

11641 HOUSE STATE AFFAIRS

**EO**

**1 1 3**

24-LS0464A  
Craver  
1/27/05

**HOUSE BILL NO.**

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Introduced:  
Referred:

**Possible House State Affairs bill, to be discussed in  
committee on Tuesday**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act amending the definition of the term 'state agencies' as it presently applies to the  
2 provisions of law that establish the Telecommunications Information Council and as it  
3 applies under Executive Order No. 113; relating to information systems in the legislative  
4 branch and to the Telecommunications Information Council; and providing for an  
5 effective date."

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

7 \* **Section 1.** AS 44.19.502(b) is amended to read:

8 (b) The council is composed of the governor, the commissioner from each  
9 principal department of the executive branch, the president of the University of  
10 Alaska, and [THE EXECUTIVE DIRECTOR OF THE LEGISLATIVE AFFAIRS  
11 AGENCY.] a member of the public appointed by the governor [, AND ONE  
12 LEGISLATOR FROM EACH HOUSE, APPOINTED BY THE RESPECTIVE  
13 PRESIDING OFFICER. THE LEGISLATORS SHALL SERVE AS NONVOTING

1 MEMBERS OF THE COUNCIL]. The public member appointed by the governor  
2 may not have a financial interest in the information services industry. The chief  
3 justice of the supreme court may appoint a member to serve on the council, and the  
4 executive director of the Legislative Affairs Agency may appoint a member to  
5 serve on the council. Each commissioner shall appoint a deputy commissioner to  
6 serve as an alternate for the commissioner. The vice-president of the University of  
7 Alaska shall serve as alternate for the president.

8 \* **Sec. 2.** AS 44.19 is amended by adding a new section to read:

9 **Sec. 44.19.508. Legislative branch.** The executive director of the Legislative  
10 Affairs Agency shall establish information systems guidelines and prepare a short-  
11 range and long-range information systems plan for the legislative branch. The  
12 guidelines and plan must be consistent with the telecommunications information  
13 guidelines and plan adopted by the council under AS 44.19.502 - 44.19.519 and must  
14 be adapted to the special needs of the legislative branch as determined by the Alaska  
15 Legislative Council

16 \* **Sec. 3.** AS 44.19.519(2) is amended to read:

17 (2) "state agencies" means all departments, divisions, and offices in the  
18 executive **branch** [AND LEGISLATIVE BRANCHES] of state government and the  
19 University of Alaska; it does not mean the Alaska Railroad Corporation or an agency  
20 of the judicial or legislative branches [BRANCH] of government.

21 \* **Sec. 4.** AS 44.21 is amended by adding a new section to read:

22 **Sec. 44.21.370. Legislative branch.** The executive director of the Legislative  
23 Affairs Agency shall establish information systems guidelines and prepare a short-  
24 range and long-range information systems plan for the legislative branch. The  
25 guidelines and plan must be consistent with the telecommunications information  
26 guidelines and plan adopted by the commissioner under AS 44.21.350 - 44.21.390 and  
27 must be adapted to the special needs of the legislative branch as determined by the  
28 Alaska Legislative Council.

29 \* **Sec. 5.** AS 44.21.390(2), added by Executive Order No. 113, is amended to read:

30 (2) "state agencies" means all departments, divisions, and offices in the  
31 executive **branch** [AND LEGISLATIVE BRANCHES] of state government and the

1 University of Alaska; it does not mean the Alaska Railroad Corporation or an agency  
2 of the judicial or legislative branches [BRANCH] of government.

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

5 CONDITIONAL EFFECT. (a) Sections 4 and 5 of this Act take effect only if  
6 Executive Order No. 113 takes effect.

7 (b) If Executive Order No. 113 takes effect, the amendment of AS 44.19.502(b) by  
8 sec. 1 of this Act, AS 44.19.508, added by sec. 2 of this Act, and the amendment of  
9 AS 44.19.519(2) by sec. 3 of this Act do not take effect.

10 \* Sec. 7. If, under sec. 6 of this Act, secs 1 - 3 of this Act take effect, they take effect on  
11 March 14, 2005, or the day after the date this Act becomes law under AS 01.10.070,  
12 whichever occurs later.

13 \* Sec. 8. If, under sec. 6 of this Act, secs. 4 and 5 of this Act take effect, they take effect on  
14 March 14, 2005, or the day after the date this Act becomes law under AS 01.10.070,  
15 whichever occurs later.

16 \* Sec. 9. Section 6 of this Act takes effect immediately under AS 01.01.070(c).

# LEGAL SERVICES

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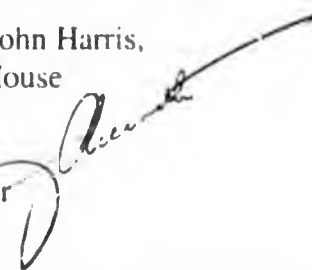
## MEMORANDUM

January 27, 2005

**SUBJECT:** Tel communications Information Council, Executive Order 113,  
and the relationship of the legislative branch  
(Work Order No. 24LS-0464A)

**TO:** Representative John Harris,  
Speaker of the House

**FROM:** Jack Chenoweth  
Assistant Revisor



In the accompanying draft, we've taken direction from Tom Wright.

Bill sections 1 - 3 make additions or amendments that change the statutes relating to the existing law establishing the Telecommunications Information Council and *would take effect only if Executive Order 113 is disapproved by the Legislature by the 60th day of the current legislative session*. These changes take the legislative branch out from under the definition of "state agencies" that must conform to the Council's work, remove the legislative members from the Council, and allow the executive director of the Legislative Affairs Agency to select a member to continue to serve on that Council.

Bill sections 4 and 5 make comparable changes to the text of Executive Order 113 assuming that the executive order is not disapproved and goes into effect. If the executive order takes effect, by its terms the current law relating to the existing statutes establishing the Telecommunications Information Council is superseded.

Bill section 6 sets out the conditions under which either of these sets of changes will (or will not) take effect.

Bill section 7 assigns an effective date to the bill sections that amend current law.

Bill section 8 makes the amendments to the executive order text provisions effective on the *later* of the effective date of Executive Order 113 or the day after the effective date of the bill.

Bill section 9 gives the conditional effect provision of the bill an immediate effective date.

► Representative John Harris  
January 27, 2005  
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I'm quite sure that this draft contains more than you contemplated. If you want to delete particular provisions, please let us know and we will rework the material.

JBC:jad  
05-052.jad

Enclosure

**LEGAL SERVICES****DIVISION OF LEGAL AND RESEARCH SERVICES  
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Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329**MEMORANDUM**

January 28, 2005

**SUBJECT:** Executive Orders

**TO:** Representative Pete Kott  
Attn: Judy Ohmer

**FROM:** Tamara Brandt Cook  
Director *TBC*

Art. III, sec. 23 of the state constitution states:

**SECTION 23. Reorganization.** The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

The procedure set out in this section must be complied with in order for the legislature to disapprove an executive order. In addition, Uniform Rule 49(a)(4) provides:

(4) A special concurrent resolution is employed to consider disapproval of an executive order of the governor laid before the legislature under provisions of Sec. 23, Art. III, of the State Constitution. This resolution must be considered by a standing committee of each house and may be adopted by a majority vote of the full membership of the legislature in joint session without recourse to three readings.

If a legislator is interested in having the disapproval of a particular executive order considered, the first step is to introduce a resolution disapproving that order. If that resolution is ultimately adopted in joint session within the 60-day time period, the executive order will not take effect. Alternatively, if the legislature does not object to the entire executive order it may allow the order to take effect, but pass a bill that amends the statutes that are dealt with in the order. Of course this bill, like any other, will be subject to veto by the governor while a resolution adopted by the legislature that disapproves an executive order is not subject to veto. The veto of a bill by the governor is addressed in

Representative Pete Kott  
January 28, 2005  
Page 2

Art. II, sec. 15. The override of a vetoed bill by the legislature is addressed in Art. II, sec. 16.

TBC:med  
05-067.med

# Legislative Recommendation related to EO 113

*Just dropped  
this to President's  
Office  
July 10  
Peter Hoff*

Section 1. AS 44.21.390(2), added by Executive Order No. 113 ~~is amended~~ to read:

(2) "state agencies" means all departments, divisions, and offices in the executive branch [AND LEGISLATIVE BRANCHES] of state government and the University of Alaska, excluding [IT DOES NOT MEAN] the Alaska Railroad Corporation, Alaska Housing Finance Corporation, Alaska Permanent Fund Corporation, or an agency of the judicial or legislative branches [BRANCH] of government.

Sec. 2. The uncodified law of the Stat. of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. (a) Section 1 of this Act takes effect only if Executive Order No. 113 takes effect.

Sec. 3. Section 2 of this Act takes effect immediately under AS 01.01.070(e).

## Rationale/justification

Levels of security differ, and each corporation and/or branch of government should determine their own security needs analysis.

Corporations must have IT systems that meet the requirements for competing in a market economy; this may be a different standard than what is necessary to meet the needs of state agencies.

Operational risk reduction for corporations such as the Permanent Fund is critical because even small decreases in efficiency can significantly reduce profits.

Introduced in the House: January 10, 2005  
Referred: State Affairs

Introduced in the Senate: January 10, 2005  
Referred: State Affairs

### EXECUTIVE ORDER NO. 113

1 Under the authority of art. III, sec. 23, of the Alaska Constitution, and in accordance  
2 with AS 24.08.210, I order the following:

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

5 **FINDINGS.** As governor, I find that the transfer of certain functions relating to the  
6 development and implementation of state telecommunications policy from the  
7 Telecommunications Information Council to the Department of Administration and the  
8 governor would be in the best interests of efficient administration. Additionally, I find that  
9 with the transfer of these functions there is no longer a need for the Telecommunications  
10 Information Council and its elimination would be in the best interests of efficient  
11 administration. These actions will encourage the development of expertise, eliminate  
12 duplication of function, and provide a single point of responsibility for state  
13 telecommunications policy, resulting in increased performance and accountability.

14 \* **Sec. 2.** AS 44.21 is amended by adding a new section to read:

#### 15 **Article 4A. Telecommunications Information.**

16 **Sec. 44.21.350. Powers and duties.** (a) The commissioner shall

17 (1) establish guidelines and prepare a state short-range and long-range  
18 information systems plan to meet state needs;

19 (2) in accordance with the state information systems plan, establish  
20 guidelines and direct state agencies to prepare agency information systems plans;

21 (3) in accordance with statutes governing the availability and  
22 confidentiality of information, establish guidelines for the accessing of information by  
23 the public.

24 (b) In addition to the commissioner's duties under (a) of this section, the

1 commissioner may establish information-related policies and engage in information-  
2 related activities the commissioner considers necessary or appropriate.

3 (c) This section does not grant the commissioner responsibility for broadcast  
4 programming content. Program design, production, and use are the responsibility of  
5 the program-sponsoring agency or other entity.

6 (d) This section does not prohibit a state agency from developing information  
7 systems that are inconsistent with the guidelines established in (a) of this section if the  
8 commissioner gives written authorization for the user agency to engage in the  
9 independent design, development, management, or operation. The commissioner may  
10 authorize independent development only upon a showing of necessity. A description  
11 of authorization under this subsection shall be included in the annual report required  
12 under this section. Written authorization under this subsection is not required for  
13 intra-agency use of microcomputers.

14 (c) A state agency, including an agency authorized to develop an independent  
15 system under (d) of this section, shall coordinate the design, development,  
16 management, and operation of its information systems with the commissioner.

17 **Sec. 44.21.360. Court system.** The administrative director of courts shall  
18 establish information systems guidelines and prepare a short-range and long-range  
19 information systems plan for the court system. The guidelines and plan must be  
20 consistent with the telecommunications information guidelines and plan adopted by  
21 the commissioner under AS 44.21.350 - 44.21.390 and must be adapted to the special  
22 needs of the judicial branch as determined by the administrator of courts.

23 **Sec. 44.21.390. Definitions.** In AS 44.21.350 - 44.21.390,

24 (1) "commissioner" means the commissioner of administration;

25 (2) "state agencies" means all departments, divisions, and offices in the  
26 executive and legislative branches of state government and the University of Alaska; it  
27 does not mean the Alaska Railroad Corporation or an agency of the judicial branch of  
28 government.

29 \* **Sec. 3.** AS 14.40.095(b) is amended to read:

30 (b) The center may

31 (1) provide support for education, training, and research in information

1 technologies to students, professionals, and the general public;

2 (2) support research on the applications, effects, and management of  
3 information technologies and provide research results to the general public;

4 (3) maintain an inventory of telecommunication research in the state;

5 (4) develop and maintain a collection that includes state documents,  
6 research reports, and other telecommunication applications materials including  
7 videotapes, software, lesson plans, and scripts;

8 (5) support the development and expansion of the geographic  
9 information system curriculum of the University of Alaska, including the possible  
10 establishment of undergraduate and masters programs;

11 (6) develop and sponsor land record and geographic information  
12 system training workshops and continuing education seminars in cooperation with the  
13 appropriate departments of the university;

14 (7) support or undertake research projects that apply geographic  
15 information technology to state issues and problems;

16 (8) provide information on the availability of federal, state, municipal,  
17 and other sources of geographic information, including aerial photography and digital  
18 data bases related to surveying and land records, natural resource inventories, and  
19 related data;

20 (9) prepare and publish on a regular basis research findings and  
21 periodicals relating to the center's activities;

22 (10) assist state agencies and municipalities in the development of  
23 policies, procedures, and capabilities for public access to automated geographic  
24 information;

25 (11) recommend, in consultation with the commissioner of  
26 administration [TELECOMMUNICATIONS INFORMATION COUNCIL] and  
27 affected state and local agencies and advisory boards, model standards and strategies  
28 relating to the implementation, indexing, documentation, mapping, data exchange, and  
29 other aspects of land records management and geographic information system  
30 development.

31 \* Sec. 4. AS 40.25.115(g) is amended to read:

1 (g) Each public agency shall establish the fees for the electronic services and  
 2 products provided under this section. The governor [TELECOMMUNICATIONS  
 3 INFORMATION COUNCIL] may cancel the fees established by a public agency in  
 4 the executive branch, except the fees of the University of Alaska and the Alaska  
 5 Railroad Corporation, if the governor [COUNCIL] determines that the fees are  
 6 unreasonably high.

7 \* Sec. 5. AS 40.25.123(a) is amended to read:

8 (a) The Department of Administration [TELECOMMUNICATIONS  
 9 INFORMATION COUNCIL] shall supervise and adopt regulations for the operation  
 10 and implementation of AS 40.25.110 - 40.25.140 by public agencies in the executive  
 11 branch, except the Alaska Railroad Corporation.

12 \* Sec. 6. AS 44.21.045(c) is amended to read:

13 (c) Except as provided in (b) of this section, money in the fund established  
 14 under (a) of this section may be expended only in accordance with legislative  
 15 appropriations. Money appropriated to the fund may be used for

16 (1) the costs of the commissioner in carrying out the  
 17 commissioner's duties under AS 44.21.350 - 44.21.350  
 18 [TELECOMMUNICATIONS INFORMATION COUNCIL], including the [ITS]  
 19 costs of performing reviews and studies considered necessary by the commissioner  
 20 under AS 44.21.350 [COUNCIL];

21 (2) necessary expenses of providing information services to political  
 22 subdivisions and state agencies;

23 (3) additions, replacements, or improvement of capital equipment for  
 24 information services; requests by the department for capital equipment expenditures  
 25 shall be included in the budget submitted by the governor to the legislature under  
 26 AS 37.07; and

27 (4) other purposes as specified in an appropriation to the fund.

