial businesses remain responsible for meeting safety standards and for providing trained and competent personnel, as outlined in Section 05.50.040.

However, HB 319 adds the presumption that a participant accepts the inherent risks of a commercial recreation activity and as such plays a part in damages resulting from that inherent risk. Likewise, a non-paying guest who is transported by a non-commercial aircraft or watercraft is considered to have assumed the same inherent risks as the commercial recreation user.

This legislation decreases uncertainties regarding the legal responsibilities for injuries and encourages the continued viability of responsible businesses that offer commercial recreational activities to the public. Existing legal uncertainties have resulted in high liability insurance costs. HB 319 helps avoid unfair and unreasonable claims that make it difficult to provide recreational and outdoor activities that Alaskans are so proud of.

# ALASKA STATE LEGISLATURE

REPRESENTATIVE  
PETE KOTT  
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Eagle River, Alaska 99577  
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While in Juneau  
State Capitol  
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FAX (907) 465-2819

House of Representatives  
House District 24

## Sectional Analysis CS for HB 319

**Section 1:** Establishes the purpose of the bill, which is to decrease the legal uncertainties regarding liability for injuries that result from participation in commercial recreational activities.

As well, the purpose of this legislation is to encourage the continued availability of businesses that offer recreational activities to the public.

**Section 2:** Amends Title 5 – Amusements & Sports, by adding a new chapter entitled, “Civil Liability for Commercial Recreational Activities.”

1. This chapter establishes an acceptance of inherent risk on the part of the participants and responsibilities of the operators. Specifically,
  - a. **Acceptance of inherent risks.** Participation in a commercial recreational activity constitutes acceptance of the inherent risks.
  - b. **Contributory negligence.** A person who accepts the inherent risks of a commercial recreational activity is contributorily negligent to the extent that the inherent risk caused the injury or loss. An action to recover damages shall be reduced for contributory negligence as provided under \*AS 09.17.060.
  - c. **Responsibilities of participants.** The participant is responsible to learn about and to expressly accept the risks of the activity and they must heed all relative warnings. They must act within the constraints of their health. The participant must heed all warnings regarding their The participant must maintain control of themselves, any minors under their control and any equipment or animals that the participant is using. The participant must not act in a fashion that could contribute to the injury of another participant.
  - d. **Responsibilities of operators of commercial recreational activities.** An operator must explain to the participants the fundamental inherent

risks of the commercial recreational activity and must explain the skills and equipment that are not apparent to a novice. The operator must ensure that employees that assist participants are trained in basic first aid and in CPR. The operator must maintain all equipment, provide trained and competent employees and act in a reasonably safe and competent manner.

- e. **Interaction with other laws.** This chapter doesn't affect the immunity of the ski area operator immunity or owner of unimproved land.
- f. **Effect of violations.** A commercial operator who breaches their responsibilities laid out in this chapter is negligent and liable to the extent that the breach caused injury or loss to a participant.

**Section 3:** Amends Title 9 by adding a new section entitled, "Civil liability for aircraft and watercraft guest passengers."

1. This chapter establishes that an owner or operator is not liable for civil damages of their guest except for damages resulting from:
  - a. gross negligence or reckless or intentional misconduct
  - b. an act or omission of a common carrier owner or operator
  - c. an act or omission that occurs while demonstrating an aircraft or watercraft to a prospective buyer
2. This new section also provides that if the owner or operator has insurance is not liable for damages that exceed their insurance coverage.
3. The owner or operator is not shielded by this chapter if they fail to provide notice to the guest that they are uninsured.

**\*09.17.060 Effect of contributory fault.** In an action based on fault seeking to recover damages for injury or death to a person or harm to property, contributory fault chargeable to the claimant diminishes proportionately the amount awarded as compensatory damages for the injury attributable to the claimant's contributory fault, but does not bar recover.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: CSHB 319(L&C)  
 (H) Publish Date: 3/15/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Recreational Activity Liability BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Kott  
 Requester House Labor and Commerce 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>

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

FUND SOURCE	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
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**

POSITIONS	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Full-time						
Part-time						
Temporary						

**ANALYSIS:** *(Attach a separate page if necessary)*  
 The court system does not anticipate any fiscal impact from the passage of HB 319.

Prepared by: Douglas Wooliver Phone 463-4750  
 Division Alaska Court System Date/Time 3/14/02 2:12 PM  
 Approved by: Stephanie Cole Date 3/14/02  
 Agency Alaska Court System

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ORIGINAL  
COPIES



*Ed & Inge Crane*

*5260 Lupin Place  
Anchorage, AK. 99507*

April 4, 2002

Representative Pete Kott  
Alaska State Legislature  
State Capitol  
Juneau, Alaska 99801-1182

Dear Representative Kott,

Thank you for your sponsorship of HB 319. Should it become law, it will resolve a range of dilemmas which confront most private pilots and/or aircraft owners in one way or another.

My aircraft (a PA 28-180) is modest with respect to market value, maintenance and operating costs, and capabilities. Nevertheless, it is a source of much enjoyment as well as an indulgence which my spouse and my circumstances can tolerate.

Over the years, a particular and recurring pleasure has been to treat friends and visitors to the awesomeness and beauty of parts of Southcentral Alaska that can be accessed by a simple and inexpensive flight. Because my lifestyle affords an association with younger people, even greater joys have accrued through the introduction of literally dozens of youngsters to general aviation.

For the past few years, though, as I've had to more seriously contemplate the future for myself and my family, and as I've watched our society become increasingly litigious, those activities have been curtailed. Today, I fly either alone or with my wife only. Because of my record, I am one of those pilots still able to buy insurance (for about \$2,800 annually, and even at that cost it does not cover off-airport operations). However, my policy limits coverage to \$100,000 per passenger. From a practical standpoint, this creates elements of uncontrollable risk which I cannot tolerate. The passage of HB 319 will alleviate that situation in a dramatic way!

