

CS FOR HOUSE BILL NO. 179(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/25/01

Referred: Rules

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to underage drinking and drug offenses; and providing for an effective
2 date."

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

4 * **Section 1.** AS 04.16.050(b) is amended to read:

5 (b) A person who violates (a) of this section and who has not been
6 previously convicted or received a suspended imposition of sentence under (1) of
7 this subsection is guilty of minor consuming or in possession or control [A
8 VIOLATION]. Upon conviction in the district court, the court

9 (1) may grant a suspended imposition of sentence under
10 AS 12.55.085 and place the person on probation for one year or until the person
11 is 21 years of age, whichever is later, if the person has not been previously
12 convicted of a violation of this section previously; among the conditions of
13 probation, the court shall, with the consent of a community diversion panel, refer
14 the person to the panel, and require the person to comply with conditions set by

the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (e) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (e) of this section [NOT LESS THAN \$100].

* Sec. 2. AS 04.16.050 is amended by adding new subsections to read:

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

1 (4) take possession of the person's driver's license.

2 (e) The court shall place a person sentenced under (b), (c), or (d) of this
3 section on probation for one year, or until the person is 21 years of age, whichever is
4 later. The person may not refuse probation. The court may require the person to pay
5 for and enroll in a juvenile alcohol safety action program, if one is available. The
6 court shall impose the following conditions of probation:

7 (1) the person shall pay for and successfully complete any education or
8 treatment recommended;

9 (2) the person may not consume inhalants or possess or consume
10 controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

11 (3) the person shall timely complete any community work ordered, as
12 provided in (f) of this section; and

13 (4) other conditions the court considers appropriate.

14 (f) A person ordered to perform community work under this section shall
15 perform the work within 120 days of the entry of judgment for a conviction. The court
16 may expand the time period for up to 30 days upon a showing of good cause. The
17 person shall submit verification of completion of community work to the clerk of court
18 on a form provided by the court. If the verification is not provided within the time
19 period required by this subsection, the court shall, within 30 days, schedule further
20 proceedings in the case to determine whether a violation of probation has occurred.

21 (g) The treatment recommended by a juvenile alcohol safety action program
22 for a person placed on probation under (e) of this section may include a period of
23 inpatient treatment if the judgment specifies the maximum period of inpatient
24 treatment authorized. A person who has been recommended for inpatient treatment
25 may make a written request to the sentencing court for review of the referral. A
26 person shall make a request for review within seven days after the recommendation
27 and shall specifically set out the grounds upon which the request for review is based.
28 The court may order a hearing on the request for review.

29 (h) The juvenile alcohol safety action program to which a person is referred
30 under this section shall inform the court or a minor's juvenile probation officer if the
31 person fails to submit to evaluation or fails to complete successfully any education or

1 treatment recommended. If the court finds that the person has failed to perform
 2 community work as ordered, to submit to evaluation, or to complete successfully the
 3 education or treatment recommended, the court may impose the suspended fine, and
 4 may impose any period of suspended incarceration. If the person was convicted under
 5 (c) or (d) of this section, the court shall revoke the person's driver's license for an
 6 additional six months beyond the revocation imposed under (c) or (d) of this section.
 7 A court revoking a person's driver's license under this subsection shall notify the
 8 agency responsible for the administration of motor vehicle laws of the revocation
 9 within five working days.

10 (i) When considering the financial resources of a minor for purposes of
 11 determining eligibility for court-appointed counsel under this section, the court shall
 12 consider the resources of both the defendant and the defendant's parent or guardian,
 13 unless the court finds good cause to treat the defendant's or the defendant's parent's or
 14 guardian's resources as being unavailable to the defendant.

15 (j) A driver's license revocation under this section is consecutive to a
 16 revocation imposed under another provision of law, but is concurrent with a
 17 revocation under another provision of law based on a prior conviction, adjudication of
 18 delinquency, or informal adjustment under AS 47.12.060.