28 \* Sec. 7. AS 44.21.045(f) is amended to read:

29 (f) Fees and surcharges for information services of the department are subject  
 30 to annual review and approval by the commissioner of the department  
 31 [TELECOMMUNICATIONS INFORMATION COUNCIL].

1 \* Sec. 8. AS 44.21.150 is amended to read:

2           **Sec. 44.21.150 Declaration of purpose.** It is the purpose of AS 44.21.150 -  
 3 44.21.170 to designate the Department of Administration as the department  
 4 responsible for the operation and management of automatic data processing resources  
 5 and activities of the executive and legislative branches of state government and the  
 6 judicial branch to the extent requested by that branch [~~TO PROVIDE FOR~~  
 7 ~~COOPERATION BETWEEN THE DEPARTMENT AND THE~~  
 8 ~~TELECOMMUNICATIONS INFORMATION COUNCIL IN THE OFFICE OF THE~~  
 9 ~~GOVERNOR,~~] and to provide for periodic review of state automatic data processing  
 10 procedures and mechanisms. It is further the purpose of these sections to encourage  
 11 cooperation between the state government and local governments in the use of  
 12 automatic data processing systems.

13 \* Sec. 9. AS 44.21.160(a) is amended to read:

14           ) Except as otherwise provided in (g) of this section, the department shall  
 15 comply with the state information systems plan adopted by the commissioner  
 16 [TELECOMMUNICATIONS INFORMATION COUNCIL IN THE OFFICE OF  
 17 THE GOVERNOR] in providing automatic data processing services responsive to the  
 18 needs of state government.

19 \* Sec. 10. AS 44.21.160(b) is amended to read:

20           (b) To carry out (a) of this section the department may, consistent with the  
 21 state information systems plan adopted by the commissioner  
 22 [TELECOMMUNICATIONS INFORMATION COUNCIL] and with the  
 23 departmental information systems plan,

24           (1) maintain a central staff of systems analysts, computer  
 25 programmers, and other staff members sufficient to provide systems analysis and  
 26 computer programming support required by the executive and legislative branches of  
 27 state government;

28           (2) develop and maintain both short-range and long-range data  
 29 processing plans for state government and provide managerial leadership in the use of  
 30 automatic data processing;

31           (3) review all budget requests for automatic data processing services

1 and recommend to the commissioner [TELECOMMUNICATIONS INFORMATION  
2 COUNCIL] and the governor approval, modification, or disapproval;

3 (4) recommend implementation priorities of requested data processing  
4 systems;

5 (5) determine and satisfy the data processing equipment and supply  
6 requirements of the executive and legislative branches, departments, and agencies of  
7 state government;

8 (6) provide all facilities, equipment, and staff required to convert data  
9 to a form suitable for processing on automatic data processing equipment;

10 (7) develop and publish systems analysis, computer programming and  
11 computer operations standards;

12 (8) review state automatic data processing systems to encourage  
13 effectiveness, measure performance, and assure adherence to the standards developed  
14 under AS 44.21.150 - 44.21.170;

15 (9) develop and conduct an automatic data processing training program  
16 designed to serve the technical and managerial needs of state government;

17 (10) charge a state agency or other governmental agency for the cost of  
18 the automatic data processing services provided or procured by the department for the  
19 agency.

20 \* Sec. 11. AS 44.21.160(d) is amended to read:

21 (d) In accordance with the state information systems plan adopted by the  
22 commissioner [TELECOMMUNICATIONS INFORMATION COUNCIL], the  
23 department and the University of Alaska may develop and implement a plan for the  
24 integration of automatic data processing facilities of the university with the state  
25 facilities.

26 \* Sec. 12. AS 44.21.160(e) is amended to read:

27 (e) If the action is not contrary to the state information systems plan adopted  
28 by the commissioner [TELECOMMUNICATIONS INFORMATION COUNCIL],  
29 this section does not prohibit

30 (1) the department from obtaining necessary contractual assistance for  
31 automatic data processing activities;

1 (2) the legislature from recruiting and employing data processing  
2 personnel or from obtaining necessary contractual assistance for automatic data  
3 processing activities;

4 (3) the judicial branch from establishing independent data processing  
5 policies and implementation procedures; however, the policies and procedures must  
6 permit information exchange and implementation procedures compatible with other  
7 branches of government whenever practical.

8 \* Sec. 13. AS 44.21.266 is amended to read:

9 **Sec. 44.21.266. Duties of the commission.** The commission shall

10 (1) apply for federal and private funds for public broadcasting  
11 purposes and receive all federal, state, or private funds, property, or assistance that  
12 may be appropriated, granted, or otherwise made available to the commission for  
13 public broadcasting purposes, and use and disburse funds and property for purposes  
14 consistent with the terms of AS 44.21.256 - 44.21.290, subject to reasonable  
15 limitations imposed by the grantor;

16 (2) provide consultative services in all aspects of public broadcasting  
17 to all public or private agencies in the state that request them;

18 (3) serve as a library and clearinghouse for public broadcasting  
19 information;

20 (4) through grants to qualified entities, develop an integrated public  
21 broadcasting network for the state;

22 (5) through grants to qualified entities, develop and distribute public  
23 broadcasting programming in the state;

24 (6) prepare and submit to the governor and the legislature, in  
25 compliance with the state information systems plan adopted by the commissioner of  
26 administration [TELECOMMUNICATIONS INFORMATION COUNCIL IN THE  
27 OFFICE OF THE GOVERNOR], a long-term plan for the development of public  
28 broadcasting stations and systems in the state, and biennially update the plan; and

29 (7) perform all other functions necessary to ensure the orderly and  
30 coordinated development of public broadcasting in the state.

31 \* Sec. 14. AS 44.21.310(a) is amended to read:

1 (a) In accordance with the state information systems plan adopted by the  
2 commissioner [TELECOMMUNICATIONS INFORMATION COUNCIL] and with  
3 the departmental information systems plan, the department shall

4 (1) advise the commissioner [COUNCIL] and the governor on matters  
5 of policy and comprehensive state planning for telecommunications services;

6 (2) [REPEALED

7 (3)] coordinate, manage, and supervise state programs in  
8 telecommunications, including the management of the telecommunication services  
9 for the state obtained from common carriers and from the communications industry;

10 (3) [(4)] when requested, provide technical and consulting assistance to  
11 the executive, judicial, and legislative branches of state government, to the University  
12 of Alaska, and to private noncommercial entities which request that assistance in  
13 facility procurement and leasing and in identifying long-range goals and objectives for  
14 the state and its political subdivisions in all aspects of telecommunications, including  
15 public, educational, and instructional telecommunications;

16 (4) [(5)] prepare and maintain a state comprehensive  
17 telecommunications development plan to further state telecommunications  
18 development and to meet state telecommunications needs and prepare and maintain a  
19 comprehensive inventory of all state communications facilities;

20 (5) [(6)] whenever feasible, procure services from private enterprise or  
21 certified and franchised utilities and contract for the construction, management,  
22 operation, and maintenance of telecommunications systems, and develop a  
23 procurement policy consistent with AS 36.30 (State Procurement Code); the  
24 procurement policy must seek to achieve the maximum benefit to the public, and  
25 methods of procurement, including lease, purchase, rental, or combinations of lease,  
26 purchase, and rental, must be selected on the basis of factors such as the ratio of long-  
27 range costs versus benefits, life cycle costing, and the costs to the communications  
28 industry to the extent that these costs may affect local and long distance basic  
29 telephone rates; procurement, contracting, construction, and maintenance under this  
30 paragraph is governed by AS 36.30;

31 (6) [(7)] provide information and assistance to state agencies to

1 promote governmental coordination and unity in the preparation of agency plans and  
2 programs involving the use of telecommunications;

3 (7) [(8)] apply for and accept federal and private money, property, or  
4 assistance, that may be appropriated, granted, or otherwise made available to the  
5 department and use and disburse money and property for purposes consistent with  
6 AS 44.21.305 - 44.21.330 and AS 44.21.256 - 44.21.290, subject to reasonable  
7 limitations imposed by the grantor;

8 (8) [(9)] participate with other governmental units in planning, and  
9 assist local governments and governmental conferences and councils in the state in  
10 planning and coordinating their activities relating to telecommunications;

11 (9) [(10)] provide for the orderly transition to new telecommunications  
12 services and systems by state agencies;

13 (10) [(11)] serve as a clearinghouse for information, data, and other  
14 materials that may be necessary or helpful to federal, state, or local governmental  
15 agencies in the development of telecommunication systems;

16 (11) [(12)] coordinate department services and activities with those of  
17 other state departments and agencies to the fullest extent possible to avoid unnecessary  
18 duplication; and

19 (12) [(13)] provide that all activities of the department are responsive  
20 to state statutes and regulations, and to the regulations and rulings of the Federal  
21 Communications Commission.

22 \* Sec. 15. AS 44.21.315(a) is amended to read:

23 (a) In accordance with the state information systems plan adopted by the  
24 commissioner [TELECOMMUNICATIONS INFORMATION COUNCIL] and with  
25 the departmental information systems plan, the department shall provide

26 (1) technical consultation to educational and public  
27 telecommunications users;

28 (2) coordination and support to telecommunications services for  
29 instruction, including technical assistance and assistance in preparation of applications  
30 for grants related to program development as may be requested by

31 (A) public school districts and the Department of Education

1 and Early Development;

2 (B) the University of Alaska; and

3 (C) other state agencies as approved by the commissioner;

4 (3) coordination and support for health and safety-related functions,  
5 including the administrative and client services provided by state, federal, and private  
6 agencies;

7 (4) coordination and support to telecommunications services for public  
8 participation in state-financed services, including the public hearing process, as may  
9 be statutorily required or otherwise appropriate;

10 (5) assistance, through design, development, and promotion, to local  
11 school districts or other local and regional education agencies for the regionalization  
12 of instructional telecommunications services;

13 (6) establishment of operational policies for public  
14 telecommunications services other than public broadcasting; and

15 (7) assistance to the Alaska Public Broadcasting Commission and any  
16 commission-designated subcommittees, as necessary to perform assigned department  
17 functions; the department shall cooperate with the commission and subcommittees in  
18 order to develop policies which are responsive to the user groups which are  
19 represented on the commission.

20 \* Sec. 16. AS 44.21.320(a) is amended to read:

21 (a) Except as provided in (d) of this section, the department may, consistent  
22 with the provisions of AS 44.21.310(a)(5) [AS 44.21.310(a)(6)]

23 (1) plan, design, construct, manage, and operate all  
24 telecommunications systems owned or leased by state agencies;

25 (2) manage centrex and other telephone-related services of state  
26 agencies;

27 (3) be responsible generally for telecommunications systems and  
28 design for state agencies; and

29 (4) coordinate with state agencies in performing their data and word  
30 processing tasks.

31 \* Sec. 17. AS 44.21.320(e) is amended to read:

1 (e) Nothing in AS 44.21.305 - 44.21.330 prohibits a state agency from  
2 developing telecommunications systems within its own agency if the agency is in  
3 compliance with the state information systems plan adopted by the commissioner  
4 [TELECOMMUNICATIONS INFORMATION COUNCIL] and with the agency's  
5 own information systems plan and if the commissioner gives written authorization for  
6 the agency to engage in its own design, development, management, or operation. The  
7 commissioner may authorize independent development only upon a showing of  
8 necessity.

9 \* Sec. 18. AS 40.25.220(4); AS 44.19.502, 44.19.504, 44.19.506, and 44.19.519 are  
10 repealed.

11 \* Sec. 19. The uncodified law of the State of Alaska is amended by adding a new section to  
12 read:

13 REVISOR'S INSTRUCTION. The revisor of statutes is instructed to change the  
14 heading of existing article 4 of AS 44.21 from "Article 4. Telecommunications" to "Article 4.  
15 Telecommunications Services and Operations."

16 \* Sec. 20. The uncodified law of the State of Alaska is amended by adding a new section to  
17 read:

18 TRANSITION. (a) Litigation, hearings, investigations, and other proceedings  
19 pending under a law repealed or amended by this Order, or in connection with functions  
20 transferred this Order, continue in effect and may be continued and completed  
21 notwithstanding a transfer, repeal, or amendment provided for in this Order.

22 (b) Regulations adopted by the former Telecommunications Information Council  
23 under authority of AS 40.25.123, as that statute existed on the day before the effective date of  
24 this Order, remain in effect, and may be implemented and enforced by the Department of  
25 Administration, until regulations are adopted by the Department of Administration under  
26 AS 40.25.123, as amended by this Order, and take effect.

27 (c) Contracts, rights, liabilities, and obligations created by or under a law repealed or  
28 affected by this Executive Order, and in effect on the effective date of this Order, remain in  
29 effect notwithstanding this Order's taking effect. Records, equipment, appropriates, and other  
30 property of an agency of the state whose functions are transferred under this Order shall be  
31 transferred to implement the provisions of this Order.

1 \* Sec. 21. This Order takes effect March 14, 2005.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Frank H. Murkowski  
Governor

**HB**

**12**

24-LS0058AL  
Luckhaupt  
3/9/05

CS FOR HOUSE BILL NO. 12( ) *as amended*

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES GRUENBERG, LYNN, GARDNER AND MCGUIRE, Ramras, Gara, Elkins

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to televisions, monitors, portable computers, and similar devices in  
2 motor vehicles."

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

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

5 Sec. 28.35.161. Driving a motor vehicle while watching a television,  
6 monitor, or similar device; installation of televisions, monitors, and similar  
7 devices in motor vehicles. (a) A person may not drive a motor vehicle while  
8 watching a

9 (1) television receiver, a video monitor, laptop type portable  
10 computer, a television or video screen, or any other similar means of visually  
11 displaying a television broadcast or video signal that is located in the vehicle  
12 and that produces entertainment or business applications; or

13 (2) device that is visible to or is intended to be viewed by the  
14 driver and that would visually distract the driver, excluding devices used in the

operation of the vehicle.

(b) A person may not install in a motor vehicle a television receiver, a video monitor, a television or video screen, or any other similar means of visually displaying a television broadcast or video signal that produces entertainment or business applications that is capable of being viewed by the driver of the motor vehicle while the motor vehicle is moving. <sup>A device</sup> ~~An interlock or other mechanism~~ that <sup>disabled</sup> ~~removes power~~ from the unit while the motor vehicle is in motion meets the requirements of this subsection.

(c) Subsections (a) and (b) of this section do not apply to the following equipment when installed in a motor vehicle:

- <sup>adopted #2</sup> (1) a vehicle information display;
- <sup>navigation or global positioning</sup> (2) a ~~Global Positioning System~~ display;
- (3) a mapping display
- (4) a visual display used to enhance or supplement the driver's view

forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the vehicle;

(5) a television receiver, video monitor, television or video screen, or any other similar means of visually displaying a television broadcast or video signal if that equipment has an interlock device that, when the motor vehicle is driven, disables the equipment for all uses except as a visual display as described in (1) - (4) of this subsection.

(d) Subsections (a) and (b) of this section do not apply to a mobile digital terminal installed in an authorized emergency vehicle or to a motor vehicle providing emergency road service or roadside assistance.

- (e) A person who violates (a) of this section is guilty of a
- (1) class A misdemeanor;
  - (2) class C felony if as a result of that violation another person suffers a physical injury;
  - (3) class B felony if as a result of that violation another person suffers serious physical injury;
  - (4) class A felony if as a result of that violation another person suffers

L

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death.