Very truly yours,

Ed Crane



## Electronic Code of Federal Regulations

~~e-CFR~~<sup>TM</sup>

THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED APRIL 5, 2002

## 14 CFR - CHAPTER 1 - PART 61

[View Part](#)~~§ 61.113 Private pilot privileges and limitations: Pilot in command.~~

- (a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.
- (b) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if:
- (1) The flight is only incidental to that business or employment; and
  - (2) The aircraft does not carry passengers or property for compensation or hire.
- (c) A private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.
- (d) A private pilot may act as pilot in command of an aircraft used in a passenger-carrying airlift sponsored by a charitable organization described in paragraph (d)(7) of this section, and for which the passengers make a donation to the organization, when the following requirements are met:
- (1) The sponsor of the airlift notifies the FAA Flight Standards District Office with jurisdiction over the area concerned at least 7 days before the event and furnishes --
    - (i) A signed letter from the sponsor that shows the name of the sponsor, the purpose of the charitable event, the date and time of the event, and the location of the event; and
    - (ii) A photocopy of each pilot in command's pilot certificate, medical certificate, and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57 of this part and has logged at least 200 hours of flight time.
  - (2) The flight is conducted from a public airport that is adequate for the aircraft to be used, or from another airport that has been approved by the FAA for the operation.
  - (3) No acrobatic or formation flights are conducted.

Tony Knowles, Governor

# Alaska

## Department of Community and Economic Development

### Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805

Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437

Email: [Insurance@dced.state.ak.us](mailto:Insurance@dced.state.ak.us) • Website: [www.dced.state.ak.us/insurance/](http://www.dced.state.ak.us/insurance/)

February 2, 2001

The Honorable Andrew Halcro  
House of Representatives  
State Capitol, Room 414  
Juneau, AK 99801-1182

Dear Representative Halcro:

---

Re: Aviation Insurance

Legislators, the Division of Insurance (Division) and the news media have all heard from Alaskan air carriers about the difficulty of obtaining affordable liability insurance for their operations. The loss of commercial aviation operations would have a significant negative impact on Alaska, both for the air carriers as well as the rural Alaskans who depend on them for transportation.

The Division has identified options that may improve the availability and affordability of this insurance coverage. The issues of availability and affordability are related yet distinct. Availability refers to the ability of a consumer to obtain insurance coverage. Affordability refers to the price of the coverage.

From discussions the Division has had with consumers and insurance producers, coverage continues to become less affordable. These discussions indicate that renewal premiums may be increasing at amounts up to 50 percent and in a few instances even higher. Some of this increase is due to poor loss experience. Some of it is due to a hardening of the soft insurance market.

Another factor related to the availability and affordability issues is the per seat limit of coverage that air carriers need or want to purchase. Alaska Statute 02.40.010 requires a minimum limit of \$150,000 per seat for bodily injury. Air carriers desiring to purchase higher limits may find availability and affordability problems in obtaining the desired coverage.

#### SAFETY

Aviation insurers have pointed to the need for more stringent safety in the aviation industry. On June 30, 1999, The National Institute for Occupation Safety and Health issued a report that states the occupation of air taxi pilot in rural Alaska is

more hazardous than that of lumberjack or crab fisherman. However, unlike the air taxi pilot, neither the lumberjack nor crab fisherman routinely places the lives of trusting passengers at risk in the performance of his job.

The aviation insurance availability and affordability problems are directly related to safety. Insurance premiums are driven by the cost of issuing a policy and paying any covered claims. Reducing the frequency or severity of claims has the greatest impact on reducing policy premiums.

Safety programs are an essential factor in reducing claims and, therefore, premiums. Air carriers who implement a comprehensive safety plan and are consistent in carrying out the safety plan should expect to see credits on their insurance policies as a result of these efforts. Use of flight simulator training, which is available in Anchorage, could be part of a safety plan. The air carriers association would be a possible source for additional information on safety programs.

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If not adopted on a voluntary basis, safety plans could become a mandatory requirement for air carriers operating in Alaska. This would probably require legislation to implement and set up a statewide safety plan. Difficulties in implementing a mandatory plan include costs to monitor compliance with the plan, development of a safety plan that meets the variety of situations faced by air carriers in Alaska, and possible conflicts with FAA regulation. A mandatory plan could also be an additional burden for those air carriers which currently have an effective safety plan in place.

#### MARKETS CURRENTLY AVAILABLE IN ALASKA

Based on discussions with consumers and producers, the Division is aware of the following markets that are available in Alaska. Detailed information on these entities should be obtained from the producers or insurers themselves. However, they are listed here to show the various options that may be available now. The players in the market are always subject to change.

United States Aircraft Insurance Group (USAIG) is a group, or pool, of insurers that collectively provide aviation insurance on a worldwide basis. On its website at [www.usau.com](http://www.usau.com), USAIG states that its primary goal is "to provide a stable, reliable aviation insurance market by (1) insuring individuals and organizations whose safety standards and loss histories satisfy our underwriting requirements; and (2) charging premiums which are sufficient to support expected losses."

Associated Aviation Underwriters (AAU), the U.S. branch of British Aviation Insurance, is another pool of insurers writing limited business in Alaska, mainly corporate jets with commercial pilots, not owner flown.

London Aviation Underwriters and Houston Casualty Company write air taxi operations as well as other types of aviation risks.

AIG Aviation is non-renewing its book of business.

W Brown & Associates is not writing new business but is renewing its existing book of business.

ACE USA writes in Alaska on a limited basis.

AirSure Ltd. writes mainly large fleets.

Lloyds of London also write portions of some risks.

#### OPTIONS CURRENTLY AVAILABLE BUT NOT USED IN ALASKA

Pooling may be seen to be a solution to the availability and affordability issues. However, pooling does not necessarily improve the loss experience of the members of the pool. If members of a pooling arrangement have poor loss experience, the costs of insurance coverage may not become more affordable. The following four options are ways that air carriers could join together to purchase insurance coverage. They are listed in the order from easiest to most difficult to implement.

##### 1. Risk Purchasing Group

A risk purchasing group is authorized under the federal Liability Risk Retention Act, 15 USC 3901-3906. Members of a risk purchasing group may be able to obtain better rates and customized forms because of the buying power available to a group that is not available to an individual purchaser. The risk purchasing group can also provide loss control services (e.g. safety programs) for its members. As mentioned above, this is an important feature needed to negotiate better rates. Purchasing groups have been used elsewhere by small airlines to lower costs by avoiding minimum premium charges.

The purpose of a risk purchasing group is to purchase liability insurance on a group basis for its members. The group members must have similar business activities and their risk exposure must be similar or related to one another. A group consisting of air carriers would appear to meet this test.

A risk purchasing group may be domiciled in any state. If it is not domiciled in Alaska, then it must register with the state under AS 21.89.090. Purchasing groups are subject to regulation under Title 21.