19 (k) In this section,

20 (1) "driver's license" has the meaning given in AS 28.40.100;

21 (2) "juvenile alcohol safety action program" means

22 (A) a juvenile alcohol safety action program developed and
 23 implemented or approved by the Department of Health and Social Services
 24 under AS 47.37;

25 (B) any other alcohol education or treatment program approved
 26 by the Department of Health and Social Services under AS 47.37 if a program
 27 described in (A) of this paragraph is not available in the community in which
 28 the person resides; or

29 (C) a program or counseling approved by the court if a program
 30 or treatment described in (A) of this paragraph is not available in the
 31 community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030, 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

* **Sec. 3.** AS 04.16.180(a) is amended to read:

(a) Except as provided in AS 04.11.015, AS 04.16.025, **04.16.050** [AS 04.16.050(b)], 04.16.051, 04.16.200 - 04.16.210, and AS 04.21.065, a person who violates a provision of this title or a regulation adopted by the board is guilty, upon conviction, of a class A misdemeanor. Each violation is a separate offense.

* **Sec. 4.** AS 21.89.027 is amended to read:

Sec. 21.89.027. Motor vehicle insurance following driver's license revocation. (a) Notwithstanding AS 21.36.210, an insurer offering insurance in this state may not (1) refuse to issue or renew motor vehicle liability insurance coverage; (2) cancel an existing policy of motor vehicle liability insurance; (3) deny a covered claim; or (4) increase the premium on a motor vehicle liability insurance policy if the refusal, cancellation, denial, or increase results only from the fact that the person's driver's license was revoked under **AS 04.16.050(c), (d), or (h)** [AS 28.15.183 OR 28.15.185] for possession or consumption of alcohol in a situation where the person was not driving and was in violation of **AS 04.16.050(a)** [AS 04.16.050] or a municipal ordinance with substantially similar elements.

(b) The provisions of (a) of this section may not prevent an insurer from underwriting or rating based upon loss experience in the same manner as it would for a person who has not had the person's driver's license revoked under **AS 04.16.050(c), (d), or (h)** [AS 28.15.183 OR 28.15.185].

* **Sec. 5.** AS 28.15 is amended by adding a new section to read:

Sec. 28.15.176. Administrative revocation of license to drive for consumption or possession of alcohol or drugs. The department shall revoke the driver's license or permit, privilege to drive, or privilege to obtain a license of a person not yet 18 years of age for

(1) six months when notified of an informal adjustment under AS 47.12.060(b)(4) and shall revoke the person's driver's license or permit, privilege

1 to drive, or privilege to obtain a license for an additional six months when notified of
 2 an unsuccessful adjustment under that paragraph;

3 (2) the time period specified in AS 28.15.185(b) when notified of an
 4 informal adjustment under AS 47.12.060(b)(5).

5 * **Sec. 6.** AS 28.15.181 is amended by adding a new subsection to read:

6 (i) A court convicting a person under AS 04.16.050(c) or (d) shall revoke the
 7 person's driver's license or permit, privilege to drive, or privilege to obtain a license as
 8 provided in AS 04.16.050(c) or (d).

9 * **Sec. 7.** AS 28.15.183(a) is amended to read:

10 (a) If a peace officer has probable cause to believe that a person who is at least
 11 14 years of age but not yet 21 years of age has [POSSESSED OR USED A
 12 CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL
 13 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, POSSESSED OR
 14 CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL
 15 ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS,] operated a
 16 vehicle after consuming alcohol in violation of AS 28.35.280, or refused to submit to a
 17 chemical test under AS 28.35.285, and the peace officer has cited the person or
 18 arrested the person for the offense, the peace officer shall read a notice and deliver a
 19 copy to the person. The notice must advise that

20 (1) the department intends to revoke the person's driver's license or
 21 permit, privilege to drive, or privilege to obtain a license or permit;

22 (2) the person has the right to administrative review of the revocation;

23 (3) if the person has a driver's license or permit, the notice itself is a
 24 temporary driver's license or permit that expires 10 days after it is delivered to the
 25 person;

26 (4) revocation of the person's driver's license or permit, privilege to
 27 drive, or privilege to obtain a license or permit, takes effect 10 days after delivery of
 28 the notice to the person unless the person, within 10 days, requests an administrative
 29 review;

30 (5) if the person has been cited under AS 28.35.280 or under
 31 AS 28.35.285, that person, under AS 28.35.290, may not operate a motor vehicle,

aircraft, or watercraft during the 24 hours following issuance of the citation.

