

**CS FOR HOUSE BILL NO. 159(JUD)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/29/95  
Referred: Finance

Sponsor(s): REPRESENTATIVES PORTER, Bunde, Green, Toohey, Rokeberg, Ogan

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act allowing a person under age 21 to be arrested by a peace officer  
2 without a warrant for illegal possession, consumption, or control of alcohol;  
3 relating to the offenses of driving while intoxicated and failure to submit to a  
4 chemical test of breath or blood; and providing for an effective date."

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

6 \* **Section 1.** AS 12.25.030(b) is amended to read:

7 (b) In addition to the authority granted under (a) of this section, a peace officer  
8 without a warrant may arrest a person when the peace officer has reasonable cause for  
9 believing that the person has committed a crime under, or violated conditions imposed  
10 as a part of the person's release before trial on misdemeanor charges brought under,

11 (1) **AS 04.16.050 or an ordinance with similar elements;**

12 (2) AS 11.41.270 or AS 11.56.740; or

13 (3) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an  
14 ordinance with elements substantially similar to the elements of a crime under

1 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former  
2 spouse of the person who committed the crime; a parent, grandparent, child, or  
3 grandchild of the person who committed the crime; a member of the social unit  
4 comprised of those living together in the same dwelling as the person who committed  
5 the crime; or another person who is not a spouse or former spouse of the person who  
6 committed the crime but who previously lived in a spousal relationship with the person  
7 who committed the crime or is in or has been in a dating, courtship, or engagement  
8 relationship with the person who committed the crime.

9 \* **Sec. 2.** AS 12.55.102(d) is amended to read:

10 (d) The court may include the cost of the ignition interlock device as a part  
11 of the fine required to be imposed against the defendant under AS 28.35.030(b) **or (n)**  
12 or 28.35.032(g) **or (q)**.

13 \* **Sec. 3.** AS 28.35.030(b) is amended to read:

14 (b) **Except as provided under (n) of this section, driving** [DRIVING] while  
15 intoxicated is a class A misdemeanor. Upon conviction

16 (1) the court shall impose a minimum sentence of imprisonment of

17 (A) not less than 72 consecutive hours and a fine of not less  
18 than \$250 if the person has not been previously convicted;

19 (B) not less than 20 days and a fine of not less than \$500 if the  
20 person has been previously convicted once;

21 (C) not less than 60 days and a fine of not less than \$1,000 if  
22 the person has been previously convicted twice **and is not subject to**  
23 **punishment under (n) of this section;**

24 (D) not less than 120 days and a fine of not less than \$2,000  
25 if the person has been previously convicted three times **and is not subject to**  
26 **punishment under (n) of this section;**

27 (E) not less than 240 days and a fine of not less than \$3,000 if  
28 the person has been previously convicted four times **and is not subject to**  
29 **punishment under (n) of this section;**

30 (F) not less than 360 days and a fine of not less than \$4,000 if  
31 the person has been previously convicted more than four times **and is not**

1 subject to punishment under (n) of this section;

2 (2) the court may not

3 (A) suspend execution of sentence or grant probation except on  
4 condition that the person serve the minimum imprisonment under (1) of this  
5 subsection;

6 (B) suspend imposition of sentence;

7 (3) the court shall revoke the person's driver's license, privilege to  
8 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
9 vehicle or aircraft that was used in commission of the offense to be forfeited under  
10 AS 28.35.036.

11 \* **Sec. 4.** AS 28.35.030(h) is amended to read:

12 (h) The court shall order a person convicted under this section to satisfy the  
13 screening, evaluation, referral, and program requirements of an agency authorized by  
14 the court to make referrals for rehabilitative treatment or to provide rehabilitative  
15 treatment. **If a person is convicted under (n) of this section, the court shall order**  
16 **the person to be evaluated as required by this subsection before the court imposes**  
17 **sentence for the offense.**

18 \* **Sec. 5.** AS 28.35.030(j) is amended to read:

19 (j) If a person fails to satisfy the requirements of an authorized agency under  
20 (i) of this section, the court

21 (1) may impose any portion of a suspended sentence; **however, if the**  
22 **person was convicted under (n) of this section, the court shall impose the**  
23 **remaining portion of any suspended sentence;**

24 (2) may punish the failure as contempt of the authority of the court  
25 under AS 09.50.010 or as a violation of a condition of probation; and

26 (3) shall order the revocation or suspension of the person's driver's  
27 license, privilege to drive, and privilege to obtain a driver's license until the  
28 requirements are satisfied.