Guaranty association coverage is available if the purchasing group obtains coverage from an admitted insurer. Guaranty association coverage provides protection to policyholders if the insurer becomes insolvent and cannot pay outstanding claims.

A purchasing group may only provide liability coverage to its members, therefore hull coverage must still be procured individually.

## 2. State Based Joint Underwriting Association or Joint Reinsurance

A joint underwriting association (JUA) and joint reinsurance are combinations of insurers joining together to provide the capacity to write a specific type of risk. A JUA and joint reinsurance are distinguished by the way in which the insurers share the risk among themselves. The national pools mentioned above are organizations of this type. The difference between the national pools and a state pool is that only insurers writing in Alaska would combine together and only Alaska air carriers would be able to obtain coverage from the state pool. The premium would be based upon the experience of the JUA or the reinsurance pool.

JUA's and joint reinsurance are subject to rate regulation under AS 21.39.110. Since aviation insurance is exempt from AS 21.39, a JUA or joint reinsurance writing only aviation insurance would be exempt from AS 21.39.110. However, other sections of Title 21 would apply to these pools.

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The disadvantage to a state based JUA is that there are few risks over which the exposure can be shared. The law of large numbers is difficult to achieve in the Alaska market. Guaranty association coverage would not be available for non-admitted insurers participating in a JUA or joint reinsurance.

## 3. Reciprocal Insurer

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A reciprocal insurer is an unincorporated aggregation of subscribers operating individually and collectively through an attorney-in-fact to provide insurance among themselves. Ten or more persons may join together to form a reciprocal. The liability of each subscriber is individual, several and proportionate liability, not joint. Reciprocal insurers are authorized under AS 21.75.

A reciprocal insurer controls all aspects of the insurance coverage such as underwriting, rating, and claims handling. A reciprocal insurer is subject to regulation under Title 21. Guaranty association coverage is available to subscribers of a reciprocal.

The main disadvantage of a reciprocal is the start-up costs for establishing the reciprocal. The minimum capital and surplus requirements for an Alaska domestic reciprocal writing liability insurance are \$1,500,000. There is also a relatively small base from which potential members can be drawn.

Alaska Timber Insurance Exchange in Ketchikan is authorized as a reciprocal insurer under AS 21.75. They would be a good source of additional information on the operations of a reciprocal.

## 4. Risk Retention Group (RRG)

A risk retention group is a corporation or limited liability association formed under the federal Risk Retention Act, 15 USC 3901-3906. An RRG operates like an insurance company to provide liability insurance for the group. The primary

purpose and activity is to assume, or spread among the members, any or all of the liability exposure of the members. The group must consist of members whose business or activity exposure is similar or related to one another.

An RRG must be licensed or chartered and authorized as a liability insurance company in a state. If the RRG is licensed in another state, it must register with Alaska under AS 21.89.090. RRG's are subject to regulation under Title 21.

As with a reciprocal, the primary disadvantage of a risk retention group is the start-up costs. A domestic Alaskan RRG has minimum capital and surplus requirements of \$2,000,000. Other disadvantages are that an RRG may only provide liability coverage to its members, so hull coverage would need to be obtained individually. Also, guaranty association coverage is not available to an RRG.

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#### ~~OPTIONS REQUIRING NEW STATUTORY PROVISIONS~~

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##### 1. Assigned Risk Plans

An assigned risk plan is one method used to provide coverage in the residual market. (The residual market consists of persons or organizations who cannot get the insurance coverage they need from private insurance companies.) Alaska currently has two assigned risk plans, one for automobile insurance, the other for workers compensation insurance. ~~An assigned risk plan for aviation insurance~~ could be modeled after these plans as in AS 21.39.155. The auto assigned risk plan is also mentioned in AS 28.20.580.

Assigned risk plans are managed by an administrator representing insurers licensed in the state and writing the kind of insurance offered by the plan. Participation in the plan is mandatory with policies assigned to insurers based on their voluntary market share. The plan may use servicing carriers who handle claims and other policy related services. Some plans pool the losses among all participating insurers, other plans require the individual insurer to accept the profit or loss from its share of the assigned risk market.

Implementing an assigned risk plan could cause insurers to withdraw from the state since they may be required to bear additional assessments if the plan operates at a loss. If these assessments are larger than an insurer can bear, the cost can be passed on to their own policyholders, thereby increasing costs for the voluntary market.

##### 2. Risk-Sharing Plans

Arkansas and New Hampshire both have statutes allowing the director to intervene in markets when a kind of insurance is not readily available. The director may direct insurers to prepare a plan to provide the necessary insurance coverage. If the plan submitted by the insurers is not acceptable, the director may develop his or her own plan.

A copy of the Arkansas statute may be found in the Arkansas Code sections 23-95-101 through 23-95-108. This statute may be accessed via the state website at [www.state.ar.us](http://www.state.ar.us).

The New Hampshire statute may be found under NHRSA 404-C. This statute may be accessed via the NH state website at <http://sudoc.nhsl.lib.nh.us/rsa>.

### 3. Market Assistance Plan

Maine has a statute that allows the director to establish a market assistance plan when a particular type of insurance is unavailable or unaffordable. The market assistance plan is a voluntary agreement between the division and the insurers that the insurers will write the insurance at an agreed upon rate for those persons that are unable to obtain the coverage.

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The Maine statute is found in section 2325-A. Internet access is available at [http://janus.state.me.us/legis/statutes/24\\_A/title24-Asec2325\\_A.html](http://janus.state.me.us/legis/statutes/24_A/title24-Asec2325_A.html).

This program was successfully used a couple of years ago when day care liability was difficult to obtain. Additional information on the operation of this program would be available from Maine.

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### 4. Joint Insurance Arrangement

A joint insurance arrangement (JIA) allows members of the JIA to pool contributions to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis. JIA's are authorized under AS 21.76. JIA's are not subject to regulation by the Division, except for review of the cooperative agreement.

Formation of an aviation JIA would require a statute change since only municipalities, city and borough school districts and regional educational attendance areas may enter cooperative agreements. Guaranty association coverage is not available to members of a JIA.

## ALTERNATIVE MARKETS

There are at least two sources of information for hard-to-place coverage. The National Underwriter publishes a supplement called "Agent/Broker Buyers Guide to Insurance Coverages." Rough Notes Company, Inc. publishes "The Insurance Marketplace." Both of these guides list markets by type of risk and each of these guides includes an aviation or aircraft section. However, most of these markets may be through wholesalers not licensed in Alaska or with nonadmitted unlisted insurers.