* **Sec. 8.** AS 28.15.183(c) is amended to read:

(c) Unless the person has requested an administrative review, the department shall revoke the person's driver's license or permit, privilege to drive, or privilege to obtain a license or permit, effective 10 days after delivery to the person of the notice required under (a) of this section, upon receipt of a sworn report of a peace officer

(1) that the officer had probable cause to believe that the person is at least 14 years of age but not yet 21 years of age and has violated one of the offenses described in (a) of this section;

(2) that the peace officer has cited or arrested the person for

[(A)] a violation of [AS 11.71, AS 04.16.050,] AS 28.35.280 [,]
or 28.35.285 [;] or

[(B) POSSESSION OR USE OF A CONTROLLED
SUBSTANCE OR ALCOHOL IN VIOLATION OF] a municipal ordinance
with substantially similar elements;

(3) that notice under (a) of this section was provided to the person; and

(4) describing the circumstances surrounding the offense.

* **Sec. 9.** AS 28.15.183(g) is amended to read:

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked under this section unless the person, **if required to participate in a juvenile alcohol safety action program, as defined in AS 04.16.050, has successfully completed any education or treatment recommended** [IS ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY COMPLETED,

(1) AN ALCOHOLISM EDUCATION OR REHABILITATION TREATMENT PROGRAM APPROVED UNDER AS 47.37, IF THE REVOCATION RESULTED FROM POSSESSION OR CONSUMPTION OF ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, FROM OPERATING A VEHICLE AFTER CONSUMING ALCOHOL IN VIOLATION OF AS 28.35.280,

1 OR FROM REFUSAL TO SUBMIT TO A CHEMICAL TEST OF BREATH IN
2 VIOLATION OF AS 28.35.285; OR

3 (2) A DRUG EDUCATION OR REHABILITATION TREATMENT
4 PROGRAM, IF THE REVOCATION RESULTED FROM POSSESSION OR USE
5 OF A CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A
6 MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS].

7 * **Sec. 10.** AS 28.15.183(i) is amended to read:

8 (i) A person whose driver's license, permit, or privilege **to drive** was revoked
9 under this section may apply for reinstatement of the person's driver's license as
10 provided in this subsection. A person may apply to the department for reinstatement
11 by filing a written request for review of the revocation imposed under this section with
12 the department. The department shall issue a new license or reissue the person's
13 driver's license

14 [(1)] as provided under AS 28.15.211(d) if the department finds that

15 **(1)** [(A)] the application for reinstatement is filed at least one year after
16 the person's license, permit, or privilege was revoked;

17 **(2)** [(B)] the person complies with (g) of this section; and

18 **(3)** [(C)] the person has not violated a provision of this title or a
19 regulation of the department since the revocation [; OR

20 (2) IMMEDIATELY IF

21 (A) THE OFFENSE DESCRIBED UNDER (a) OF THIS
22 SECTION FOR WHICH THE PERSON WAS CITED OR ARRESTED IS
23 NOT PROSECUTED OR THE PROSECUTION RESULTS IN DISMISSAL
24 BY A COURT; OR

25 (B) A COURT OR JURY FINDS THAT THE PERSON IS
26 NOT GUILTY OF THE OFFENSE DESCRIBED UNDER (a) OF THIS
27 SECTION FOR WHICH THE PERSON WAS CITED OR ARRESTED].