(f) A person who violates (b) of this section is guilty of a class A misdemeanor and may only be punished by imposition of a fine of not less than \$2,500 and not more than \$10,000.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB012-DPS-CRI-3-10-05  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: "An Act relating to televisions and RDU Statewide Support  
monitors in motor vehicles" Component: Alaska Criminal Records &  
 Sponsor: Representative Gruenberg Identification  
 Requester: House State Affairs Component No. 1190

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This Act creates a new AS 28.35.16 (a) to prohibit operating of a motor vehicle while watching a television or monitor; (b) prohibits installing a television or monitor viewable by the driver without an interlock; (c) exempts vehicle information, GPS, map, or maneuvering displays, and equipment with an interlock; (d) exempts emergency or assistance vehicles; (e) and (f) provide the penalties. A violation of AS 28.35.16(a) may be an A misdemeanor or an A, B, or C felony, depending on the facts.

Passage of this bill will not have a fiscal impact on the Department of Public Safety.

Prepared by: Director David Schade Phone 269-5092  
 Division: Statewide Services Date/Time 3/10/05 10:51 AM  
 Approved by: Commission William Tandeske Date 3/10/2005  
 Agency: Department of Public Safety

✓ Laptop Computer  
✓ Video phone

24-LS0058\Y

HOUSE BILL NO. 12

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GRUENBERG, LYNN, GARDNER, AND MCGUIRE, Ramras, Gara

Introduced: 1/10/05

Referred: State Affairs, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to televisions and monitors in motor vehicles."

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

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

4 Sec. 28.35.161. <sup>Driving a</sup> ~~Operation of~~ a motor vehicle while watching a television  
5 or a monitor; installation of televisions and monitors in motor vehicles. (a) A  
6 person may not drive a motor vehicle while watching a television receiver, a video  
7 monitor, <sup>laptop computer</sup> a television or video screen, or any other similar means of visually displaying  
8 a television broadcast or video signal that is located in the vehicle and that produces  
9 entertainment or business applications #3

10 (b) A person may not install in a motor vehicle a television receiver, a video  
11 monitor, a television or video screen, or any other similar means of visually displaying  
12 a television broadcast or video signal that produces entertainment or business  
13 applications that is capable of being viewed by the driver of the motor vehicle while  
14 the motor vehicle is moving. An interlock or other mechanism that removes power  
15 from the unit while the motor vehicle is in motion meets the requirements of this

#1

#2

#

]

1 subsection.

2 (c) Subsections (a) and (b) of this section do not apply to the following  
3 equipment when installed in a motor vehicle:

4 (1) a vehicle information display;

5 (2) a Global Positioning System display;

6 (3) a mapping display;

7 (4) a visual display used to enhance or supplement the driver's view  
8 forward, behind, or to the sides of a motor vehicle for the purpose of maneuvering the  
9 vehicle;

10 (5) a television receiver, video monitor, television or video screen, or  
11 any other similar means of visually displaying a television broadcast or video signal if  
12 that equipment has an interlock device that, when the motor vehicle is driven, disables  
13 the equipment for all uses except as a visual display as described in (1) - (4) of this  
14 subsection.

15 (d) Subsections (a) and (b) of this section do not apply to a mobile digital  
16 terminal installed in an authorized emergency vehicle or to a motor vehicle providing  
17 emergency road service or roadside assistance.

18 (e) A person who violates (a) of this section is guilty of a

19 (1) class A misdemeanor;

20 (2) class C felony if as a result of that violation another person suffers  
21 a physical injury;

22 (3) class B felony if as a result of that violation another person suffers  
23 serious physical injury;

24 (4) class A felony if as a result of that violation another person suffers  
25 death.

26 (f) A person who violates (b) of this section is guilty of a class A  
27 misdemeanor and may only be punished by imposition of a fine of not less than  
28 \$2,500 and not more than \$10,000.

# nbc6.net

## NBC 6 Investigation: Reckless Ride

### More Motorists Watching TV While Driving

POSTED: 9:02 am EST February 11, 2005  
UPDATED: 7:19 am EST February 16, 2005

From David Weiser -

Wanted to show National Attention this case is getting!

Feb 11, 2005

**MIRAMAR, Fla.** -- They're on our roadways -- people driving and watching TV screens at the same time. It's a reckless ride that NBC 6 found happening more and more.

Watching video in cars has been around for years, but usually for passengers in the back seat.

#### FeedRoom



Reckless Ride

NBC 6 FeedRoom

Now, more of these new entertainment systems are being installed in the front seat where drivers can see them. You can watch movies, music videos and even live television.

For safety's sake, the driver is supposed to be restricted from watching while the car is moving, but NBC 6's Willard Shepard found several motorists watching while driving.

#### SURVEY

Can motorists safely watch television and drive at the same time?

- Yes
- No

Vote

Results | Disclaimer

"Sure, I could watch the DVD while driving," Janet Rodriguez said.

"If we be careful and pay attention to the road, we're not going to hurt nobody," Juan Montoya said.

In West Miami-Dade County, downtown, on Miami Beach and in Broward County, NBC 6 found drivers breaking the law -- finding ways around safety systems designed to prevent viewing television from the driver's seat.

Alaska prosecutors say driving and watching television led to a crash that killed Robert and Donna Weiser. Some legal observers say driver Jamie Peterson was acquitted of murder in the case because police didn't establish exactly what he was viewing before the TV device was taken from the dashboard after the crash.

On the 836, NBC 6 saw Steven Rivera watching a DVD and talking on his cell phone at 60 mph. When interviewed, he told us about clubs sprouting up for those who drive and watch.

"We've got the same TV on the dash in the same place," Rivera said.

Surprisingly in Florida, watching while driving is a non-criminal traffic infraction. The penalty is a \$71 ticket -- no deterrent to drivers like Montoya, who has an illegal TV.

"Yeah, I've been stopped. We got a lot of tickets," he said.

As a state legislator, Miami-Dade Commissioner Sally Heyman tried to toughen the penalties for distracted drivers. A study she pushed found that distracted drivers were hurt or killed twice as often as drivers in other accidents.

She says it's only a matter of time before a TV-watching driver kills a South Florida resident.

"As it becomes more available, as more people do it, you bet (it will happen)," Heyman said.

Lester Taks, who runs Cartronics where these entertainment systems are properly installed, says the front seat TVs are manufactured with devices to shut the video off when the car is in motion.

"It will shut down and this is the way they come from the factory," Taks said. "They are designed to work that way -- all of them."

But drivers told NBC 6 they didn't have any trouble finding ways around the safeguards. Some even told us where they had the work done.

With our undercover camera rolling, a worker at the Senor Stereo outlet in Pembroke Pines said, "We could look it up so you can watch it."

But when confronted with a camera, the workers officially had no comment. Later, the company faxed a statement saying, "These systems are installed according to manufacturer recommendations."

Montoya said Best Buy installed his TV system and it came so he could watch and drive at the same time.

"That's how they do it," he said.

We went to a Best Buy store on Pines Boulevard where one employee told an NBC 6 producer how to bypass the safety system, but he said they would not do it and that we would have to do it on our own.

Best Buy responded saying it is concerned about the safe use of mobile electronics products and that the "products are installed in a manner that ensures the video mode of the product is not operable while the vehicle is in motion."

Florida Attorney General Charlie Crist says there's a need for the Legislature to take a close look at updating the Florida law to protect everyone on the road.

"If it is happening and it is increasing ... That's why it's important for policy makers to be vigilant about what modern technologies keep coming online," Crist said.

Another distraction is other motorists driving near a car with a TV screen because they're tempted to look over and see what's playing.

Installers point out the screens play a valuable role for drivers, displaying navigation aids and rear-mounted cameras that prevent backing over children.

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# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version\* HB012-DPS-CRI-3-10-05  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title "An Act relating to televisions and RDU Statewide Support  
monitors in motor vehicles" Component Alaska Criminal Records &  
 Sponsor Representative Gruenberg Identification \_\_\_\_\_  
 Requester House State Affairs Component No. 1190

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This Act creates a new AS 28.35.16 (a) to prohibit operating of a motor vehicle while watching a television or monitor; (b) prohibits installing a television or monitor viewable by the driver without an interlock; (c) exempts vehicle information, GPS, map, or maneuvering displays, and equipment with an interlock; (d) exempts emergency or assistance vehicles; (e) and (f) provide the penalties. A violation of AS 28.35.16(a) may be an A misdemeanor or an A, B, or C felony, depending on the facts.

Passage of this bill will not have a fiscal impact on the Department of Public Safety.

Prepared by: Director David Schade Phone 269-5092  
 Division Statewide Services Date/Time 3/10/05 10:51 AM  
 Approved by: Commission William Tandeske Date 3/10/2005  
 Agency Department of Public Safety

# FISCAL NOTE HB 12

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB012-DPS-ASTD-2-28-05  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
Title Televisions and monitors in motor vehicles RDU Alaska State Troopers  
Component AST Detachments  
Sponsor Representative Gruenberg  
Requester House State Affairs Component No. 2325

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

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

This bill will prohibit the driver of a motor vehicle from watching a television receiver, video monitor, TV video screen, or similar device for viewing television or video signals while operating the motor vehicle. It also prohibits the installation of these devices so that they can be viewed by the driver of a motor vehicle while the vehicle is in motion. The bill does allow the following equipment; a vehicle information display; a GPS display; a mapping display; and a display used to enhance a drivers view forward, behind, or to the sides of the vehicle.

Prepared by: Lieutenant Todd Sharp Phone 907-465-3223  
Division Alaska State Troopers Date/Time 2/28/05 1:26 PM  
Approved by: Commissioner William Tandeske Date 2/28/2005  
Agency Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB012-DPS-CRI-2-28-05  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act relating to televisions and RDU Statewide Support  
monitors in motor vehicles Component Alaska Criminal Records &  
 Sponsor Representative Gruenberg Identification  
 Requester House State Affairs Component No. 1190

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill creates new AS 28.35.16 (a) to prohibit operating of a motor vehicle while watching a television or monitor; (b) prohibits installing a television or monitor viewable by the driver without an interlock; (c) exempts vehicle information, GPS, map, or maneuvering displays, and equipment with an interlock; (d) exempts emergency or assistance vehicles; (e) and (f) provides the penalties. AS 28.35.16(a) creates four different levels of offense (misdemeanor or felony, depending on the facts), which may cause confusion and increase the risk of error on forms and in criminal record systems. Although some criminal statutes share this format, it should be avoided when new crimes are created because it may cause a misdemeanor to be erroneously identified as a felon, or vice versa, and can result in a violation of the person's rights and privileges and a risk to public safety. To avoid this, the Department proposes that the four different levels of offense be differentiated in four separate statutes, as are assault and sexual abuse of a minor statutes.

Prepared by: Director David Schade Phone 269-5092  
 Division: Statewide Services Date/Time 2/28/05 1:39 PM  
 Approved by: Commission William Tandeske Date 2/28/2005  
 Agency: Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB012-LAW-CDCO-2-28  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act relating to televisions and monitors  
in motor vehicles. RDU CRIMINAL  
 Component Criminal Justice Litigation  
 Sponsor Representative Gruenberg  
 Requester House State Affairs Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>						
-------------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

FUND SOURCE	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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 (F/2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Part-time						
Temporary						

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

This bill amends AS 28.35 prohibiting watching a television receiver, a video monitor or the like while driving a motor vehicle. The bill similarly prohibits the installation of televisions or monitors or the like in such a way that they can be viewed by the driver of the vehicle unless there is a locking device that blocks power to the the unit while the motor vehicle is in motion. The bill excepts vehicle information display, GPS, mapping display, or equipment intended to enhance the driver's view forward, behind or to either side of the motor vehicle. The bill does not apply to emergency vehicles.

The Department of Law does not anticipate that there will be many new prosecutions arising out of passage of this legislation, and thus does not anticipate a fiscal impact.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 2/28/05 2:57 PM  
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 2/28/2005  
 Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 12  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act relating to televisions RDU Legal and Advocacy Services  
and monitors in vehicles Component Public Defender Agency  
 Sponsor Reps. Gruenberg, Lynn, Gardner,...  
 Requester House State Affairs Component No. 1631

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>

**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	0.0	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>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 (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill creates a number of new offenses, including felonies, for operating a motor vehicle while watching a TV or video monitor or installing such equipment that is capable of being viewed by the driver while the vehicle is moving. Due to the indigency of public defender clients this bill, if enacted, is not expected to have a significant fiscal impact on the operations of the Agency.

Prepared by: Linda K. Wilson, Deputy Director Phone: (307)334-4416  
 Division: Public Defender Agency Date/Time: 3/1/05 7:26 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date: 3/1/2005  
 Agency: Department of Administration

## Sarah Hook

---

**From:** eggnogg [eggnogg@alaska.net]  
**Sent:** Friday, March 04, 2005 11:04 AM  
**To:** Sarah Hook  
**Subject:** HB 12

Thank you and Representative Gruenberg for e-mailing me a copy of HB 12 which I understand will be introduced for hearing before the Judiciary Committee tomorrow morning. I will be unable to personally testify before the Committee tomorrow but I would appreciate having my written testimony read into the record.

Thank you for the opportunity to comment on HB 12 and thanks to the sponsors of this bill. Its introduction and hopeful passage should save lives of our friends, family, neighbors, co-workers, other community members and visitors to our state and serve as a useful deterrent to thoughtless and grossly negligent use of the stated devices. The bill centers legal responsibility on those persons and businesses that are in the best position to avoid harm to the public.

Over two years ago, close friends were killed in an accident that devastated family, friends, co-workers in what was alleged to have been a driver watching a DVD. This vehicle purportedly crossed over into our friends' driving lane snuffing out their lives and devastating all who knew and loved them. I sat through much of a very high profile trial in which the driver was charged with the murder of my friends. The jury acquitted that driver because of reasonable doubt as to his guilt. I believe the outcome of that trial might have been very different had the Alaska State Troopers investigating at the accident scene and the Alaska Crime Lab had better training on how to determine whether the DVD was engaged and playing at the vehicles' impact. As the State Crime lab apparently cut or disabled the battery, it could not be forensically determined whether the DVD was engaged on impact. I believe in addition to HB12's passage, this Legislature should appropriate sufficient public safety funding to better ensure proper field and crime lab training to deal with collecting evidence with this relatively new technology so that spoliation of critical evidence is far less likely to occur.

Thank you for your thoughtful consideration and hopeful positive reporting out of this bill from your Committee.

Respectfully,

Russell A. Nogg  
515 Fredricks Drive  
Anchorage, Alaska 99504  
(907) 276-6040 or (907) 337- 6851



Consumer Electronics Association

2500 Wilson Blvd. Arlington, VA 22201-3834 USA (703) 907-7600 main (703) 907-7601 fax www.CEA.org

March 16, 2005

VIA E-MAIL

Page 1 of 3

The Honorable Paul Seaton  
Chair, State Affairs Committee  
House of Representatives  
Alaska State Capitol  
Juneau, Alaska 99801-1182

Re: **H.B. 12 ("An act relating to televisions and monitors in motor vehicles")**

Dear Representative Seaton:

The Consumer Electronics Association (CEA) appreciates the opportunity to present its comments regarding House Bill 12 for the hearing scheduled on March 17, 2004 before the House State Affairs Committee.

CEA represents more than 1,800 companies involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. CEA also produces the nation's largest annual trade event, the International Consumer Electronics Show.

CEA welcomes the introduction of H.B. 12, which is an opportunity to revise and elevate Alaska's current law concerning in-vehicle video displays. CEA's main interest in this subject is to achieve and maintain a consistent regulatory approach to in-vehicle video displays across the United States, which benefits consumers, industry and the law enforcement community.