February 2, 2001

tax credit would overcome the underwriting judgement of the riskiness of the market.

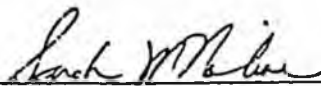
### 3. Subsidization

Many of the options described are likely to have more effect on availability of coverage rather than affordability. Even in a pooling arrangement, if claim costs are high, the insurance premiums will be high. If claim costs are high, some type of subsidization may be the only way to lower insurance premiums.

### CONCLUSION

For any of the options outlined above to improve availability and affordability of aviation liability insurance, the aviation community will need to address safety issues and find ways to reduce the frequency and severity of losses. We have tried to identify various options that may assist air carriers to obtain the coverage they need. If you need additional information, or if you would like to discuss particular options further, we would be happy to discuss these with you.

Sincerely,



---

For Robert A. Lohr  
Director

# CORRECTION

THE FOLLOWING DOCUMENT(S)  
HAVE BEEN REFILMED TO  
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services  
Department of Education & Early Development  
State of Alaska

February 2, 2001

tax credit would overcome the underwriting judgment of the riskiness of the market.

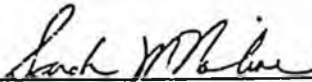
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Sincerely,



For Robert A. Lohr  
Director

**HB**

**321**



SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 321  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES GUESS, Meyer

Introduced: 1/30/02  
Referred: Judiciary, Finance

A BILL  
FOR AN ACT ENTITLED

1 "An Act relating to the purpose for crime victims' compensation; and limiting the  
2 factors that may be considered in making a crime victims' compensation award in cases  
3 of sexual assault or sexual abuse of a minor."

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

5 \* Section 1. AS 18.67.010 is amended to read:

6 Sec. 18.67.010. Purpose. It is the purpose of this chapter to facilitate and  
7 permit the payment of compensation to [INNOCENT] persons injured, to dependents  
8 of persons killed, and to certain other persons who, by virtue of their relationship to  
9 the victim of a crime, incur actual and reasonable expense as a result of certain serious  
10 crimes or in attempts to prevent the commission of crime or to apprehend suspected  
11 criminals.

*Amendment #1. REINSERT  
ADOPTED*

12 \* Sec. 2. AS 18.67.080(c) is amended to read:

13 (c) In determining whether to make an order under this section, the  
14 board shall consider all circumstances determined to be relevant, including

1 provocation, consent, or any other behavior of the victim that directly or indirectly  
2 contributed to the victim's injury or death, the prior case or social history, if any, of the  
3 victim, the victim's need for financial aid, and any other relevant matters. However, if  
4 the claim is based on a crime of sexual assault or sexual abuse of a minor, the  
5 board may not deny an order based on considerations of provocation, the use of  
6 alcohol or drugs by the victim, or the prior social history of the victim.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE GRETCHEN GUESS

## Sponsor Statement HB 321

*An act relating to the purpose for crime victims' compensation; and limiting the factors that may be considered in making a crime victims' compensation award in cases of sexual assault or sexual abuse of a minor.*

When the state established Victims' Compensation Board over 20 years ago, it ensured the victim's role in the crime would be considered. For example, if someone started a bar brawl and was hurt, their case could be denied by the Victims' Compensation Board.

The unintended consequence of this language was child abuse and sexual assault victims could be denied funding if the board found them to have contributed to the circumstances of the crime. For example, a victim of sexual assault could be denied because they were drinking the night of their sexual assault.

Implying a victim of sexual assault somehow deserved or played a role in being victimized is in direct opposition to what we believe as a community – a victim of child abuse or sexual assault has not done anything to bring the crime on him or herself.

Toward fixing this unintended consequence, the language of this bill does the following.

- Deletes the word "innocent" from the purpose statement to ensure the subjective determination of "innocence" is not part of the Board's decision (section one).
- Ensures compensation is not denied based on considerations of provocation, the use of alcohol or drugs, or the prior social history of the victim.
- Retains the current language for compensation criteria for all other crimes.

The victim's compensation board is funded 60 percent by state government and 40 percent by federal government. The 40 percent from the state government comes from garnishing felon's permanent fund dividend checks. Given the nature of the funding mechanism, the fiscal note from the Department of Public Safety will be zero.

# ALASKA STATE LEGISLATURE



REPRESENTATIVE GRETCHEN GUESS

## Sectional Analysis HB 321

“An act relating to the purpose for the crime victims’ compensation; and limiting the factors that may be considered in making a crime victim’ compensation award in cases of sexual assault or sexual abuse of a minor.”

- Section 1:** Amends AS 18.67.010 (Purpose) by omitting the word ‘innocent’ from the purpose statement of the chapter.
- Section 2:** Amends AS 18.67.080 (Awarding Compensation) (c) by adding language prohibiting the consideration of provocation, the use of alcohol or drugs, or the prior social history of the victim, in the case of sexual assault or sexual abuse of a minor.

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: SSHB 321  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 2/7/2002 10 a.m. correctio Dept. Affected: Public Safety  
Title: An Act Relating to the Purpose of BRU: Violent Crimes Compensation  
Crime Victims' Compensation Component: Violent Crimes Compensation  
Sponsor: Representative Guess  
Requester: House Judiciary Component No.: 163

**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>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</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>
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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 should have no fiscal impact for the following reasons:

- 1) current claimants, under similar circumstances, are already being compensated;
- 2) the number of potential cases is small.

Prepared by: Susan L. Browne, Administrator  
Division: Violent Crimes Compensation Board  
Approved by: Commissioner Glenn Godfrey  
Agency: Department of Public Safety

Phone (907)465-5525  
Date/Time 2/7/02 10:11 AM  
Date 2/7/2002

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121 West Fireweed Lane  
Suite 240  
Anchorage, AK 99503  
Phone: (907) 278-1122  
Fax: (907) 278-1121

February 11, 2002

To Whom It May Concern:

My name is Denise Morris, I am the President/CEO of the Alaska Native Justice Center. I chair the Alaska Native Women's Sexual Assault Committee whose mission is to prevent sexual violence against Alaska Native women by increasing community awareness through outreach, education, ongoing evaluation, and supporting and promoting research. I am also a board member of Standing Together Against Rape.