28 * **Sec. 11.** AS 28.15.184(g) is amended to read:

29 (g) The hearing for review of a revocation by the department under
30 AS 28.15.183 shall be limited to the issues of whether the person was at least 14 years
31 of age but not yet 21 years of age and whether the person [POSSESSED OR USED A

CONTROLLED SUBSTANCE IN VIOLATION OF AS 11.71 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS, OR POSSESSED OR CONSUMED ALCOHOL IN VIOLATION OF AS 04.16.050 OR A MUNICIPAL ORDINANCE WITH SUBSTANTIALLY SIMILAR ELEMENTS,] operated a vehicle after consuming alcohol in violation of AS 28.35.280 [,] or refused to submit to a chemical test of breath in violation of AS 28.35.285.

* **Sec. 12.** AS 28.15.185(a) is amended to read:

(a) A person [WHO IS AT LEAST 13 YEARS OF AGE BUT NOT OLDER THAN 17 YEARS OF AGE] is subject to revocation, under (b) of this section, of the person's driver's license or permit, privilege to drive, or privilege to obtain a license if the person

(1) is at least 13 years of age but not yet 21 years of age and is convicted of or is adjudicated a delinquent minor by a court for

[(1)] misconduct involving a controlled substance under AS 11.71 or a municipal ordinance with substantially similar elements; or

(2) is at least 13 years of age but not yet 18 years of age and is convicted of or is adjudicated a delinquent minor by a court for an offense involving the illegal use or possession of a firearm that is punishable under AS 11 or a municipal ordinance with substantially similar elements.

* **Sec. 13.** AS 28.15.185 is amended by adding a new subsection to read:

(e) In addition to revocation imposed under this section, a court that adjudicates a delinquent minor for repeat minor consuming or in possession or control under AS 04.16.050(c) or for habitual minor consuming or in possession or contact under AS 04.16.050(d) shall revoke the minor's driver's license, privilege to drive, or privilege to obtain a license as provided in AS 04.16.050(c) or (d).

* **Sec. 14.** AS 28.15.211 is amended by adding a new subsection to read:

(g) Except as provided under AS 28.15.183(h), the department may not issue a new license or reissue a license to a person whose driver's license has been revoked under AS 04.16.050, AS 28.15.183, or 28.15.185 unless the person, if required to participate in a juvenile alcohol safety action program, has successfully completed any education or treatment recommended. In this subsection, "juvenile alcohol safety

1 action program" has the meaning given in AS 04.16.050.

2 * **Sec. 15.** AS 47.12.030(b) is amended to read:

3 (b) When a minor is accused of violating a statute specified in this subsection,
4 other than a statute the violation of which is a felony, this chapter and the Alaska
5 Delinquency Rules do not apply and the minor accused of the offense shall be
6 charged, prosecuted, and sentenced in the district court in the same manner as an
7 adult; if a minor is charged, prosecuted, and sentenced for an offense under this
8 subsection, the minor's parent, guardian, or legal custodian shall be present at all
9 proceedings; the provisions of this subsection apply when a minor is accused of
10 violating

11 (1) a traffic statute or regulation, or a traffic ordinance or regulation of
12 a municipality;

13 (2) AS 11.76.105, relating to the possession of tobacco by a person
14 under 19 years of age;

15 (3) a fish and game statute or regulation under AS 16;

16 (4) a parks and recreational facilities statute or regulation under
17 AS 41.21;

18 (5) AS 04.16.050, relating to possession, control, or consumption of
19 alcohol, **except for conduct constituting habitual minor consuming or in**
20 **possession or control under AS 04.16.050(d)**; and

21 (6) a municipal curfew ordinance, whether adopted under
22 AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its
23 ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for
24 the violation of a municipal curfew ordinance, the court shall allow a defendant the
25 option of performing community work; the value of the community work, which may
26 not be lower than the amount of the fine, shall be determined under AS 12.55.055(c);
27 in this paragraph, "community work" includes the work described in AS 12.55.055(b)
28 or work that, on the recommendation of the municipal or borough assembly, city
29 council, or traditional village council of the defendant's place of residence, would
30 benefit persons within the municipality or village who are elderly or disabled.