Two years ago, CEA developed model legislation regarding in-vehicle video displays, and versions of the model have been enacted in both California and Louisiana. The Louisiana legislation was subsequently adopted by the Council of State Governments for its 2004 volume of *Suggested State Legislation*. Attached is a copy.

The CEA model legislation (copy below) achieves three important objectives with regard to regulating in-vehicle video displays: consistency, flexibility and focus. As mentioned above, it is beneficial to achieve and maintain uniformity among the states with laws on this subject. Secondly, regarding flexibility, the model legislation avoids calling out specific technologies, which always change over time. Finally, the model legislation focuses on the video functions of concern while avoiding a broad ban on any visual presentation, such as navigation displays.

**Suggested Language for Legislation  
Concerning In-Vehicle Video**

- (a) A person may not operate a motor vehicle if a television receiver, a video monitor, or a television or video screen capable of displaying a television broadcast or video signal that produces entertainment or business applications, is located in the motor vehicle at any point forward of the back of the driver's seat, or is visible to the driver while operating the motor vehicle.
- (1) Section (a) does not apply to the following equipment when installed in a motor vehicle:
- (i) A vehicle information display;
  - (ii) A navigation or global positioning display;
  - (iii) A visual display used to enhance or supplement the driver's view forward, behind, or to the sides of a motor vehicle for the purpose of low-speed maneuvering of the vehicle;
  - (iv) A television receiver, video monitor, television or video screen or any other similar means of visually displaying a television broadcast or video signal, if that equipment has a device that, when the motor vehicle is being driven, disables the equipment for all uses except as a visual display as described in paragraphs (i)–(iii).
- (b) A person may not install in a motor vehicle a television receiver, a video monitor, or a television or video screen capable of displaying a television broadcast or video signal that produces entertainment or business applications at any point forward of the back of the driver's seat, or that is visible to the driver while operating the motor vehicle.

As introduced, H.B. 12 closely follows the model supported by CEA. One issue the committee might wish to consider is whether the last sentence in Section (b) of the H.B. 12 is redundant given the preferred language in Section (c)(5). In addition, the reference to "remove power" in Section (b) might be too proscriptive.

House State Affairs Committee  
March 16, 2005  
Page 3

Thank you again for the opportunity to provide the views of the consumer electronics industry regarding H.B. 12, and please let us know if you or the Committee have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas Johnson", with a long horizontal flourish extending to the right.

Douglas Johnson  
Senior Director, Technology Policy  
djohnson@ce.org

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Tel +1 703-907-7600

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**By Fax and Mail**

February 28, 2005

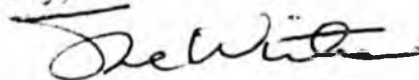
Representative Max Gruenberg  
Representative Bob Lynn  
Representative Berna Gardner  
Representative Lesil McGuire  
State Capitol  
Juneau, Alaska 99801

Re: HB 12

Dear Representatives:

On behalf of State Farm Insurance Companies, I would like to express State Farm's support of HB 12, "An Act relating to televisions and monitors in motor vehicles." If there is any information we can provide to you, please let me know.

Sincerely,



Sheldon E. Winters

SEW/caf

RepsGruenberg-Lynn-Gardner-McGuire.wpd

**Support and Background**



**Jennifer Adzima**

---

**From:** Jordan Marshall  
**Sent:** Thursday, August 19, 2004 11:52 AM  
**To:** Jennifer Adzima  
**Subject:** DVD editorial

ADN Opinion, *August 12*

**DVD ruling**

*Jury's decision not the end of this*

A Kenai jury acquitted a man accused of causing a fatal wreck on the Seward Highway by watching a DVD while driving. Jurors apparently bought his story that he was only listening to a CD at the time of the wreck, and it also appears the victims' vehicle was "passing like crazy" just before the accident, according to a 911 call.

Fair enough; a jury's decision is what counts in any murder trial. But that's not the end of the story here.

For the Legislature, this should be an easy call: Active DVD screens should not be visible to the driver of any vehicle while it's in motion. The potential for distraction is too great. Come legislative season next January, this problem can be easily remedied.

<http://www.adn.com/opinion/story/5417015p-5353046c.html>

## Petterson found not guilty on murder charges

Tuesday, August 10, 2004 - by Warren Williamson

**Kenai, Alaska** - Not guilty on all counts. That was the decision Tuesday in the second-degree murder trial of 29-year-old Jamie Petterson, the Kenai man accused of watching an onboard DVD movie that the state says caused a head-on collision, killing two people on the Seward Highway.



"We, the jury, find the defendant, Erwin J. Petterson Jr., not guilty of murder in the second degree."

After just five hours of deliberation, the jury returns its first verdict.

"We, the jury, find the defendant, Erwin J. Petterson Jr., not guilty of the lesser included offense."



At that, defense attorney Chuck Robinson hugged his client while Petterson exhaled a sigh of relief. The jury acquitted Petterson of all charges, including the lesser counts of manslaughter and criminally negligent homicide.

The decision came nearly two years after a horrific head-on collision on the Seward Highway took the lives of Robert and Donna Weiser.

"The state should have never brought this case in a criminal court," Robinson said after the trial. "They didn't have criminal evidence, and the jury agreed."

For Petterson, the decision had been a long time coming. "It's weighed on me heavy since Day 1," he said. "It's been a struggle. I mean, family and friends have pulled together to help with everything, money, third party, work, everything." He has been unable to work or drive for two years, and he says he now faces legal bills of about \$90,000.

Jurors actually were given the case about 1 p.m. Monday and left the courthouse for the day about 5 p.m. After returning Tuesday, it took them less than an hour to tell the judge that they had reached a verdict.

As for the family and friends of the Weisers, they say the decision was a disappointment, but admit the case from the beginning has been a difficult one to win.



"I wish I could say that it was a surprise," said David Weiser, a son of the victims. "But I think that, with the speed that the jury came back and the burdens that are placed on the state and the prosecution, 'beyond reasonable doubt,' I think that it didn't come as much of a shock."

"Regardless of the outcome of this trial, it wasn't going to heal what pains us," said Martin Weiser, also a son of the victims. "Justice wasn't served."

But long-term justice may be served. The defense team agree that, while Petterson was acquitted, this trial is a good beginning for discussions leading to a change in laws.

"A DVD player in your dash that you don't use is no more distracting than a radio that you're listening to, or kids or animals or food," said defense attorney Eric Derleth. "So we feel that the evidence just wasn't there that distracted driving was a part of this collision. But it certainly can't hurt to bring that topic into the forum for discussion in our society."

For right now, two families must find a way to rebuild their lives. For Martin and David Weiser, admittedly, finding the strength to move on will be difficult. Especially with a stark reminder -- a license plate reading GRNPAA -- of loving parents lost.



"Two years later, I still have my mom's last voice mail to me on my cell phone," said David Weiser. "I'm no more capable of deleting that right now, right this second, post-trial, than I was before."

For Jamie Petterson, it's a lifetime of memories of that horrible day two years ago. "I'll never forget this. It'll never go away," he said. A tragedy that took the lives of two innocent people.

The Weiser family did speak to Petterson after the verdict was read Tuesday. One told him, "You have a long life to live. Live it well."

KTUU-TV anchor John Tracy interviewed Petterson and his attorney

after the verdict.



**Mr. Petterson, what emotions were you experiencing the moment you heard those precious two words 'not guilty'?**

I couldn't even describe it. I really don't know.

**Mr. Robinson, I don't think I've ever seen an attorney jump higher when a verdict was read. It was a quick decision, indicating that you did a good job of convincing this jury. Is there a key piece of testimony or evidence that you credit for Jamie's acquittal?**

Yes, after talking to some of the jurors, we found out that the 911 caller, Mr. Steve Couture, was a very credible and instrumental piece of evidence and witness in this case, that caused the jury to have some reasonable doubt as to Mr. Petterson's guilt.

**Are you surprised at the speedy return of this jury?**

Actually, I thought they'd come back a little sooner, so I was a little worried last night. But when we were called this morning at about 10 o'clock, I felt pretty good that we had this case won.

**Mr. Petterson, I know this is a victory for you and your family, but in the end, two people are still dead, and you yourself could have been killed. How much responsibility do you accept for this crash?**

That's a tough thing to say. I mean there's a lot of things that I think I maybe could have done differently, but I'll never know.

**Gentlemen, as you both know, this case generated a fair amount of national attention because of the growing popularity of DVDs in cars. Mr. Petterson, one question still nags at me from the trial – if you did not watch DVDs while driving, why did you bypass the safety device that prohibits the DVD from playing while someone is driving?**

It was just a matter of it was easier to do. It was honestly easier to do on a bench, rather than having to change that in a car.



**Mr. Robinson, you know that there has been all sorts of talk about perhaps changes in state law, and you certainly indicated to the jury that there currently is no state law preventing these in-dash DVDs.**

**Would now be the time, and would you support, such a law?**

Well, I'm never for this attitude of, 'There's got to be a law against.' We've adapted to all sorts of entertainment in our automobiles since we left the horse and buggy days, from radios to CBs to CDs. I think that it just goes along with common sense, that it's pretty hard to watch a movie on a high-speed highway where you're going at least 65 mph, traveling over 100 miles. I doubt very seriously that anybody with good common sense would be watching a DVD anyway. So, I understand that it's legal in California, which is the largest populace state in the country, probably has the most vehicles per state, and it's not prohibited there, because when people get stuck in traffic jams in Los Angeles, it might be a good idea for them while they're waiting 45 minutes to an hour to entertain themselves with a movie.

**Final question, Mr. Petterson. Your life's been on hold for two years, what's next for you?**

Just going to get back to work. I've got a lot of people to pay back for all of this. So get back to work, get my life back on track.

---

*Channel 2 Broadcasting Inc.*  
*<http://www.ktuu.com/>*

**Subject:** Bob and Donna Weiser: Trial starts this Monday, July 19th with jury selection.  
**From:** "David Weiser" <davidw@theworld.com>  
**Date:** Sat, 17 Jul 2004 09:21:14 -0400  
**To:** "Max Gruenberg" <Representative\_Max\_Gruenberg@Legis.state.ak.us>  
**CC:** <mbweiser@gci.net>

Max:

Update on the status of the trial, below

At some point I would like to speak with you about the possibility of presenting legislation that can serve to prevent this type of tragedy in the future. Alaska is by no means on the cutting edge of this type of legislation from what I understand. Something needs to be on the books making it illegal to even put these things in the front of a pickup truck. The way I understand it currently you can install one, nothing illegal about that, but it would be illegal to use it. That's like making Stinger missiles available in the open market by competition to terrorists (even creating a market for them) but making it illegal for them to actually fire one at a US plane. Everyone I speak to cannot fathom that it is even possible to have an in-dash DVD player in the front of a pickup truck that will actually work. And is easily made to do so by the driver of the vehicle. Even though it is illegal, you never hear of anyone being arrested for having a workable screen in their car. At best the person would probably receive a \$10 ticket or something? You have better access to that answer than I would. Once a law is on the books, as you know the next step is enforcement. But at least if there are tragic circumstances as in this case, the law exists with harsh penalties for violation?

Just some thoughts. Now that the defendant is about to go to trial I'm interested in pursuing this matter legislatively. Is that something you would be able to help me with?

David Weiser

-- -- Original Message -----

**From:** David Weiser

**To:** William M. Mehner; Throop Brown; Swmikel@aol.com; Steven Newman; Stacy Lefton; Shannon Kordas; Sandy Gibbs; Russ Nogg; Roz Jones; Ray Ellis; Phil Weinberg; Phil Lowenthal; Mitchell J. (Mickey) LaBrie; Mitch and Suzanne Snapira; Mindy Schcot; Mike Schneider; Mike Davis; Mike Beckerman; Michael Davis; Maxine Rosenthal; matthew\_glogowski@us.ibm.com; Matthew Glogowski; Matt Bremson; Linda Newman & Bob Steingisser; Larry & Tirza Weiser; Joy Kucinski; Joy Kucinski; Jodie Welch; Jim Lucason; Jill Piscitelle; JESSE G. CHAVEZ; Hinda and Andy Piscitelle; Gayle Davis; Gary Schloss; Gary and Barbara Zipkin; Gail and Mike Stemborski; Fran Bremson; Florence Frohman; Erika Swanson; Erika Swanson; Doug Geiss; Doug Geiss; Davis, Barry S.; David Weiser; Dave Wolf; Curt Michael; Cheryl Bremson; Cathy (Frawley) Doran; Brock Shamberg; Brian Meyers; Bonnie Mehner; Bob Steingisser; Bethany Mehner-Weiser; Anthony Moccia; Ann Bardake; Aaron Newman; Mike and Judy Dapelo

**Sent:** Friday, July 16, 2004 10:51 PM

**Subject:** Trial starts this Monday, July 19th with jury selection.

Update:

After many postponements all at the request of the defense, Irwin Petterson, Jr. finally goes to trial on Monday, July 19th, accused of killing my parents Bob and Donna Weiser as a result of driving at high speeds while watching a DVD movie in the front of his pickup truck. <http://www.anchoragepress.com/newarchives/coverstoryvol12ed44.html> The DA is somewhat short on specifics as so much is up to change in a trial. But here's what I know.

The trial starts on Monday with jury selection, a process that should take between 2 to 3 days by estimation. This puts opening statements as early as Wednesday, but more likely Thursday. The trial is expected to last between 3 to 4 weeks, but that's a wide open estimate. Could be less or more. But with serious charges of 2nd degree murder, it is more likely to go

longer?

I've left my job of 8 years (permanently) to attend the trial which is projected to last far longer than I originally anticipated. My travel requirements became a source of tension at my job and a 4 week absence wasn't going to work for the ownership of the company. Such is life. Anyone interested is welcome to email me about my future plans.

Marty, Beth, and I will be attending the trial on a full time basis. I'm not sure if they will have to come and go as Isabel (6) and Sophie (4) will require their presence. The trial is being held in Kenai which is 2 hours or so South of Anchorage. Our accommodations are somewhat figured out, but it won't be easy especially being so far outside Anchorage. I am not expecting easy internet access, but will seek out internet cafes where they might be found.

The first witness to be called (at this time) will be my sister-in-law Bethany. It's a brave thing she is doing, the purpose of which is to put a human touch to the loss of my parents. I didn't feel like I should be up on the witness stand and Marty felt the same way from what I can tell.

A question that has been asked: Petterson has never attempted any contact with us to show remorse. And neither my brother or I have ever attempted contact either. We've heard his voice during telephonic participation in court proceedings, but neither of us have ever seen him in person. It should be interesting, speaking for myself anyway.

**David Weiser**  
davidw@theworld.com  
mobile: 617-877-1785

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Anchorage Daily News

[Print Page](#)[Close Window](#)**DVD unit plays role in Kenai crash case****MURDER TRIAL: Prosecutors say driver was watching a movie.**

By TATABOLINE BRANT

Anchorage Daily News

*(Published: July 23, 2004)*

KENAI -- Was Erwin Jamle Petterson Jr. watching a movie while driving his truck two years ago when he slammed head-on into a Jeep on the Seward Highway in a fiery wreck that killed two people?

And even if the state can prove the 29-year-old Kenai man was watching the movie "Road Trip" on his in-dash DVD player while driving at highway speeds -- an allegation Petterson denies -- does such behavior constitute "an extreme indifference to the value of human life," deserving of a minimum 10-year prison sentence?