I am writing today in support of HB 321 "An act relating to the purpose for crime victims' compensation; and limiting the factors that may be considered in making a crime victims' compensation award in cases of sexual assault or sexual abuse of a minor." offered by Representative Guess. This bill would simply ensure that victims of child abuse and sexual assault would not be denied compensation for crimes committed against them.

The present language includes the word "innocent" which could be subjectively interpreted and could potentially deny victims of serious crimes just compensation. A victim of sexual assault could potentially be denied compensation because they were consuming alcohol at the time of the assault.

On Friday February 8, 2002 I attended the sentencing of the individual responsible for the sexual assault and kidnapping of five Alaska Native women. The defense attorney alleged that these victims contributed to and were some how responsible for the brutal attacks because they were consuming alcohol prior to the sexual violence. This case demonstrates the need for clear and precise language regarding the rights of victims of violent crimes.

HB 321 will ensure that the use of alcohol/drugs or a person's prior social history will not be used to deny just compensation. The unintended consequence of the present law creates an "impression" of wrongdoing on the part of the victim and that is neither right nor consistent with the practices Alaskans hold dear.

On behalf of the Alaska Native Justice Center, the Alaska Native Women's Sexual Assault Committee and the clients we serve, I urge your support of HB 321.

Sincerely,

for Denise R. Morris  
President/CEO

**HB**

**328**

# ALASKA STATE LEGISLATURE

## HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Scott Ogan, Vice-Chairman  
Representative John Coghill  
Representative Jeannette James  
Representative Kevin Meyer  
Representative Ethan Berkowitz  
Representative Albert Kookesh



State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4990  
Fax: (907) 465-2040

Heather M. Nobrega  
Counsel to Committee

HB 328 was rolled into  
HB 350.

From the Dept. of Law  
Adopted as Amended

A M E N D M E N T

OFFERED IN THE HOUSE

TO: HB 328

Page 1, following line 4:

Insert new bill sections to read:

\* Section 1. AS 11.31.120(i)(2) is amended to read:

(2) "serious felony offense" means an offense

(A) against a person under AS 11.41, punishable as an unclassified or class

A felony; [OR]

(B) involving controlled substances under AS 11.71, punishable as an unclassified, class A or class B felony;

(C) that is damaging an oil or gas pipeline or supporting facility under

AS 11.46.470;

(D) that is terroristic threatening in the first degree under

AS 11.56.807; or

(E) that is criminal mischief in the first degree under AS 11.46.480.

\* Sec. 2. AS 11.41.100(a) is amended to read:

(a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child;

[OR]

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or the immediate flight from that offense, any person causes the death of the child; in this paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

**(4) acting alone or with one or more persons, the person commits or attempts to commit damaging an oil or gas pipeline facility under AS 11.46.470 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants;**

**or**

**(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.**

Page 4, line 7:

Following “containing”:

Insert “a biological and chemical substance or”

Page 4, lines 13 - 15:

Delete all material and insert:

“(b) In this section

(1) “a chemical or biological substance” means a material that is harmful to the health of a person;

(2) “an imitation chemical or biological substance” means a material that by its appearance or by representations would lead a reasonable person to believe that it is harmful to the health of a person.”

TONY KNOWLES  
GOVERNOR  
governor@gov.state.ak.us



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

HB 328  
P.O. Box 110001  
Juneau, Alaska 99811-0001  
(907) 465-3500  
Fax (907) 465-3532  
www.gov.state.ak.us

January 14, 2002

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

I am transmitting a bill that would increase the criminal penalties for certain acts of terrorism and would prohibit the mailing of imitation substances with the intent to frighten people or cause other specified harm. This proposal is part of a package of six bills I am presenting to the Legislature today regarding terrorism prevention and emergency response.

The bill proposes the following criminal penalties:

- Intentional damage of an oil or gas pipeline or supporting facility would be raised to a class A felony (from the current class B felony);
- Unlawful tampering with an oil or gas pipeline or supporting facility would be raised to a class B felony (from a class C felony);
- Unlawful tampering with an airplane or helicopter would be raised to a class B felony (from a class C felony);
- Unlawful tampering with water, including a public or private water supply, with intent to cause physical injury would be the same level of crime as tampering with a food, drug, or cosmetic - a class B felony;
- Sending or attempting to send an imitation biological or chemical substance with intent to frighten people or cause other specified harm would be a class B felony. (Current law provides for either a class C felony or no criminal charge, depending on the circumstances.);

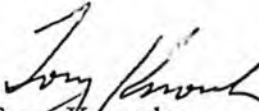
The Honorable Brian Porter

Page 2

- Making a false report under certain circumstances regarding the sending or presence of a harmful biological or chemical substance, or a false report threatening damage to an oil or gas pipeline or supporting facility would be established as a class C felony.

It is unfortunate that recent tragedies and ensuing upheavals in our country make these measures very important. I urge your prompt and favorable action on this bill.

Sincerely,

  
Tony Knowles  
Governor

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL  
OFFICE  
P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3428  
FAX: (907) 465-4043

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
310 K STREET, SUITE 308  
ANCHORAGE, ALASKA 99501-2064  
PHONE: (907) 269-6250  
FAX: (907) 269-6270

February 8, 2002

FEB 08 2002

Honorable Norman Rokeberg  
Chair, House Judiciary Committee  
State Capitol  
Room 13  
Juneau, AK 99801-1182

Re: HB 328

Dear Chairman Rokeberg:

I am writing to request that you schedule House Bill 328 for a hearing in the House Judiciary Committee. HB328 would increase criminal penalties for certain acts of terrorism and would prohibit the mailing of imitation substances with the intent to frighten people or cause other specified harm.

The bill proposes the following changes:

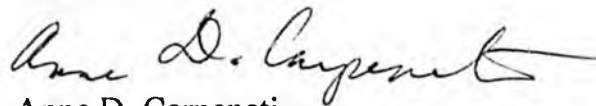
- Intentional damage of an oil or gas pipeline or supporting facility would be raised to a class A felony (from the current class B felony);
- Unlawful tampering with an oil or gas pipeline or supporting facility would be raised to a class B felony (from a class C felony);
- Unlawful tampering with an airplane or helicopter would be raised to a class B felony (from a class C felony);
- Unlawful tampering with water, including a public or private water supply, with intent to cause physical injury would be the same level of crime as tampering with a food, drug, or cosmetic - a class B felony;

- Sending or attempting to send an imitation biological or chemical substance with intent to frighten people or cause other specified harm would be a class B felony. (Current law provides for either a class C felony or no criminal offense, depending on the circumstances.);
- Making a false report under certain circumstances regarding the sending or presence of a harmful biological or chemical substance, or a false report threatening damage to an oil or gas pipeline or supporting facility would be established as a class C felony.