31 * **Sec. 16.** AS 47.12.060(b) is amended to read:

(b) When the department or the entity selected by it decides to make an informal adjustment of a matter under (a)(2) of this section, that informal adjustment

(1) must be made with [MAY NOT BE MADE WITHOUT] the agreement or consent of the minor and the minor's parents or guardian to the terms and conditions of the adjustment; [.]

(2) must give [IN ADDITION, THE DEPARTMENT OR ENTITY SHALL GIVE] the minor's foster parent an opportunity to be heard before the informal adjustment is made; [.]

(3) must include notice that [AN] informal action to adjust a matter is not successfully completed unless, among other factors that the department or the entity selected by it considers, as to the victim of the act of the minor that is the basis of the delinquency allegation, the minor pays restitution in the amount set by the department or the entity selected by it or agrees as a term or condition set by the department or the entity selected by it to pay the restitution;

(4) for a violation of habitual minor consuming or in possession or control under AS 04.16.050(d) must include an agreement that the minor perform 96 hours of community work, provide that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for six months, and provide that the driver's license or permit, privilege to drive, or privilege to obtain a license be revoked for an additional six months if the informal adjustment is not successful because the minor has failed to perform community work as ordered, or has failed to submit to evaluation or successfully complete the education or treatment recommended; the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this paragraph or of an unsuccessful adjustment described in this paragraph;

(5) of an offense described in AS 28.15.185(a)(1) must include an agreement that the minor's driver's license or permit, privilege to drive, or privilege to obtain a license be revoked as provided in AS 28.15.185(b); the department or an entity selected by the department shall notify the agency responsible for issuing driver's licenses of an informal adjustment under this

1 **paragraph.**

2 * **Sec. 17.** AS 47.12.120 is amended by adding a new subsection to read:

3 (k) A court that adjudicates a delinquent minor for repeat minor consuming or
4 in possession or control under AS 04.16.050(c) or for habitual minor consuming or in
5 possession or control under AS 04.16.050(d) shall revoke the minor's driver's license
6 or permit, privilege to drive, or privilege to obtain a license as provided in
7 AS 04.16.050(c) or (d). A court that adjudicates a delinquent minor for an offense
8 involving a controlled substance under AS 11.71 or involving a firearm under AS 11
9 shall revoke the minor's driver's license or permit, privilege to drive, or privilege to
10 obtain a license as provided in AS 28.15.185.

11 * **Sec. 18.** AS 47.37.040 is amended by adding a new paragraph to read:

12 (20) develop and implement or designate, in cooperation with other
13 state or local agencies, a juvenile alcohol safety action program that provides alcohol
14 and substance abuse screening, referral, and monitoring of persons under 18 years of
15 age who have been referred to it by

16 (A) a court in connection with a charge or conviction of a
17 violation or misdemeanor related to the use of alcohol or a controlled
18 substance;

19 (B) the agency responsible for the administration of motor
20 vehicle laws in connection with a license action related to the use of alcohol or
21 a controlled substance; or

22 (C) the department after a delinquency adjudication that is
23 related to the use of alcohol or a controlled substance.

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

26 PILOT JUVENILE ALCOHOL TREATMENT PROGRAM. The Department of
27 Health and Social Services, beginning July 1, 2001, and ending June 30, 2003, shall, in
28 Fairbanks, Juneau, Ketchikan, and Kotzebue, establish a pilot juvenile alcohol treatment
29 program.

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

1 APPLICABILITY. This Act applies to offenses committed on or after the effective
2 date of this Act, except that references to previous convictions include convictions occurring
3 before, on, or after the effective date of this Act.
4 * **Sec. 21.** This Act takes effect July 1, 2001.