Those are a few of the questions surrounding a murder trial that began this week in Kenai and is said by industry experts and lawyers to be the first case in the country in which a DVD player is implicated in a fatal wreck resulting in the driver being charged with murder. The questions and trial assume even more importance given that more and more vehicle owners are installing players and monitors in their vehicles, according to figures from the Consumer Electronics Association.

In opening statements Thursday in front of Superior Court Judge Charles Cranston, prosecutors attributed the accident to Petterson's driving behavior. The defense claimed there are other explanations for the wreck.

Robert and Donna Weiser, 60 and 56, died in the Seward Highway crash, which occurred near Bertha Creek on the sunny afternoon of Oct. 12, 2002.

The couple, from Anchorage, had been on their way to the Kenai Peninsula for a weekend getaway. The state medical examiner believes both died on impact. Donna was pulled from the wreckage before it went up in flames. Robert was not.

Petterson, who has had three speeding tickets since 1991, and his passenger were hospitalized but recovered. Their air bags deployed, and troopers say they were wearing seat belts. Drugs and alcohol were not factors, authorities say.

Petterson, a carpenter with no criminal history who will turn 30 next month, is charged with second-degree murder. He has denied he was watching the comedy when he and the Weisers collided. He told troopers he had reached for a soda in the seconds before the crash.

"It was an accident," he told the Daily News last summer. "I get to live with this the rest of my life. ... It haunts me."

Petterson's attorney, Chuck Robinson, said during opening statements Thursday in Kenai Superior Court that his client was listening to a CD, not watching a movie, when the crash

occurred. Troopers found the music disc "Head to Toe" in the same dash unit where they found the DVD, he said.

He contended that the state also failed to pursue a key witness in the case until just last month. The man will testify that he saw Robert Weiser's Jeep "unsafely, imprudently and erratically pass other vehicles on the road," Robinson said.

"This case is about a tragic auto accident," Robinson said, "not murder."

Prosecutor June Stein told jurors she has witnesses who would testify to Petterson's erratic driving behavior the day of the accident, as well as a woman who claims Petterson's passenger told her that when the accident happened, he and Petterson "were zoned out watching a DVD."

While she didn't bring it up Thursday, the state has contended in court documents that Petterson ignored manufacturer's warnings in installing the DVD player so it would play while the car was moving. A Sony PlayStation II was also installed in the vehicle.

Robinson said Petterson plans to testify later in the trial that, while his in-dash system may have been capable of being operated while driven and viewed by the driver at the same time, it was not operated at the time of this accident.

"You will also find out that the installation of a DVD player in an automobile in Alaska is not illegal, even if it's installed where the driver can see it."

Alaska laws prohibit televisions within view of the driver in vehicles but do not address DVD players.

Emotions run strong on both sides of the case. The Weisers are survived by two grown sons, who have been devastated by the loss. For the past two years, David Weiser, a mortgage broker, has saved a message from his mom on his cell phone so it won't expire. In an interview last week, he said he hopes Petterson "sees the inside of a jail cell."

Petterson's friends and family have rallied to his side since his May 2003 arrest, holding dances and rummage sales to raise money for his defense. One couple put up the deed to their house to get him released on bail.

As the two sides face off, legal and electronics industry officials are keeping close tabs.

"If Erwin Petterson is convicted, I would expect to see more indictments like this," said Jack King, a spokesman for the National Association of Criminal Defense Lawyers. "And if it's upheld on appeal, I would expect to see more indictments for all sorts of distractions."

Petterson, fit and tan with short blond hair and braces, started the opening day of his murder trial ironing his shirt at home, according to his family. He ate a Hot Pocket and then headed to the Kenai courthouse. The trial began at 8:30 a.m.

"He's really nervous about this," said his dad, Jim Petterson.

Inside the courtroom, Petterson sat at a dark wood table between Robinson and his other attorney, Eric Derleth. Prosecutor June Stein sat at a table opposite them, with four large black binders before her.

The Weiser family sat behind Stein in the audience. Petterson's father, aunt, grandmother and two close friends sat in the audience behind his table, dressed casually in jeans. The tension between the two parties was palpable.

Three people testified Thursday: the Weisers' daughter-in-law, the state's chief medical

examiner Franc Fallico and trooper Paul Randall, who responded to the crash.

Robert and Donna Weiser moved to Alaska in the 1970s, according to their daughter-in-law, Bethany. Donna worked at Health South, Robert as a procurement officer for the National Park Service. Both loved to spend time with their granddaughters, ages 6 and 4. The license plate on their Jeep read "GRNPAA."

The pair headed south the day of the wreck to stay at the Kenai Princess Lodge. Randall, who was stationed in Cooper Landing at the time, told the court he was notified of the crash around 1:30 p.m.

Randall said when he got to the scene, he found a vehicle on fire in a ditch, a white truck off to the same side of the road and a body lying on the pavement with a blanket over it.

Petterson and his passenger were sitting in a woman's van, he said. Both men were "very shook up," he said, and appeared to have injuries.

Medical professionals and firefighters came from all directions. Petterson and Douglas were taken to the hospital, the Weisers to the morgue.

Troopers towed the cars and took numerous photos. Stein showed about two dozen of the images to jurors Thursday.

The photos showed a Jeep that burned to its frame and a white pickup that looked as if a bear had clawed off its front, revealing the engine.

Fallico told the jurors he believed the Weisers both died on impact, before the fire.

On cross-examination, Fallico confirmed that a small amount of Depakene, an epilepsy medicine, was found in Robert Weiser's body.

Fallico said the substance had nothing to do with the accident, but Derleth, the defense attorney, said during a recess he thought it might.

Derleth said Weiser was taking the drug to prevent migranes and suggested a medical emergency on Weiser's part might have caused the crash. He said the defense hopes to bring up Weiser's medical history in more detail later but is waiting for a ruling by the judge.

David Weiser said during a recess outside the courtroom that the defense is grasping at straws. "It's like they find fertilizer at your house and try to arrest you for blowing up a courthouse," he said.

The story of the wreck and the alleged involvement of a DVD player has garnered national attention. Spokespersons from the Consumer Electronics Association and the National Association of Criminal Defense Lawyers say they have never heard of a similar case.

Petterson is charged under two second-degree murder theories -- one that he knowingly did something that was certain to cause serious harm to another person and the other that his actions showed extreme indifference to human life.

King, with the national defense lawyers association, said he thinks the state is going to have a difficult time proving either.

"Having a friend put an apple on top of her head and shooting it -- that shows extreme indifference," he said. Trying to elude police by driving through a playground full of kids -- that's extreme indifference, he said.

Robinson called the charges excessive. He suspected the state was trying to send the message that it doesn't want people to drive and watch movies.

The trial is expected to take three weeks.

Reporter Tataboline Brant can be reached at [tbrant@adn.com](mailto:tbrant@adn.com) or 257-4321.

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**ANCHORAGE'S MOST WIDELY-READ WEEKLY NEWSPAPER**

Vol. 12, Ed. 44 October 30 - November 5 2003

Page Code: coverstoryvol12ed44

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**COVER STORY****None for the road**

As more and more motorists get in-dash DVD players, the state gears up to try driver Erwin "Jamie" Petterson Jr. for murder in a fatal wreck. Among other things, he is charged with watching a movie while driving.

*By Tony Hopfinger*



On December 8, Erwin "Jamie" Petterson Jr. is due to be tried for murder for allegedly causing the deaths of two motorists while driving under the influence of the frat-boy comedy "Road Trip." That's the movie the state says was playing on the DVD player on the dashboard of Petterson's pickup truck when the wreck happened last fall on the Seward Highway. Motorists on cell phones have become a grudging part of most people's driving experience, but as the Petterson case shows, a new technological threat may be emerging on the roads: drivers zoning out in front of TV screens.

Televisions in cars are nothing new. Vans have had them in the backseat for decades. In the 1950s, car shows had futuristic exhibits of automobiles driving themselves as motorists watched TV, read or slept. Many of the cars of today have computer navigation systems and some have TVs; backseat DVD players and televisions are rapidly becoming the norm in SUVs and mini-vans. Just as we still have not seen personal jet-packs, cars do not yet drive themselves, yet some are apparently so confident in their multi-tasking abilities that they are watching movies while driving.

Those who install DVD players in dashboards are supplementing young men rigging big speakers and groovy stereos in their cars. Costing more than a thousand bucks, the DVD players are a coveted, macho investment, like

tinted windows, big bass and florescent lights. While looking at car DVD players recently at Anchorage's Pyramid Audio and Video, a young male customer explained their appeal this way: "Chick's dig 'em."

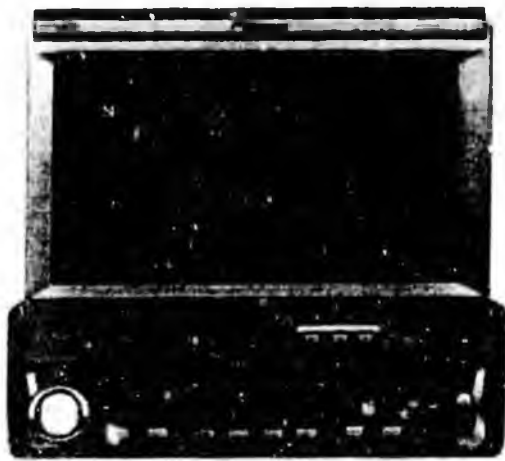
You're not supposed to be able to watch an in-dash DVD player while driving. Owner's manuals for the devices say that they must be hooked to the emergency brake or parking gear, so that you can only turn them on when the car isn't moving.

Why would you want sit behind the wheel in a parked car and watch a movie?

"Have you ever been sitting in the parking lot waiting for your girlfriend or wife to come out of the store?" asked Dave Van Dort, manager of Pyramid Audio and Video.

Van Dort says his shop only installs about one or two dashboard DVDs a month, but industry studies show sales of the players are one of the fastest growing sectors in car entertainment systems. An estimated one hundred and seventy-six thousand in-dash DVD players are expected to be sold this year, up from one hundred and twenty thousand last year, according to the Consumer Electronics Association.

Many people buy in-dash DVD players and install them on their own. Some purposely bypass the emergency brake so they can watch the players as they drive. Alaska State Troopers and state prosecutors say that's how Petterson had his DVD player wired, which along with inattentiveness and high speeds led him to cause the head-on crash that killed a husband and wife on the Seward Highway.



The state is going tough on Petterson, treating him like a drunk driver who survived a fatal wreck. Drinking played no role in the incident, yet Petterson, who is twenty-eight, is charged with four counts of second-degree murder, two counts each for the two people the state says he killed.

Petterson, who is out on bail and living in Anchorage, did not return calls for this story, but he has denied watching the DVD player while driving. His lawyer, Arthur Robinson, said the state has leveled a number of false allegations against his client, including accusing him of trying to pass another car when the accident happened. Robinson said he believes the state is wrongly trying to make an example of his client. "Is that the kind of social policy we want to have, charging murder for something that could have been a simple accident?" he asked.

"Murder implies that there is an intentional action, that the person knows that what they're doing will cause somebody to be killed. I don't think this case merits such charges."

State investigators say interviews and analysis of Peterson's pickup truck tell a different story. In great detail, court documents paint a picture of a guy obsessed with having the ultimate home entertainment system on wheels.

On October 12, 2002, Jamie Petterson and his friend Jonathan Douglas were driving from Kenai to Anchorage in Peterson's Ford F-150 pickup. According to trooper reports, the new, white truck was almost like a moving couch: Petterson had outfitted it with a Pioneer DVD player and five-inch monitor in the dashboard. He'd also hooked up a Sony PlayStation 2 in the front seat.

The DVD player turned on as soon as Petterson flipped the ignition, but that wasn't the way he was supposed to have wired the player. State investigators later found a green tag on the player with a disclaimer that said a safety wire must be connected to the emergency brake switch so that it could not be watched as the car was driven. Petterson or the person who installed it bypassed the brake, they say.

Petterson was ready to hit the road last fall with Road Trip on the DVD player and "Crash Bandicoot" in the

PlayStation, according to court documents. Road Trip could prove a distraction to a driver speeding through Southcentral Alaska. "As with all road movies, it's not getting there that matters, but what happens along the way," said one reviewer. "And that means a lot of which has to do with sex."

Whether or not Petterson was preoccupied by, say, Marla Sucharetza's demi star turn as "Sperm Bank Nurse" in Road Trip, or the female auction scene, the state maintains he was also concerned with speed. Other drivers later said Petterson zoomed by them at speeds of more than ninety miles an hour, according to troopers. He was approaching Turnagain Pass when he crossed the center line, near mile 65.5 of the Seward Highway, to pass a car, the state says.

Coming in the other direction were Robert and Donna Weiser, of Anchorage, in a Jeep Grand Cherokee. They tried to swerve out of the way. So did Petterson, but the two cars ended up pointed in the same direction. The vehicles smashed and the Weisers' Jeep caught fire. A passing motorist pulled Donna Weiser from the Jeep but Robert couldn't be rescued before it was engulfed in flames. Both died at the scene.

Petterson and Douglas had minor injuries.

Although Petterson has denied the DVD player was playing, troopers say they pieced together a conflicting account from Douglas, his passenger, who spoke to his ex-wife shortly after the accident. According to troopers, Marty Zoda, Douglas' former wife, said that Douglas called her and told her he was "zoned out on the TV-DVD deal that Jamie has in his truck, and the next thing he knew Jamie said, 'Oh shit,' and they hit a car."

Douglas denies saying that.

Robinson, Petterson's lawyer, says the state's account of what happened is riddled with false statements. Petterson wasn't trying to pass a car, he says; Robert Weiser, in fact, crossed into Petterson's lane.

Robinson also says that an autopsy showed that Robert Weiser, who was sixty, was taking Depakene, an anti-seizure medication, at the time of the accident. The amount in his body was well below the therapeutic level, Robinson said, leading him to speculate that Weiser might have had a seizure just before the accident.

If Petterson is convicted of murder, it may be the first documented case in the country of an in-dash DVD player leading to a fatal car wreck. Nevertheless, such players have reportedly caused problems elsewhere, such as in London, where police are cracking down on people caught driving and watching movies on mini-screens by fining them the equivalent of a hundred dollars.

The stakes are much higher in Petterson's case, of course, but the fact remains that it is not even against the law in Alaska or most other states to have an in-dash television or mini movie screen. It just can't be on while the car is driven. In other words, it's up to the driver to keep it turned off.

Manufacturers of in-dash DVD players and other television devices have sought to shield themselves from liability by stipulating that their warranties are void if the cables for such a device are not properly connected to keep it from playing while a vehicle is in motion.

It takes no particular aptitude to bypass the safety feature. One need only go online for advice and visit a site such as the Dodge Dakota message board (at [www.dodgedakotas.com](http://www.dodgedakotas.com)). One recent posting there explained how to "get around" the emergency brake wiring.

Said another writer to the message board: "I'm no safety nut but rigging you're in-dash DVD player to play while driving is just plain STUPID."

The second-degree murder charges against Petterson cover a wide range of reckless behavior that prosecutors say includes being stupid enough to watch a movie as he drove.

Sergeant Keith Mallard, an Alaska trooper who responded to the wreck last fall, said he believes Petterson went

far beyond simple reckless driving.

"The reality of it is he showed a blatant disregard for driving and cost two people their lives," Mallard said. "Does that make him a murderer? Well, I won't answer that. We'll leave that up to the jury."

Supporters of Petterson say a murder conviction would bring a harsh punishment for a man who has no criminal record. State records do show, however, that Petterson had fifteen speeding tickets and other traffic violations between 1991 and 1999.

Petterson's friends are raising money to fight the charges against him, and have set up a website with the provocative address [www.accidentsjusthappen.com](http://www.accidentsjusthappen.com).