These provisions will be very useful to law enforcement if acts of terrorism reach our shores. If you have any questions please call me. Thank you for your consideration of this request.

Sincerely,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:   
Anne D. Carpeneti  
Assistant Attorney General

BMB:ADC:vr

**HOUSE BILL 328**  
**SECTIONAL ANALYSIS**  
*From the Dept. of Law*

House Bill 328 addresses threats and terroristic acts by increasing the level of offense for certain acts, and adding new provisions to the criminal code. The bill proposes raising the consequences of harming an oil or gas pipeline or supporting facility from the current levels. Intentionally damaging an oil or gas pipeline or supporting facility is currently a class B felony; the bill raises this conduct to a class A felony. There is a similar increase in recklessly tampering with an oil or gas pipeline or supporting facility from a class C to a class B felony.

The bill also adds new provisions to Title 11. Terroristic threatening in the first degree prohibits sending imitation substances that appear to be harmful to a person with intent to cause serious disruption or fear of physical injury. The bill also adds tampering with a person's water supply with the intent to cause physical injury to criminal mischief in the first degree. Current law prohibits tampering with food, drugs, or cosmetics with the intent to cause physical injury. Additionally, making a false threat to damage an oil or gas pipeline is added to the criminal code as a class C felony.

**Section 1** is a conforming amendment that adds terroristic threatening in the first degree as a predicate offense, along with other crimes including terroristic threatening in current law, that would raise the offense of stalking in the second degree to stalking in the first degree.

**Section 2** makes it a class A felony to intentionally damage an oil or gas pipeline or supporting facility. Under current law, this offense is a class B felony.

**Section 3** amends criminal mischief in the first degree (a class B felony) in two ways: First, it adds the prohibition of tampering with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm or loss to property. Under current law, this conduct is a class C felony. Second, it prohibits tampering with water or a container for water, or delivering or distributing water, knowing that it has been tampered with, with the intent to cause physical injury to another person.

**Sections 4 and 5** make conforming amendments to the definitions of "deliver" and "distribute" for criminal mischief in the first degree, to add the delivery or distribution of water to the definitions.

**Section 6** makes a conforming amendment to making a false information or report in violation of AS 11.56.800(a) to exclude conduct that arises to terroristic threatening in the second degree.

**Section 7** adopts the crime of terroristic threatening in the first degree, that prohibits sending or delivering, or attempting or soliciting the sending or delivery of an imitation biological or chemical substance with the intent to place another in fear of physical injury to any person, cause the evacuation of a building or other facility, or cause serious public inconvenience. This is a class B felony.

**Section 8** changes the current terroristic threatening to the second degree offense, and adds the prohibition of making a false report with the intent to cause an evacuation of a public place, business premises, or means of public transportation. It also adds the prohibitions of making a false report that claims that a biological or chemical substance harmful to a person's health has been sent or is present in specified places, or that threatens damage to an oil or gas pipeline or supporting facility.

**Section 9** adds the definition of "oil or gas pipeline or supporting facility" to terroristic threatening in the second degree.

**Section 10** is a conforming amendment that adds terroristic threatening in the first degree to those crimes that allow for the victim's or witness's address and telephone number to be kept confidential from the defendant if the court finds that the defendant may be a continuing threat to the victim or witness.

**Section 11** makes a conforming amendment that adds terroristic threatening in the first degree to those crimes that may potentially be a crime involving domestic violence.

**Section 12** repeals the provision in criminal mischief in the second degree for conduct that was added to criminal mischief in the first degree (tampering with an oil or gas pipeline).

**Sections 13 and 14** are applicability and effective date clauses.

# FISCAL NOTE

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

Fiscal Note Number: 1  
 Bill Version: HB 328  
 (H) Publish Date: 1/16/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An act relating to terrorism criminal penalties..." BRU Legal and Advocacy Services  
 Component Public Defender Agency  
 Sponsor Rules  
 Requester \_\_\_\_\_ 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>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 would increase the penalty for intentionally damaging an oil or gas pipeline or supporting facility from a class B to class A felony. It would also add a higher degree to the crime of Terroristic Threatening (from class C to class B felony) for sending, delivering or attempting or soliciting to send or deliver an envelope, package or item containing an imitation biological or chemical substance with the intent to place a person in fear of physical injury or cause evacuation or serious public inconvenience. The Public Defender Agency believes this bill will have minimal fiscal impact on the Agency.

Prepared by: Barbara Brink, Director Phone (907) 334-4416  
 Division Public Defender Agency Date/Time 1/11/02 9:32 AM  
 Approved by: Jim Duncan, Commissioner Date 1/11/2002  
 Agency Department of Administration

# FISCAL NOTE

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

Fiscal Note Number: 2  
Bill Version: HB 328  
(H) Publish Date: 1/16/02

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
Title "... to the crimes of damaging an oil and gas BRU Criminal Division  
pipeline ... criminal mischief and terroristic threatening ..." Component 1st-4th Judicial Districts; Criminal  
Sponsor Rules Committee Appeals/Special Litigation  
Requester Governor Component No. 2198-99;2201-03;61;79

**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 bill increases criminal penalties for acts of terrorism and adopts a class B felony offense for sending an imitation biological or chemical substance with the intent to frighten people. Specifically, the crime of intentionally damaging an oil or gas pipeline or supporting facility is raised to a class A felony from the class B felony under current law. Tampering with an oil and gas pipeline or supporting facility is raised to a class B felony from the class C felony under current law. The bill further provides that tampering with a water supply with intent to cause physical injury is the same level of crime (class B felony) as tampering with food or drugs, and makes it a class B felony to send or attempt to send an imitation biological or chemical substance with intent to frighten people or cause serious public inconvenience; depending on the circumstances. Under current law this would either not be a crime or it could be a class C felony.