29 \* **Sec. 6.** AS 28.35.030(m)(4) is amended to read:

30 (4) "previously convicted" means having been convicted in this or  
31 another jurisdiction, within 10 years preceding the date of the present offense, of any

1 of the following offenses [, OR OF ANOTHER LAW OR ORDINANCE WITH  
2 SUBSTANTIALLY SIMILAR ELEMENTS]; however, convictions for any of these  
3 offenses, if arising out of a single transaction and a single arrest, are considered one  
4 previous conviction:

5 (A) operating a motor vehicle, aircraft, or watercraft while  
6 intoxicated, in violation of this section or in violation of another law or  
7 ordinance with similar elements, except that the other law or ordinance  
8 may provide for a lower level of alcohol in the person's blood or breath  
9 than imposed under (a)(2) of this section;

10 (B) refusal to submit to a chemical test in violation of  
11 AS 28.35.032 or in violation of another law or ordinance with similar  
12 elements; or

13 (C) operating a commercial motor vehicle while intoxicated in  
14 violation of AS 28.33.030 or in violation of another law or ordinance with  
15 similar elements, except that the other law or ordinance may provide for  
16 a lower level of alcohol in the person's blood or breath than imposed  
17 under AS 28.33.030(a)(2).

18 \* **Sec. 7.** AS 28.35.030 is amended by adding a new subsection to read:

19 (n) A person is guilty of a class C felony if the person is convicted of driving  
20 while intoxicated and has been previously convicted two or more times. For purposes  
21 of determining if a person has been previously convicted, the provisions of (m)(4) of  
22 this section apply, except that only convictions occurring within five years preceding  
23 the date of the present offense may be included. Upon conviction the court

24 (1) shall impose a fine of not less than \$5,000 and a minimum sentence  
25 of imprisonment of not less than

26 (A) 120 days if the person has been previously convicted twice;

27 (B) 240 days if the person has been previously convicted three  
28 times;

29 (C) 360 days if the person has been previously convicted four  
30 or more times;

31 (2) may not

1 (A) suspend execution of sentence or grant probation except on  
2 condition that the person serve the minimum imprisonment under (1) of this  
3 subsection; or

4 (B) suspend imposition of sentence;

5 (3) shall revoke the person's driver's license, privilege to drive, or  
6 privilege to obtain a license under AS 28.15.181(c);

7 (4) may order as a condition of probation or parole that the person take  
8 a drug or combination of drugs, intended to prevent the consumption of an alcoholic  
9 beverage; a condition of probation imposed under this paragraph is in addition to any  
10 other condition authorized under another provision of law; and

11 (5) may also order forfeiture under AS 28.35.036 of the vehicle or  
12 aircraft used in the commission of the offense, subject to remission under  
13 AS 28.35.037.

14 \* **Sec. 8.** AS 28.35.032(f) is amended to read:

15 (f) **Except as provided under (q) of this section, refusal** [REFUSAL] to  
16 submit to a chemical test authorized by AS 28.33.031(a) or AS 28.35.031(a) or (g)  
17 is a class A misdemeanor.

18 \* **Sec. 9.** AS 28.35.032(g) is amended to read:

19 (g) Upon conviction under this section

20 (1) the court shall impose a minimum sentence of imprisonment of

21 (A) not less than 72 consecutive hours and a fine of not less  
22 than \$250 if the person has not been previously convicted;

23 (B) not less than 20 days and a fine of not less than \$500 if the  
24 person has been previously convicted once;

25 (C) not less than 60 days and a fine of not less than \$1,000 if  
26 the person has been previously convicted twice **and is not subject to**  
27 **punishment under (q) of this section;**