Alcohol-related wrecks can result in murder charges, Robinson said, but he doesn't believe distractions such as in-dash movies are necessarily as grave. Besides, he said, Petterson, his client, did nothing wrong.

"Do you know how many things (there are) that distract drivers?" he said. "There are cell phones, navigation monitors... I mean, the state hasn't even outlawed the use of cell phones in cars."

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## Alaska man accused of driving while watching DVD acquitted

KENAI, Alaska An Alaska man has been acquitted of two counts of second-degree murder because he was allegedly watching a D-V-D while driving, causing a head-on collision.

Erwin Petterson Junior was also acquitted on two counts of manslaughter.

Alaska does not prohibit operating a D-V-D player in view of the driver. The prosecutor says the matter should now be addressed by legislators.

Petterson says his truck strayed into oncoming traffic when he reached for a soda. Two people in the vehicle hit head-on were killed.

The ex-wife of a passenger in Petterson's pickup testified that she was told by her former spouse that a D-V-D was playing when the accident occurred.

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(2) two or more crimes under AS 11.41, a consecutive term of imprisonment shall be imposed for at least

(A) the mandatory minimum term under AS 12.55.125(a) for each additional crime that is murder in the first degree;

(B) the mandatory minimum term for each additional crime that is an unclassified felony governed by AS 12.55.125(b);

(C) the presumptive term specified in AS 12.55.125(c) or the active term of imprisonment, whichever is less, for each additional crime that is

- (i) manslaughter; or
- (ii) kidnapping that is a class A felony;

(D) two years or the active term of imprisonment, whichever is less, for each additional crime that is criminally negligent homicide;

(E) one-fourth of the presumptive term under AS 12.55.125(c) or (i) for each additional crime that is sexual assault in the first degree under AS 11.41.410 or sexual abuse of a minor in the first degree under AS 11.41.434, or an attempt, solicitation, or conspiracy to commit those offenses; and

(F) some additional term of imprisonment for each additional crime, or each additional attempt or solicitation to commit the offense, under AS 11.41.200 — 11.41.250, 11.41.420 — 11.41.432, 11.41.436 — 11.41.458, or 11.41.500 — 11.41.520.

(d) In this section,

(1) "active term of imprisonment" means the total term of imprisonment imposed for a crime, minus suspended imprisonment;

(2) "additional crime" means a crime that is not the primary crime;

(3) "primary crime" means the crime

(A) for which the sentencing court imposes the longest active term of imprisonment; or

(B) that is designated by the sentencing court as the primary crime when no single crime has the longest active term of imprisonment. (§ 3 ch 125 SLA 2004)

**Effective dates.** — Section 9, ch. 125, SLA 2004, provides that this section applies "to offenses occurring on or after July 1, 2004."

**Editor's notes.** — Section 8, ch. 125, SLA 2004,

**Sec. 12.55.135. Sentences of imprisonment for misdemeanors.** (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.

(b) A defendant convicted of a class B misdemeanor may be sentenced to a definite term of imprisonment of not more than 90 days unless otherwise specified in the provision of law defining the offense.

(c) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence committed in violation of the provisions of an order issued or filed under AS 12.30.027 or AS 18.66.100 — 18.66.180 and not subject to sentencing under (g) of this section shall be sentenced to a minimum term of imprisonment of 20 days.

(d) A defendant convicted of assault in the fourth degree who knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the assault shall be sentenced to a minimum term of imprisonment of

- (1) 60 days if the defendant violated AS 11.41.230(a)(1) or (2);
- (2) 30 days if the defendant violated AS 11.41.230(a)(3).

(e) If a defendant is sentenced under (c), (d), or (h) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of defendant be imprisoned under this section; and

(3) the minimum

(f) A defendant convicted under AS 11.46.365(a)(1) shall be sentenced to a term of imprisonment of not more than one year

(g) A defendant convicted of a crime involving domestic violence shall be sentenced to a term of imprisonment of not more than one year

(1) 30 days if the defendant is convicted of a crime involving domestic violence against a person or a child

(2) 60 days if the defendant is convicted of a crime against a person or a child

(h) A defendant convicted of a crime involving domestic violence in the second degree shall be sentenced to a term of imprisonment of 35 days

(i) If a defendant is sentenced to a term of imprisonment of 35 days or more

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served

(2) imposition of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served

(3) the minimum term of imprisonment shall be the term of imprisonment specified in this section

(j) In this section,

(1) "crime against a person or a child" means a crime against another jurisdiction having jurisdiction over the defendant

(2) "crime involving domestic violence" means a crime involving domestic violence as defined in AS 166 SLA 1978; am § 31 ch 143 SLA 1982; am § 3 ch 6 SLA 1996; am § 9 ch 86 SLA 1998; am § 3 ch 125 SLA 2004

**Revisor's notes.** — Subject to the provisions of AS 12.55.135, a defendant convicted of a crime involving domestic violence shall be sentenced to a term of imprisonment of not more than one year. Subsections (i) and (j) were added by AS 12.55.135. Relettered in 1998.

**Cross references.** — For legislative purpose in connection with the enactment of this section, see §§ 1 and 2, ch. 125, Temporary and Special Acts.

**Effect of amendments.** — The amendments to this section, effective September 13, 1991, renumbered and added subsection (f).

The first 1996 amendment, effective September 13, 1996, substituted "whenever the conduct constituting the offense is committed by a correctional employee" for "correctional employee" in paragraphs (1) and (2) for "30 days" for "60 days".

The second 1996 amendment, effective September 13, 1996, inserted "or fil" in subsection (c), inserted "or fil" under former" and inserted section 12.55.135. The third 1996 amendment, effective September 13, 1996,

**Constitutionality of presumptive provisions.** — See notes under AS 12.55.125, *Nell v. State*, 642 P.2d 1000, 1001 (Alaska App. 1982).

**Maximum sentence for joyriding.** — The district court judge was not eligible to impose a sentence of more than 90 days for joyriding.

IMPRISONMENT FOR MISDEMEANORS

(2) imposition of a sentence may not be suspended except upon condition that the defendant be imprisoned for no less than the minimum term of imprisonment provided in this section; and

(3) the minimum term of imprisonment may not otherwise be reduced.

(f) A defendant convicted of vehicle theft in the second degree in violation of AS 11.46.365(a)(1) shall be sentenced to a definite term of imprisonment of at least 72 hours but not more than one year.

(g) A defendant convicted of assault in the fourth degree that is a crime involving domestic violence shall be sentenced to a minimum term of imprisonment of

(1) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

(h) A defendant convicted of failure to register as a sex offender or child kidnapper in the second degree under AS 11.56.840 shall be sentenced to a minimum term of imprisonment of 35 days.

(i) If a defendant is sentenced under (g) of this section,

(1) execution of sentence may not be suspended and probation or parole may not be granted until the minimum term of imprisonment has been served;

(2) imposition of sentence may not be suspended;

(3) the minimum term of imprisonment may not otherwise be reduced.

(j) In this section,

(1) "crime against a person" means a crime under AS 11.41, or a crime in this or another jurisdiction having elements similar to those of a crime under AS 11.41;

(2) "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 12 ch 166 SLA 1978; am § 2 ch 139 SLA 1980; am § 22 ch 59 SLA 1982; am § 13 ch 61 SLA 1982; am § 31 ch 143 SLA 1982; am §§ 4, 5 ch 92 SLA 1983; am §§ 5, 6 ch 53 SLA 1991; am § 3 ch 6 SLA 1996; am § 14 ch 64 SLA 1996; am §§ 5, 6 ch 71 SLA 1996; am §§ 8, 9 ch 86 SLA 1998; am §§ 3, 4 ch 106 SLA 1998)

**Revisor's notes.** — Subsection (h) was enacted as (g). Relettered in 1998, at which time the cross-reference in subsection (e) was conformed.

Subsections (i) and (j) were enacted as (h) and (i), respectively. Relettered in 1998.

**Cross references.** — For legislative findings and purpose in connection with the enactment of subsection (f), see §§ 1 and 2, ch. 53, SLA 1991 in the Temporary and Special Acts.

**Effect of amendments.** — The 1991 amendment, effective September 13, 1991, rewrote subsection (e) and added subsection (f).

The first 1996 amendment, effective June 27, 1996, in subsection (d), substituted "who knowingly directed the conduct constituting the offense at" for "upon," "correctional employee" for "correctional officer," and paragraphs (1) and (2) for "30 days."

The second 1996 amendment, effective July 1, 1996, in subsection (c), inserted "or filed" and "or issued under former" and inserted section references.

The third 1996 amendment, effective June 20, 1996,

in the introductory language in subsection (e), deleted "Except as provided in AS 12.55.055(f)," from the beginning and ", or (f)" following "(d)" and made related stylistic changes and rewrote subsection (f).

The first 1998 amendment, effective June 13, 1998, rewrote subsection (c) and added subsections (g), (i), and (j).

The second 1998 amendment, effective January 1, 1999, inserted a subsection reference and made minor stylistic changes in subsection (e) and added subsection (h).

**Editor's notes.** — Section 7, ch. 6, SLA 1996 provides that the 1996 amendment to (d) of this section applies "to all offenses committed on or after June 27, 1996."

Section 22(c), ch. 86, SLA 1998 provides that with respect to the 1998 enactment of subsections (g), (i), and (j), "[r]eferences to previous convictions in this Act apply to all convictions occurring before, on, or after June 13 1998."

NOTES TO DECISIONS

**Constitutionality of presumptive sentencing provisions.** — See notes under same heading, AS 12.55.125. *Nell v. State*, 642 P2d 1361 (Alaska Ct. App. 1982).

**Maximum sentence for joyriding justified.** — The district court judge was not clearly mistaken in

characterizing a defendant as a worst offender, and in imposing the maximum sentence of one year for third-degree criminal mischief (joyriding). Despite the limited period of time in which the defendant committed the offenses, the defendant's record, coupled with the especially serious nature of the particular joyrid-

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583 P.2d 840 (Alaska 1978); *State v. Afcan*, 583 P.2d 849 (Alaska 1978); *Daniels v. State*, 584 P.2d 47 (Alaska 1978); *Honeycutt v. State*, 583 P.2d 806 (Alaska 1978); *Ferguson v. State*, 590 P.2d 43 (Alaska 1979); *One v. State*, 592 P.2d 1193 (Alaska 1979); *Dayton v. State*, 598 P.2d 67 (Alaska 1979); *Stone v. State*, 598 P.2d 72 (Alaska 1979); *Edinger v. State*, 598 P.2d 943 (Alaska 1979); *Larson v. State*, 598 P.2d 946 (Alaska 1979); *LaBarbera v. State*, 598 P.2d 947 (Alaska 1979); *Eltad v. State*, 599 P.2d 137 (Alaska 1979); *Charles v. State*, 606 P.2d 390 (Alaska 1980); *Pyrdol v. State*, 617 P.2d 513 (Alaska 1980); *Coleman v. State*, 621 P.2d 869 (Alaska 1980), cert. denied, 454 U.S. 1090, 102 S. Ct. 653, 70 L. Ed. 2d 628 (1981); *Shearer v. State*, 619 P.2d 726 (Alaska 1980); *Nelson v. State*, 619 P.2d 480 (Alaska Ct. App. 1980); *Bryant v. State*, 623 P.2d 310 (Alaska 1981); *Hoover v. State*, 641 P.2d 1283 (Alaska Ct. App. 1982); *Davidson v. State*, 642 P.2d 1383 (Alaska Ct. App. 1982); *Parker v. State*, 714 P.2d 802 (Alaska Ct. App. 1986); *State v. Price*, 740 P.2d 476 (Alaska Ct. App. 1987); *State v. Capjohn*, 779 P.2d 1255 (Alaska Ct. App. 1989); *State v. Clark*, 782 P.2d 308 (Alaska Ct. App. 1989).

**Sentence too lenient.** — See *State v. Chaney*, 477 P.2d 441 (Alaska 1970); *State v. Wortham*, 537 P.2d 1117 (Alaska 1975); *State v. Lancaster*, 550 P.2d 1257 (Alaska 1976); *State v. Abraham*, 566 P.2d 267 (Alaska 1977); *State v. Wassilie*, 578 P.2d 971 (Alaska 1978); *Putnam v. State*, 629 P.2d 35 (Alaska 1980); *State v. Brinkley*, 681 P.2d 351 (Alaska Ct. App. 1984); *Cleary v. State*, 548 P.2d 952 (Alaska 1976); *Salazar v. State*, 562 P.2d 694 (Alaska 1977); *Cleary v. State*, 564 P.2d 374 (Alaska 1977); *Amidon v. State*, 565 P.2d 1248 (Alaska 1977); *Black v. State*, 569 P.2d 804 (Alaska

1977); *Sumabat v. State*, 580 P.2d 323 (Alaska 1978); *Hansen v. State*, 582 P.2d 1041 (Alaska 1978); *Kanipe v. State*, 620 P.2d 678 (Alaska 1980); *Hintz v. State*, 627 P.2d 207 (Alaska 1981); *State v. Hooper*, 750 P.2d 840 (Alaska Ct. App. 1988).

**Inclusion of improper reference to unverified police contacts did not require remand for resentencing before different judge.** — See *Parks v. State*, 571 P.2d 1003 (Alaska 1977).

Reference to unverified police contacts in a presentence report does not require a remand for resentencing where the record indicates that the sentencing judge was not unduly or improperly influenced by reference to the unverified police contacts. *Pascoe v. State*, 628 P.2d 147 (Alaska 1980).

**Case remanded for resentencing.** — See *Neal v. State*, 628 P.2d 19 (Alaska 1981).

**Case remanded for sentence review.** — Although a sentence of 15 years' imprisonment with eligibility for parole at the discretion of the parole board upon conviction of manslaughter was not excessive, since the trial court had sentenced defendant as if his conviction had been obtained within one year of the crime and therefore substantially ignored his subsequent history of steady employment, his meritorious service in the army, and his lack of involvement in any criminal activity other than a few traffic offenses in the 12 years since the commission of the crime, the case was remanded for the purpose of permitting the trial court to review the sentence it imposed, in light of all available information concerning defendant without excluding the time period commencing one year from the time of the killing until the present. *Padie v. State*, 594 P.2d 50 (Alaska 1979).