Prepared by: Joan M. Kasson  
Division: Attorney General's Office  
Approved by: Kathryn Daughhetee for Bruce M. L. Delo, Attorney General  
Agency: Department of Law

Phone (907) 465-5370  
Date/Time 1/10/02 8:55 AM  
Date 1/10/2002

FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 328

ANALYSIS CONTINUATION

The Department of Law does not anticipate a significant fiscal impact from passage of this legislation. Because these are felony-level crimes that would be prosecuted under current law, the sections of the bill that increase penalties would not increase the department's workload. The new provisions that address imitation anthrax or other biological or chemical scares, and increase the penalty for tampering with the water supply from a misdemeanor to a felony, do represent potential new workload. However, the department is optimistic that few of these prosecutions will be required.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 328  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
 Title "An Act relating to the crimes of dama BRU Administration and Operations  
an oil or gas pipeline or supporting facility, ..... Component All  
 Sponsor Rules Committee  
 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>						
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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>***</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 proposes to increase the criminal penalties for certain acts of terrorism, including intentional damage or unlawful tampering of an oil or gas pipeline, airplane or helicopter, or water, food and drug supplies. Additionally, it prohibits sending imitation biological or chemical substance with the intent to frighten people or cause other harm.

It is very difficult to predict the potential impact of the increased sanctions on the Department of Corrections. The specific and unusual nature of the crimes will hopefully result in an insignificant number of offenders that fit into these categories. Any increase in sanctions results in an impact on the DOC, thus we are submitting an indeterminate fiscal note.

Prepared by: Candace Brower Phone 564-4652  
 Division Commissioner's Office Date/Time 1/23/02 4:21 PM  
 Approved by: Margaret Pugh Date 1/23/02  
 Agency Commissioner, Dept. of Corrections

**HB**

**329**

# 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

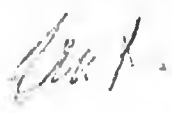
State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

February 4, 2002

**SUBJECT:** Chemical tests of drivers - (HB 329)

**TO:** Representative Norman Rokeberg  
Attn: Heather

**FROM:** Michael F. Ford   
Legislative Counsel

You have asked if the testing requirements imposed on a motor vehicle driver under HB 329, raise constitutional problems, because the bill repeals the requirement that an arrested driver be driving while intoxicated. As explained in this memo, I believe that the elimination of the link to intoxication may cause the bill to be struck down as an unreasonable search prohibited under the Alaska Constitution.

Under HB 329, all drivers who are arrested and who are involved in an accident that causes death or physical injury would be chemically tested to determine the presence of alcohol or drugs. The bill eliminates the requirement in existing law that the person be arrested for driving while intoxicated. The bill only requires that the driver be arrested for some offense, which may or may not be related to intoxication. The elimination of the link to some suspicion of impairment before being tested is troublesome. In Blk v. State, 3 P.3d 359 (Alaska App. 2000), the Alaska Court of Appeals held the legislature could not authorize the police to test a driver for impairment when involved in an accident that causes death or serious physical injury. Under that provision of law, AS 28.35.031(g), there was no requirement of any individualized suspicion of impairment, but also no requirement that the driver be arrested as in HB 329. The court pointed to several cases in which testing for impairment was approved, without requiring individualized suspicion of impairment. In Skinner v. Railway Labor Executives' Ass'n., 489 U.S. 602 (1989), the United States Supreme Court approved blood and breath tests by railroad companies for those employees who were involved in serious accidents or who violated safety rules. The Court ruled that these searches were reasonable under the Fourth Amendment even though there was no individualized suspicion of wrongdoing. The court stated in Skinner:

In limited circumstances, where the privacy interests implicated by the search are minimal, and where an important government interest furthered by the intrusion would be placed in jeopardy by a requirement of individualized suspicion, a search may be reasonable despite the absence of such suspicion.

Representative Norman Rokeberg  
February 4, 2002  
Page 2

It appears that the Court balanced the safety needs of the public verses the employees diminished expectation of privacy in reaching this conclusion.

There are other examples where the courts have justified intruding on Fourth Amendment privacy rights of individuals in order to achieve public safety needs. In National Treasury Employees Union v. Von Raab, 489 U.S. 656 (1989), the Court approved a U.S. Customs Service ruled that mandated drug testing for certain employees involved in drug intervention or who carried a firearm. In Vernonia School Dist. 47J v. Acton, 515 U.S. (1995), the Court approved a random drug-testing program for students participating in extracurricular sports programs.

In these cases, the Courts found there were special needs beyond normal law enforcement that justified the intrusion on Fourth Amendment privacy rights. In arriving at this conclusion, the Court in Acton balanced three factors, (1) the nature of the privacy interest being intruded upon; (2) the character of the intrusion; and (3) the nature of the government's concern and the means to meet it. The question for purposes of HB 329 becomes, does the individual driver's right to privacy outweigh the government's need to eliminate impaired drivers? I have doubts that the goal of detecting impaired drivers would constitute the type of "special need" that would survive constitutional challenge, but the issue is not entirely clear. Under HB 329, the driver has been arrested, indicating some probable cause to believe that a crime has been committed. However, I believe that even with an arrest, requiring all drivers be tested without requiring some suspicion of impairment is likely the type of intrusion on privacy rights that was found impermissible under Blank.

In conclusion, I am doubtful that a suspicionless search is justified even when there is an arrest and an accident causing death or physical injury, unless there is some special societal need other than normal law enforcement. In the case of HB 329, I believe that unless some special societal need can be identified, this means that the bill would not survive constitutional challenge.

Please contact me if you have further questions.

MFF:med  
02-097.med

22-LS1234\C  
Ford  
1/25/02

*Adopted*

CS FOR HOUSE BILL NO. 329(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act requiring that a chemical test be administered to determine the presence of  
2 alcohol or a substance that impairs driving ability after the commission of an offense  
3 while operating a motor vehicle, aircraft, or watercraft."

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

5 \* Section 1. AS 28.35.035(a) is amended to read:

6 (a) If a person is under arrest for an offense arising out of acts alleged to have  
7 been committed while the person was operating a motor vehicle, aircraft, or watercraft  
8 [WHILE INTOXICATED], and that arrest results from an accident that causes death  
9 or physical injury to another person, a chemical test shall [MAY] be administered  
10 [WITHOUT THE CONSENT OF THE PERSON ARRESTED] to determine the  
11 amount of alcohol in that person's breath or blood or to determine the presence of any  
12 substance that impairs the person's ability to drive [CONTROLLED  
13 SUBSTANCES] in that person's blood and urine.