28 (D) not less than 120 days and a fine of not less than \$2,000  
29 if the person has been previously convicted three times **and is not subject to**  
30 **punishment under (q) of this section;**

31 (E) not less than 240 days and a fine of not less than \$3,000 if

1 the person has been previously convicted four times **and is not subject to**  
2 **punishment under (q) of this section;**

3 (F) not less than 360 days and a fine of not less than \$4,000 if  
4 the person has been previously convicted more than four times **and is not**  
5 **subject to punishment under (q) of this section;**

6 (2) the court may not

7 (A) suspend execution of the sentence required by (1) of this  
8 subsection or grant probation, except on condition that the person serve the  
9 minimum imprisonment under (1) of this subsection; or

10 (B) suspend imposition of sentence;

11 (3) the court shall revoke the person's driver's license, privilege to  
12 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
13 vehicle or aircraft that was used in commission of the offense be forfeited under  
14 AS 28.35.036; and

15 (4) the sentence imposed by the court under this subsection shall run  
16 consecutively with any other sentence of imprisonment imposed on the person.

17 \* **Sec. 10.** AS 28.35.032(l) is amended to read:

18 (l) The court shall order a person convicted under this section to satisfy the  
19 screening, evaluation, referral, and program requirements of an agency authorized by  
20 the court to make referrals for rehabilitative treatment or to provide rehabilitative  
21 treatment. **If a person is convicted under (q) of this section, the court shall order**  
22 **the person to be evaluated as required by this subsection before the court imposes**  
23 **sentence for the offense.**

24 \* **Sec. 11.** AS 28.35.032(n) is amended to read:

25 (n) If a person fails to satisfy the requirements of an authorized agency under  
26 (m) of this section, the court

27 (1) may impose any portion of a suspended sentence; **however, if the**  
28 **person was convicted under (q) of this section, the court shall impose the**  
29 **remaining portion of any suspended sentence;**

30 (2) may punish the failure as contempt of the authority of the court  
31 under AS 09.50.010 or as a violation of a condition of probation; and

1 (3) shall order the revocation or suspension of the person's driver's  
2 license, privilege to drive, and privilege to obtain a driver's license until the  
3 requirements are satisfied.

4 \* **Sec. 12.** AS 28.35.032 is amended by adding a new subsection to read:

5 (q) A person is guilty of a class C felony if the person is convicted under this  
6 section and has been previously convicted two or more times. For purposes of  
7 determining if a person has been previously convicted, the provisions of  
8 AS 28.35.030(m)(4) apply, except that only convictions occurring within five years  
9 preceding the date of the present offense may be included. Upon conviction,

10 (1) the court shall impose a fine of not less than \$5,000 and a  
11 minimum sentence of imprisonment of not less than

12 (A) 120 days if the person has been previously convicted twice;

13 (B) 240 days if the person has been previously convicted three  
14 times;

15 (C) 360 days if the person has been previously convicted four  
16 or more times;

17 (2) the court may not

18 (A) suspend execution of the sentence required by (1) of this  
19 subsection or grant probation, except on condition that the person serve the  
20 minimum imprisonment under (1) of this subsection; or

21 (B) suspend imposition of sentence;

22 (3) the court shall revoke the person's driver's license, privilege to  
23 drive, or privilege to obtain a license under AS 28.15.181(c);

24 (4) the court may order as a condition of probation or parole that the  
25 person take a drug or combination of drugs intended to prevent consumption of an  
26 alcoholic beverage; a condition of probation imposed under this paragraph is in  
27 addition to any other condition authorized under another provision of law;

28 (5) the sentence imposed by the court under this subsection shall run  
29 consecutively with any other sentence of imprisonment imposed on the person; and

30 (6) the court may also order forfeiture under AS 28.35.036, of the  
31 vehicle or aircraft used in the commission of the offense, subject to remission under

1 AS 28.35.037.

2 \* **Sec. 13.** APPLICABILITY. This Act applies to offenses that are committed on or after  
3 the effective date of this Act, except that references to previous convictions include  
4 convictions occurring before, on, or after the effective date of this Act.

5 \* **Sec. 14.** This Act takes effect July 1, 1995.