**Sec. 12.55.125. Sentences of imprisonment for felonies.** (a) A defendant convicted of murder in the first degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture; or

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an

adopted parent, a legal guardian to the child; or (2) cause under AS 11.41.200 — "parental authority" have the means to

(c) Except as provided otherwise, a defendant may be sentenced to a definite term of imprisonment to be sentenced to the following: 12.55.155 — 12.55.175:

(1) if the offense is as described in (2) of this section;

(2) if the offense is as follows:

(A) other than for murder, a dangerous instrument, a deadly offense, or knowingly displaying a firearm, or otherwise clearly identifiable medical technician, paramedic, or nurse who was engaged in the performance of official duties;

(B) for manslaughter directed towards a child under 16 years of age;

(C) for manslaughter while under the influence of alcohol or drugs;

(3) if the offense is as follows:

(4) if the offense is as described in (1) of this section;

(d) Except as provided otherwise, a defendant may be sentenced to a definite term of imprisonment to be sentenced to the following: 12.55.155 — 12.55.175:

(1) if the offense is as described in (2) of this section;

(2) if the offense is as follows:

(e) Except as provided otherwise, a defendant may be sentenced to a definite term of imprisonment to be sentenced to the following in AS 12.55.155 — 12.55.175:

(1) if the offense is as described in (2) of this section;

(2) if the offense is as follows:

(3) if the offense is as described in (2) of this section;

(4) if the offense is as described in (2) of this section and AS 08.54.720(a)(15), one year of imprisonment;

(f) If a defendant is sentenced to a definite term of imprisonment pending under AS 12.55.155 — 12.55.175:

(1) imprisonment for a term of not less than 10 years and not more than 20 years;

(2) imposition of sentence of not less than 10 years and not more than 20 years;

(3) imprisonment for a term of not less than 10 years and not more than 20 years, except as provided in (j) of this section;

(g) If a defendant is sentenced to a definite term of imprisonment in this section, except to the extent provided in (j) of this section:

(1) imprisonment for a term of not less than 10 years and not more than 20 years;

(2) imposition of sentence of not less than 10 years and not more than 20 years;

(3) terms of imprisonment of not less than 10 years and not more than 20 years;

(h) Nothing in this section shall be construed to prevent a court from imposing a sentence of not less than 10 years and not more than 20 years, except as specifically provided in (j) of this section.

adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five years;

(2) if the offense is a first felony conviction

(A) other than for manslaughter and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven years;

(B) for manslaughter and the conduct resulting in the conviction was knowingly directed towards a child under the age of 16, seven years;

(C) for manslaughter and the conduct resulting in the conviction involved driving while under the influence of an alcoholic beverage, inhalant, or controlled substance, seven years;

(3) if the offense is a second felony conviction, 10 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (f) of this section, 15 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, four years;

(2) if the offense is a third felony conviction, six years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) if the offense is a second felony conviction, two years;

(2) if the offense is a third felony conviction, three years;

(3) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one year.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d)(1), (d)(2), (e)(1), (e)(2), (e)(3), or (i) of this section, except to the extent permitted under AS 12.55.155 — 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person

convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 40 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, eight years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 30 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definite term of imprisonment of not more than 30 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 10 years;

(C) if the offense is a third felony conviction, does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a third felony conviction, and the defendant has two prior convictions for sexual felonies, 15 years;

(4) sexual assault in possession of child pornography or sexual assault in the second degree or exploitation of a minor may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 15 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 20 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (I) of this section, 25 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 30 years;

(j) A defendant sentenced under (a) of this section may be sentenced to a definite term of imprisonment of not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 years;

(I) Notwithstanding any other provision of law, a defendant convicted of a class A felony offense under this section, shall be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) imprisonment for not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 10 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 years;

(E) if the offense is a third felony conviction, does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 15 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 20 years;

(I) Notwithstanding any other provision of law, a defendant convicted of a class A felony offense under this section, shall be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(1) imprisonment for not more than 20 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a first felony conviction and does not involve circumstances described in (B) of this paragraph, five years;

(B) if the offense is a first felony conviction, and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 10 years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 10 years and shall be sentenced to the following presumptive terms, subject to adjustment as provided in AS 12.55.155 — 12.55.175:

(A) if the offense is a second felony conviction and does not involve circumstances described in (B) of this paragraph, two years;

(B) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, three years;

(C) if the offense is a third felony conviction and does not involve circumstances described in (D) of this paragraph, three years;

(D) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, six years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving the greater of (A) one-half of the definite term or (B) 30 years. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) A first felony offender convicted of an offense for which a presumptive term of imprisonment is not specified under this section

(1) may be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second or third felony offender convicted of the same crime if the offender is convicted of criminally negligent homicide and the victim is a child under the age of 16;

(2) except as provided in (1) of this subsection, may not be sentenced to a term of unsuspended imprisonment that exceeds the presumptive term for a second felony offender convicted of the same crime unless the court finds by clear and convincing evidence that an aggravating factor under AS 12.55.155(c) is present, or that circumstances exist that would warrant a referral to the three-judge panel under AS 12.55.165.

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of at least 40 years but not more than 99 years when the defendant has been previously convicted of two or more most serious felonies and the prosecuting attorney has filed a notice of intent to seek a definite sentence under this subsection at the time the defendant was arraigned in superior court. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section. (§ 12 ch 166 SLA 1978; am § 18 ch 45 SLA 1982; am §§ 28 — 30 ch 143 SLA 1982; am § 8 ch 78

SLA 1983; am §§ 1 — 3 ch 92 SLA 1983; am § 5 ch 59 SLA 1988; am § 4 ch 37 SLA 1989; am §§ 23 — 25 ch 79 SLA 1992; am § 5 ch 3 SLA 1994; am §§ 1, 2, 6 ch 6 SLA 1996; am §§ 3 — 7 ch 7 SLA 1996; am § 8 ch 30 SLA 1996; am § 4 ch 33 SLA 1996; am §§ 9 — 11 ch 54 SLA 1999; am § 1 ch 65 SLA 1999; am §§ 1, 2 ch 49 SLA 2000; am § 4 ch 60 SLA 2002; am §§ 1 — 5 ch 90 SLA 2003; am § 5 ch 99 SLA 2004)

**Cross references.** — For classification of felonies and misdemeanors, see AS 11.81.250; for authorized fines, see AS 12.55.035; for reduction of sentence for good behavior, see AS 33.20.010; for effect of the enactment of (j) of this section on Alaska Rule of Criminal Procedure 35, see § 34, ch. 79, SLA 1992 in the Temporary and Special Acts; for findings related to the addition of subsection (l), see § 1, ch. 7, SLA 1996 in the Temporary and Special Acts; for the effect of amendments to (j) of this section made by ch. 7, SLA 1996 on Alaska Rule of Criminal Procedure 35, see § 20, ch. 7, SLA 1996 in the Temporary and Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 9, ch. 54, SLA 1999, and relating to the 1999 amendment of subsections (c) and (k), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 1999 amendment of subsection (b) by § 1, ch. 65, SLA 1999, see § 2, ch. 64, SLA 1999 in the 1999 Temporary & Special Acts. For applicability provisions relating to the 2000 amendment of subsection (a) by sec. 1, ch. 49, SLA 2000, and the addition of subsection (m) by sec. 2, ch. 49, SLA 2000, see sec. 3, ch. 49, SLA 2000 in the 2000 Temporary & Special Acts.

**Effect of amendments.** — The 1992 amendment, effective September 14, 1992, in subsection (a), added the second sentence and paragraphs (1) to (3); added the second sentence in subsection (h); and added subsections (j) and (k).

The 1994 amendment, effective May 30, 1994, inserted "conspiracy to commit murder in the first degree," in subsection (b).

The first 1996 amendment, effective June 27, 1996, substituted "correctional employee" for "correctional officer" in paragraphs (a)(1) and (c)(2) and repealed paragraphs (d)(3) and (e)(3).

The second 1996 amendment, effective June 27, 1996, in paragraphs (c)(4) and (i)(4), inserted "and the defendant is not subject to sentencing under (l) of this section"; in subsection (f), inserted "or mandatory" in paragraphs (1) and (2), and in paragraph (3), deleted "otherwise" preceding "reduced" and added ", except as provided in (j) of this section"; in (j), inserted "(1)," "once," and all of the language following "AS 35.20.010"; and added subsection (l).

The third 1996 amendment, effective May 16, 1996, inserted a section reference in subsection (g).

The fourth 1996 amendment, effective May 23, 1996, made a section reference substitution in paragraph (e)(4).

The first 1999 amendment, effective June 5, 1999, in subsection (b), inserted "solicitation to commit murder in the first degree" in the first sentence and added the third and fourth sentences; and added subparagraph (c)(2)(B), the subparagraph (c)(2)(A) designation, paragraph (k)(1), the paragraph (k)(2) designation, and "except as provided in (1) of this subsection" at the beginning of paragraph (k)(2).

The second 1999 amendment, effective September 20, 1999, in subsection (b) deleted "murder in the second degree," following "convicted of" in the first sentence and added the second sentence.

The 2000 amendment, effective August 9, 2000, added paragraph (e)(4) and made related stylistic changes, and added subsection (m).

The 2002 amendment, effective July 1, 2002, added subparagraph (c)(2)(C).

The 2003 amendment, effective September 11, 2003, added "Except as provided in (i) of this section" at the beginning of subsections (c)-(e); substituted "(e)(3)" for "(e)(4)" in subsection (g); rewrote subsection (i); and made stylistic changes.

The 2004 amendment, effective July 23, 2004, substituted "subsection" for "section" at the end of the introductory language of subsection (l).

**Editor's notes.** — Section 7, ch. 6, SLA 1996 provides that the repeal of (d)(3) and (e)(3) and the amendments to (a) and (c) of this section made by ch. 6, SLA 1996 apply "to all offenses committed on or after June 27, 1996." Section 19, ch. 7, SLA 1996 provides that references to prior or previous convictions in ch. 7, SLA 1996, which amended subsections (c), (f), (i), and (j) and added subsection (l), "apply to all convictions occurring before, on, or after June 27, 1996."

Subsection (b) was amended by § 9, ch. 54, SLA 1999, with an effective date of June 5, 1999, and was further amended by § 1, ch. 65, SLA 1999, with a later effective date of September 20, 1999. Thus, on and after June 5 and before September 20, 1999, subsection (b) read as follows: "A defendant convicted of murder in the second degree, attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 — 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470."

Section 12(a), ch. 90, SLA 2003 provides that the provisions of §§ 1 — 5, ch. 90, SLA 2003 amending this section apply "to sentencings for offenses committed on or after September 11, 2003," and that "[a]ll references to prior or previous convictions in [that section] apply to convictions occurring before, on, or after September 1, 2003."

- I. General Consideration.
- II. Sentencing.
  - A. In General.
  - B. Specific Crimes.
- III. Presumptive Sentencing.
  - A. In General.
  - B. First Offenders.

**I. GENERAL CONSIDERATION**

**Constitutionality of 1982**  
 ter 143, SLA 1982, which am not violate the Alaska Const., § 14. Galbraith v. State, 693 P. 1985).

- Applied in Faulkenberry (Alaska Ct. App. 1982); State (Alaska Ct. App. 1982); Qualls (Alaska Ct. App. 1982); William (Alaska Ct. App. 1982); Connor (Alaska Ct. App. 1982); Sears (Alaska Ct. App. 1982); Hartley (Alaska Ct. App. 1982); Griffith (Alaska Ct. App. 1982); Nix (Alaska Ct. App. 1982); Dunn (Alaska Ct. App. 1982); State 1060 (Alaska Ct. App. 1982); W 1186 (Alaska Ct. App. 1982); E 1199 (Alaska Ct. App. 1982); E 1324 (Alaska Ct. App. 1983); P.2d 621 (Alaska Ct. App. 198 P.2d 184 (Alaska 1983); Contr 654 (Alaska Ct. App. 1984); Gr 662 (Alaska Ct. App. 1984); W 912 (Alaska Ct. App. 1984); E 415 (Alaska Ct. App. 1984); M P.2d 1093 (Alaska Ct. App. 19 P.2d 737 (Alaska Ct. App. 198 P.2d 1961 (Alaska Ct. App. 19 693 P.2d 887 (Alaska Ct. App. 698 P.2d 1230 (Alaska Ct. App. 702 P.2d 651 (Alaska Ct. App. 1 730 P.2d 161 (Alaska Ct. App. 1 P.2d 695 (Alaska Ct. App. 1985 P.2d 1164 (Alaska Ct. App. 19 P.2d 1198 (Alaska Ct. App. 19 715 P.2d 209 (Alaska Ct. App. 1 739 P.2d 769 (Alaska Ct. App. 759 P.2d 541 (Alaska Ct. App. 771 P.2d 448 (Alaska Ct. App. 770 P.2d 296 (Alaska Ct. App. 1 P.2d 599 (Alaska Ct. App. 1989 P.2d 377 (Alaska Ct. App. 198 P.2d 1258 (Alaska Ct. App. 19 P.2d 33 (Alaska Ct. App. 1990); P.2d 677 (Alaska Ct. App. 19 P.2d 807 (Alaska Ct. App. 199 808 P.2d 280 (Alaska Ct. App. 826 P.2d 775 (Alaska Ct. App. 829 P.2d 1191 (Alaska Ct. App. 837 P.2d 130 (Alaska Ct. App. 1 P.2d 1244 (Alaska Ct. App. 199 P.2d 1347 (Alaska Ct. App. 199 P.2d 298 (Alaska Ct. App. 1994 P.2d 1319 (Alaska Ct. App. 199 P.2d 517 (Alaska Ct. App. 1996 P.2d 1335 (Alaska Ct. App. 199 P.2d 1208 (Alaska Ct. App. 199

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB012-DPS-CRI-2-28-05  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title An Act relating to televisions and RDU Statewide Support  
monitors in motor vehicles Component Alaska Criminal Records &  
 Sponsor Representative Gruenberg Identification  
 Requester House State Affairs Component No. 1190

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
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>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 (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This bill creates new AS 28.35.16 (a) to prohibit operating of a motor vehicle while watching a television or monitor; (b) prohibits installing a television or monitor viewable by the driver without an interlock; (c) exempts vehicle information, GPS, map, or maneuvering displays, and equipment with an interlock; (d) exempts emergency or assistance vehicles; (e) and (f) provides the penalties. AS 28.35.16(a) creates four different levels of offense (misdemeanor or felony, depending on the facts), which may cause confusion and increase the risk of error on forms and in criminal record systems. Although some criminal statutes share this format, it should be avoided when new crimes are created because it may cause a misdemeanant to be erroneously identified as a felon, or vice versa, and can result in a violation of the person's rights and privileges and a risk to public safety. To avoid this, the Department proposes that the four different levels of offense be differentiated in four separate statutes, as are assault and sexual abuse of a minor statutes.

Prepared by: Director David Schade Phone 269-5092  
 Division: Statewide Services Date/Time 2/28/05 1:39 PM  
 Approved by: Commission William Tandeske Date 2/28/2005  
 Agency: Department of Public Safety

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### Sponsor Statement and Sectional Analysis

#### HB 12 – Televisions and Monitors in Motor Vehicles

The purpose of the bill is to prevent operators of motor vehicles from watching television, video, and any other programming by making it a crime. Furthermore the bill makes it a crime to install a device capable of being viewed while the vehicle is in operation.

#### Sectional analysis

Paragraph (a) sets forth the general rule that a person shall not drive a motor vehicle while watching television or video.

Paragraph (b) prohibits installing video equipment in a motor vehicle that can be viewed by the driver while the vehicle is moving. This paragraph goes on to provide for specified means of disabling the equipment lawfully.

Paragraph (c) provides specific exemptions to the general rule that are all in the nature of aides to navigation or operation.

Paragraph (d) makes it clear that the bill is not intended to cover mobile digital terminals that are intended to provide emergency service or roadside assistance.

Paragraph (e) prescribes the types of crimes that a person who is in violation of the law will face under various circumstances including injury and death of another.

**SECTIONAL**

A person who violates the law is guilty of a

- (1) class A misdemeanor
- (2) class C felony if as a result of that violation another person suffers a physical injury;
- (3) class B felony if as a result of that violation another person suffers a serious physical injury ;
- (4) class A felony if as a result of that violation another person suffers death.

Paragraph (f) prescribes the crime and punishment of a person who installs equipment in violation of the law.

**HB**

**21**

**Representative Jay Ramras**  
Co-Chair, House Resources  
V-Chair, Economic Develop.  
Tourism & Trade

**House State Affairs**  
119 N. Cushman St. Suite 207  
Fairbanks, Alaska 99701  
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## Alaska State Legislature



While in Session  
State Capitol, Room 104  
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(907) 465-3004  
Fax: 465-2070  
Toll Free: (877) 465-3004

House District 10

### House of Representatives

*Liars Bill*  
Sponsor Statement

### HB 21

*Deception  
unfairly standard*

House Bill 21 may very be the first step to more positive political campaigns. Presently, a candidate running for office, or a group proposing an initiative can be the subject of negative advertising and sometime even lies. HB 21 will establish an administrative process to counteract false attacks in a timely manner.