# ALASKA STATE LEGISLATURE

## HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Scott Ogan, Vice-Chairman  
Representative John Coghill  
Representative Jeannette James  
Representative Kevin Meyer  
Representative Ethan Berkowitz  
Representative Albert Kookesh



State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4990  
Fax: (907) 465-2040

Heather M. Nobrega  
Counsel to Committee

### Sponsor Statement for HB 329

The House Judiciary Committee has introduced this bill at the request of Mother's Against Drunk Driving. HB 329 will enhance law enforcement's ability to combat Alaska's pervasive problem of intoxicated and/or impaired drivers by requiring that any driver arrested for an accident that caused death or physical injury be chemically tested for drugs or alcohol.

Current law gives discretion in administering a chemical test to a driver when there has been a motor vehicle accident that causes a death or physical injury. However, in order for the test to be administered, the driver must first be under arrest for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle, aircraft, or watercraft WHILE INTOXICATED. Therefore, even though the chemical test is discretionary, the driver must be under arrest, and that arrest must be because the arresting officer had probable cause that the driver was intoxicated.

HB 329 will make the chemical test mandatory for any driver who is under arrest for an accident that caused death or physical injury to another person. The purpose of the chemical test will be to determine if there was any alcohol, or controlled substance, in the driver at the time of the accident.

In addition, the bill also removes the requirement of intoxication when the driver has been arrested. Therefore, the driver must be chemically tested when arrested for ANY offense arising out of acts alleged to have been committed while the person was operating a motor vehicle, aircraft, or watercraft, not just those that were the result of intoxication.

In deciding the breadth of this bill, the Judiciary committee was constrained by a recent Alaska Court of Appeals decision, *Blank v. State*, 3 P.3d 359 (Alaska App. 2000). In this case, the Court of Appeals struck down AS 28.35.031(g), which stated that any person who operates a vehicle, and is involved in a motor vehicle accident that causes death or serious physical injury, is implied to have given consent to a chemical test. The court found the statute unconstitutional as an unreasonable search and seizure under the Fourth Amendment to the U.S. Constitution, and Article 1, Section 14 of the Alaska Constitution.

As a result of this decision, the Judiciary committee can only broaden the scope of chemical tests following an accident, after there has been an arrest. However, the mandatory chemical testing required by HB 329, will create a powerful tool for law enforcement, and the prosecution, in identifying and catching drivers who are under the influence and a menace to society.

The Committee urges your support of this bill.

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 329  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title Chemical Tests for Auto Accidents BRU AST Detachments  
 Component AST Detachments  
 Sponsor House Judiciary Committee  
 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 for the Department of Public Safety.

Prepared by: Lt. Julia Grimes Phone 269-4532  
 Division: Alaska State Troopers Date/Time 1/30/02 4:45 PM  
 Approved by: Commissioner Glenn Godfrey Date 1/30/2002  
 Agency: Department of Public Safety

# FISCAL NOTE

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

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 329  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title "An Act requiring a chemical test BRU Legal and Advocacy Services  
after an offense while operating...." Component Public Defender Agency  
 Sponsor House Judiciary by Request  
 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>						
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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>	*	*	*	*	*	*

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 require instead of allow (under the current law) the police to administer a chemical test for alcohol or controlled substances after an arrest for an offense arising out of acts alleged to have been committed while the person was operating a motor vehicle, aircraft, or watercraft that results in an accident causing death or physical injury. The Public Defender Agency believes that in the vast majority of cases, chemical tests are already being administered, so this bill should have minimal fiscal impact on the Agency, but the Agency does not have the necessary information to determine this, 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 4:14 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 329  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Law  
 Title "... requiring that a chemical test be administered BRU Criminal Division  
... after ... an offense while operating a motor vehicle, ..." Component All  
 Sponsor House Judiciary Committee by Request  
 Requester House Judiciary Committee Component No. \_\_\_\_\_

**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 CF 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)

HB 329 would require that a chemical test for alcohol or controlled substances be administered in all instances when a person is arrested for an offense resulting from driving a motor vehicle, aircraft, or watercraft, and the arrest is due to an accident that causes the death or physical injury of another person.

Passage of this legislation is not anticipated to have a significant fiscal impact on the Department of Law. The bill primarily impacts police procedure. Mandatory chemical testing may result in a few more cases being accepted for prosecution than otherwise would be, but we believe it rarely happens that the use of alcohol or controlled substances as a factor contributing to these types of accidents is not detected now.

Prepared by: Joan M. Kasson Phone (907) 465-5370  
 Division Attorney General's Office Date/Time 1/25/02 2:19 PM  
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 1/25/2002  
 Agency Department of Law

# FISCAL NOTE

STATE OF ALASKA  
2002 LEGISLATIVE SESSION

BILL NO. HB 329

Revision Date/Time (Note if correction) _____	Dept. Affected _____
Title <u>Chemical Tests for Auto Accidents</u>	BRU <u>Alaska Court System</u>
	Component <u>Trial Courts</u>
Sponsor <u>House Judiciary</u>	
Requester <u>House Judiciary</u>	Component No. <u>768</u>

**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 ( )						
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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)						
<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 329.

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

For distribution information, call the Governor's Legislative Office



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**Mothers Against Drunk Driving • Juneau Chapter**

211 Fourth St. Suite 102 • Juneau, AK 99801

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Tuesday, January 22, 2002

RE: House Bill Number 329

Mothers Against Drunk Driving (MADD) support House Bill No. 329. MADD endorses laws that protect people from injuries or deaths caused by drunk driving.

When testing is not performed immediately, it is unknown whether alcohol was a contributing factor in a motorized vehicle crash. The "crash" becomes an "accident" and the "accident" remains a factor in our accepted norm of drunk driving.

MADD recognizes the *privilege* to operate a motorized vehicle. MADD supports the California law which states in section 23612: Any person who drives a motor vehicle is deemed to have given his or her consent to chemical testing of his or her blood or breath for the purpose of determining the alcoholic content of his or her blood, if lawfully arrested for any offense *allegedly committed* in violation of Section 23140, 23152, or 23153.

The MADD Juneau Chapter is of the opinion the concept "*allegedly committed*" includes the possibility of all motorized vehicle crashes where person(s) are injured or killed.

Sincerely,

Cindy Cashen  
Volunteer