Under existing law, a false damaging statement in a political advertisement can only be countered with a response, often times along the same lines. Legally the only recourse is to file a civil suit. Because of the backlog in the courts it may be months after the election before the complaint is even heard.

With the passage of HB 21, a candidate or group victimized by false advertising will be able file a complaint with the Alaska Public Offices Commission (APOC). By filling out a form, and providing proof that the statement is false APOC must respond in an expedited manner. The panel will be able to hold hearings and may fine the offending campaign or individual.

HB 21 will cause a candidate or group to consider more closely what they say in their advertising campaigns. Alaskans want the truth about the candidates and issues before they go to the polls just like they do when they purchase a commercial product or service. HB 21 will show our constituents that we, as elected officials, agree.

## HOUSE BILL NO. 21

IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES RAMRAS, Wilson

Introduced: 1/10/05

Referred: State Affairs, Judiciary

## A BILL

## FOR AN ACT ENTITLED

1 "An Act relating to false statements in state election advertising; and providing for an  
2 effective date."

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

4 \* Section 1. AS 15.13 is amended by adding a new section to read:

5           Sec. 15.13.092. False statements in election advertising. (a) A person may  
6 not make a false statement in election advertising with knowledge that the statement is  
7 false or with a reckless disregard for whether or not the statement is false.

8           (b) In an administrative complaint under AS 15.13.380 alleging a violation of  
9 (a) of this section, the complainant shall

10                       (1) identify with specificity the name of the respondent who made the  
11 false statement in election advertising;

12                       (2) attach relevant evidence to support the allegation that the statement  
13 is false; and

14                       (3) verify under oath or affirmation before a person authorized by law

1 to take the person's oath or affirmation that the complainant has read the complaint  
2 and believes its contents to be true.

3 (c) If the person who disseminates the false statement is not the maker of the  
4 false statement, the person who disseminates the statement violates (a) of this section  
5 only if the person had actual knowledge that the statement was false before  
6 disseminating the statement.

7 (d) A print or broadcast medium by means of which the election advertising is  
8 made is not liable for damages caused by the distribution of false information unless  
9 the owners of the print or broadcast medium knew or had reason to know the  
10 information distributed was false.

11 (e) In this section, "election advertising" means an announcement or  
12 advertisement that is disseminated through print or broadcast media, including radio,  
13 television, cable, and satellite, the Internet, or through a mass mailing, the principal  
14 purpose of which is to influence the outcome of

15 (1) the election of a candidate; or

16 (2) an election concerning a ballot proposition; in this paragraph,

17 "proposition" has the meaning given in AS 15.13.065(c).

18 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

**Representative Jay Ramras**  
**Co-Chair, House Resources**  
**V-Chair, Economic Develop.**  
**Tourism & Trade**

**House State Affairs**  
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## Alaska State Legislature



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### House of Representatives

## MEMO

To: Representative

Fm: Jim Pound, Chief of Staff

Cc:

Date: January 10, 2005, 11:54 AM

Re: Request for hearing of HB 21

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Please accept this Memo as a request for the House Committee to hear HB 21 "An Act relating to false statements in state election advertising; and providing for an effective date." HB 21 will allow a political candidate or group that is the subject of false advertising to seek a remedy in an expedited manner through the administrative process.

Thank you in advance for scheduling HB 21 before the House Committee.

Attachments: Sponsor Statement, HB 21, AS 15.13.065(c), AS 15.13.380, FTC Policy Statement on Deception

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**Thank you**

# LEGAL SERVICES

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## MEMORANDUM

January 27, 2005

**SUBJECT:** Constitutionality of HB 21 (Work Order No. 24-LS0153A)

**TO:** Representative Paul Seaton  
Attn: Louie Flora

**FROM:** Barbara R. Craver  
Legislative Counsel *BRC*

You have asked about any constitutional issues raised by HB 21 which concerns false statements in political campaign communications. In my opinion, this bill raises constitutional issues in regard to the curtailment of free speech, particularly in regard to false statements in political advertising regarding initiatives. While there is no Alaska law on this topic or controlling federal law, there is a case from Washington state that raises red flags, particularly relating to prohibiting false statements in regard to ballot measures.

In the Washington case the highest court in that state found that the first amendment of the United States Constitution protected a malicious false statement of material fact made in political advertising. *State ex rel. Public Disclosure Comm'n v. 119 Vote No! Comm.*, 957 P.2d 691 (Wash., 1998). The court found that RCW 42.17.530(1)(a)<sup>1</sup> was unconstitutional on its face. The State alleged that the "119 Vote No!" committee

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<sup>1</sup> RCW 42.17.530 provides:

- False political advertising (1) It is a violation of this chapter for a person to sponsor with actual malice:
- (a) Political advertising that contains a false statement of material fact;
  - (b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;
  - (c) Political advertising that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.
- (2) Any violation of this section shall be proven by clear and convincing evidence.

published political advertising that violated the Washington law. Basically, the court found that the first amendment provided its broadest protection to speech in political campaigns.<sup>2</sup> This case involved allegedly false statements in regard to an initiative, and the court found that free speech was particularly chilled in this case involving an initiative:

Ultimately, the State's claimed compelling interest to shield the public from falsehoods during a political campaign is patronizing and paternalistic. It assumes the people of this state are too ignorant or disinterested to investigate, learn, and determine for themselves the truth or falsity in political debate, and it is the proper role of the government

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<sup>2</sup> The court opinion said:

The constitutional guarantee of free speech has its "fullest and most urgent application" in political campaigns. *Brown v. Hartlage*, 456 U.S. 45, 53, 102 S. Ct. 1523, 71 L. Ed. 2d 732 (1982) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271-72, 91 S. Ct. 621, 28 L. Ed. 2d 35 (1971)). Therefore, the State bears a "well-nigh insurmountable" burden to justify RCW 42.17.530's restriction on political speech. *Meyer v. Grant*, 486 U.S. 414, 425, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988). This burden requires the court to apply "exacting scrutiny" to RCW 42.17.530(1)(a). *Meyer*, 486 U.S. at 420. See also *Buckley v. Valeo*, 424 U.S. 1, 39, 96, S. Ct. 612, 46 L. Ed. 2d 659 (1976). Exacting scrutiny will invalidate the statute unless the State demonstrates a compelling interest that is both narrowly tailored and necessary. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 347, 115 S. Ct. 1511, 1519, 131 L. Ed. 2d 426 (1995); *Burson v. Freeman*, 504 U.S. 191, 198, 112 S. Ct. 1846, 119 L. Ed. 2d 5 (1992). Such burdens are rarely met. *Burson*, 504 U.S. at 199-200. *Ino Ino, Inc. v. City of Bellevue*, 132 Wash. 2d 103, 114, 937 P.2d 154 (1997) ("The State bears the burden of justifying a restriction on speech."). . . . RCW 42.17.530(1)(a) infringes on speech protected by the First Amendment. Uninhibited speech "is the single most important element upon which this nation has thrived." *Nelson v. McClatchy Newspapers, Inc.*, 131 Wash. 2d 523, 536, 936 P.2d 1123 (quoting *Guzick v. Drebus*, 305 F. Supp. 472, 481 (N.D. Ohio 1969), aff'd, 431 F.2d 594 (6th Cir. 1970), cert. denied, 401 U.S. 948, 91 S. Ct. 941, 28 L. Ed. 2d 231 (1971)), cert. denied, 118 S. Ct. 175, 139 L. Ed. 2d 117 (1997). Free speech is revered as the "Constitution's majestic guarantee," central to the preservation of all other rights. *Id.* at 536. Advocacy of one's political views through leafletting lies at the very core of our First Amendment freedoms. *McIntyre*, 514 U.S. at 346-47; *Meyer*, 486 U.S. at 421-22.

Representative Paul Seaton  
January 27, 2005  
Page 3

itself to fill the void. This assumption is especially flawed in cases like this where the truth of the assertion may be readily tested against the text of the initiative.

*State ex rel. Public Disclosure Comm'n v. 119 Vote No! Comm.*, 957 P.2d 691, 699 (citations omitted). Three judges concurred with the court's decision but on different grounds. Two of those judges (Justices Guy and Talmadge) declared that the committee that had made the political advertisement did not violate the law, but also found that the law did not violate the first amendment. *Id.*, 633; 636 - 658. One of the three (Justice Madsen) wrote a concurrence to say that the first amendment definitely protected false statements in regard to initiatives, but that same protection might not extend to deliberate falsehoods about candidates. *Id.* at 633.

This case is not controlling in Alaska, and numerous commentators have taken exception to this case, but it still stands, and illustrates that some caution is warranted.

By contrast, an Ohio law prohibiting false statements in political advertising was upheld by the Sixth Circuit of the U.S. Court of Appeals. The Ohio law allowed the Ohio Elections Commission to make findings regarding allegedly false statements and to refer a violation for prosecution. *Pestak v. Ohio Elections Com.*, 926 F.2d 573, 1991 U.S. App. LEXIS 3151 (6th Cir. 1991). This case was denied certiorari by the U. S. Supreme Court in 1991, and has not been overruled in the Sixth Circuit. This case was cited by Justice Talmadge in his comprehensive "concurring"<sup>3</sup> opinion in the Washington case.<sup>4</sup>

If I may be of further assistance, please advise.

BRC:med  
05-057.med

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<sup>3</sup> Justice Talmadge concurred with the dismissal of the case against the committee, but disagreed completely on the legal grounds for doing so, arguing that the Washington law was not unconstitutional on its face.

<sup>4</sup> State ex rel. Public Disclosure Comm'n v. 119 Vote No! Comm., 957 P.2d 691, 649, n 3.

Sec 15.13.065. Contributions.

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010, "proposition" includes an issue placed on a ballot to determine whether

- (1) a constitutional convention shall be called;
- (2) a debt shall be contracted;
- (3) an advisory question shall be approved or rejected; or
- (4) a municipality shall be incorporated.

History

(§ 9 ch 48 SLA 1996; am § 7 ch 1 SLA 2002)

Annotations

Administrative Code. - For campaign disclosure, see 2 AAC 50, art. 2.

Sec. 15.60.010. Definitions.

Statute text

In this title, unless the context otherwise requires,

- (25) "proposition" means an initiative, referendum, or constitutional amendment submitted at an election to the public for vote;

Sec. 15.13.380. Violations; limitations on actions.

Statute text

(a) Promptly after the final date for filing statements and reports under this chapter, the commission shall notify all persons who have become delinquent in filing them, including contributors who failed to file a statement in accordance with AS 15.13.040, and shall make available a list of those delinquent filers for public inspection. The commission shall also report to the attorney general the names of all candidates in an election whose campaign treasurers have failed to file the reports required by this chapter.

(b) A member of the commission, the commission's executive director, or a person who believes a violation of this chapter or a regulation adopted under this chapter has occurred or is occurring may file an administrative complaint with the commission within one year after the date of the alleged violation. If a member of the commission has filed the complaint, that member may not participate as a commissioner in any proceeding of the commission with respect to the complaint. The commission may consider a complaint on an expedited basis or a regular basis.

(c) The complainant or the respondent to the complaint may request in writing that the commission expedite consideration of the complaint. A request for expedited consideration must be accompanied by evidence to support expedited consideration and be served on the opposing party. The commission shall grant or deny the request within two days after receiving it. In deciding whether to expedite consideration, the commission shall consider such factors as whether the alleged violation, if not immediately restrained, could materially affect the outcome of an election or other impending event; whether the alleged violation could cause irreparable harm that penalties could not adequately remedy; and whether there is reasonable cause to believe that a violation has occurred or will occur. Notwithstanding the absence of a request to expedite consideration, the commission may independently expedite consideration of the complaint if the commission finds that the standards for expedited consideration set out in this subsection have been met.

(d) If the commission expedites consideration, the commission shall hold a hearing on the complaint within two days after granting expedited consideration. Not later than one day after affording the respondent notice and an opportunity to be heard, the commission shall

→ (1) enter an emergency order requiring the violation to be ceased or to be remedied and assess civil penalties under AS 15.13.390 if the commission finds that the respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter;

(2) enter an emergency order dismissing the complaint if the commission finds that the respondent has not or is not about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter; or

(3) remand the complaint to the executive director of the commission for consideration by the commission on a regular rather than an expedited basis.

(e) If the commission accepts the complaint for consideration on a regular rather than an expedited basis, the commission shall notify the respondent within seven days after receiving the complaint and shall investigate the complaint. The respondent may answer the complaint by filing a written response with the commission within 15 days after the commission notifies the respondent of the complaint. The commission may grant the respondent additional time to respond to the complaint only for good cause. The commission shall hold a hearing on the complaint not later than 45 days after the respondent's written response is due. Not later than 10 days after the hearing, the commission shall issue its order. If the commission finds that the

respondent has engaged in or is about to engage in an act or practice that constitutes or will constitute a violation of this chapter or a regulation adopted under this chapter, the commission shall enter an order requiring the violation to be ceased or to be remedied and shall assess civil penalties under AS 15.13.390.

(f) If the complaint involves a challenge to the constitutionality of a statute or regulation, necessary witnesses that are not subject to the commission's subpoena authority, or other issues outside the commission's authority, the commission may request the attorney general to file a complaint in superior court alleging a violation of this chapter. The commission may request the attorney general to file a complaint in superior court to remedy the violation of a commission order.

(g) A commission order under (d) or (e) of this section may be appealed to the superior court by either the complainant or respondent within 30 days in accordance with the Alaska Rules of Appellate Procedure.

(h) If the commission does not complete action on an administrative complaint within 90 days after the complaint was filed, the complainant may file a complaint in superior court alleging a violation of this chapter by a respondent as described in the administrative complaint filed with the commission. The complainant shall provide copies of the complaint filed in the superior court to the commission and the attorney general. This subsection does not create a private cause of action against the commission; against the commission's members, officers, or employees; or against the state.

(i) If a person who was a successful candidate or the campaign treasurer or deputy campaign treasurer of a person who was a successful candidate is convicted of a violation of this chapter, after the candidate is sworn into office, proceedings shall be held and appropriate action taken in accordance with

(1) art. II, sec. 12, of the state constitution, if the successful candidate is a member of the state legislature;

(2) art. II, sec. 20, of the state constitution, if the successful candidate is governor or lieutenant governor;

(3) the provisions of the call for the constitutional convention, if the successful candidate is a constitutional convention delegate;

(4) art. IV, sec. 10, of the state constitution, if the successful candidate is a judge.

(j) Information developed by the commission under (b) - (e) of this section shall be considered during a proceeding under (i) of this section.

(k) If, after a successful candidate is sworn into office, the successful candidate or the campaign treasurer or deputy campaign treasurer of the person who was a successful candidate is charged with a violation of this chapter, the case shall be promptly tried and accorded a preferred position for purposes of argument and decision so as to ensure a speedy disposition of the matter.

#### History

(§ 1 ch 76 SLA 1974; am § 25 ch 189 SLA 1975; am §§ 1, 6 ch 134 SLA 1982; am §§ 33 - 36 ch 74 SLA 1985; am § 26 ch 14 SLA 1987; am §§ 20, 21, 28 ch 48 SLA 1996; am § 6 ch 1 SLA 2002 TSSLA; am § 17 ch 108 SLA 2003)