

H B

6



# STATE OF ALASKA THE LEGISLATURE

FOUCHY STATE CAPITOL  
JUNEAU, ALASKA 99801  
907-465-3800


## LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 23, 1983

SUBJECT: Eligibility of Alaska for federal grants  
relating to drunk driving  
(SCS CSHB 6 (State Affairs))

TO: Senator Bill Ray

FROM:  Russ Josephson  
Legislative Counsel

You have asked whether SCS CSHB 6 (State Affairs) meets the requirements for eligibility for federal grants to states meeting the criteria of Congressman Barnes' bill (P.L. 97-364) passed in 1982. The grants are of two types, basic and supplemental. For your information and assistance, I am enclosing a photocopy of the pertinent parts of the federal law and the final rules adopted by the National Highway Traffic Safety Administration.

### Basic Grants

As you will note in the federal law, there are four criteria for basic grants. They are

- (1) provisions for prompt suspension of license;
- (2) mandatory sentences;
- (3) a 0.10 percent blood alcohol level standard; and
- (4) increased enforcement and education.

(1) The license suspension criterion. Under the suspension criterion, the driver's license of a person determined to be intoxicated as a result of a chemical test or a person who refuses to take the test must be suspended promptly for at least 90 days on the first offense, and for at least a year for subsequent offenses. The officer must have probable cause under state law to believe the person has committed an alcohol-related traffic offense. For driving while

intoxicated or refusal of a chemical test of breath, SCS CSHB 6 (State Affairs) calls for a 90-day revocation (suspension) of the license on the first offense, not less than a year on the second offense, and for not less than ten years on subsequent offenses (sec. 6). Except as noted below, the bill meets the criterion on its face.

Concerns and differences. The discussion of the regulations in the Federal Register suggests the following:

(1) "Prompt suspension" means that the average time from arrest to final suspension action should not exceed 45 days. (Confiscation of the license at the scene by a peace officer is not suspension for the purpose of the criterion.) A state with a longer average time for final suspension actions may be awarded basic grants under this program if the state submits a plan showing how it will meet the 45-day standard in the future. Such a state will have to meet the 45-day standard to receive supplemental grants. Alaska will need to demonstrate its record of prompt suspensions. The bill as written appears to provide the means of meeting the requirements of the federal regulations.

(2) The adopted definition of "suspension" requires a full suspension for 30 days and allows the issuance of a restricted, provisional or conditional license ("limited license" in our terminology) for the remaining 60 days of the 90-day suspension period. We meet this requirement except that the adopted rule prohibits a limited license being issued to a person who has refused to take a chemical test. Sec. 7 of this bill contradicts the federal rule on this point.

(3) The scheme of determining who is a repeat offender for purposes of the federal rule is based on a person's record in a five-year period. "Repeat offender" is defined as "any person convicted of an alcohol-related traffic offense more than once in five years". (Refusal to submit to a chemical test is included.) Our statutory scheme is based on a ten-year period. Inasmuch as that is a stricter standard than the federal scheme, which wipes the slate clean after five years, apparently, I expect our scheme would receive federal approval.

(4) The federal rules allow the limited license to be used "for the purposes of going from [sic] a residence to or from a place of employment or to and from a mandated alcohol education or treatment program". While the wording of the definition is not clearly expressed, it is clear that it differs from our provision. Our provision (sec. 7 of the bill) allows the limited license "if the court determines that the person's ability to earn a livelihood would be severely impaired" and the limitation would "enable the person to earn a livelihood without excessive danger to the public". Thus, our version of this provision is stricter, allowing the limited license to be used only for work-related purposes. Again, I suspect the approach taken in this bill would receive federal approval, being stricter than the federal rule.

(2) The mandatory sentence criterion. For a person convicted more than once in a five-year period of driving while intoxicated, one of the options of this criterion is imprisonment for not less than 48 consecutive hours. Under SCS CSHB 6 (State Affairs), a first DWI conviction carries a penalty of 72 consecutive hours' imprisonment. A second conviction within ten years carries twenty days' imprisonment, minimum. Subsequent convictions carry a thirty days' sentence. Thus, the bill meets this criterion.

Difference: This criterion is based on a five-year period while the bill uses a ten-year period. Again, as our standard is stricter than the federal standard, I expect it would receive federal approval.

(3) The blood alcohol level criterion. This criterion sets the level at 0.10 percent. Under our statute, a person with 0.10 percent blood alcohol concentration is considered intoxicated and the bill leaves this provision unchanged, so we meet this criterion.

(4) The "increased efforts" criterion. The fourth criterion for the basic grants is "increased efforts or resources dedicated to the enforcement of alcohol-related laws and increased efforts to inform the public of such enforcement". The discussion of this criterion in the Federal Register indicates that states will "demonstrate increases in their effort by comparing fiscal year 1982 (or later years) with the prior preceding year or with the average of the State's enforcement and information efforts

over the three years preceding the year in which a State first applies for a grant". This bill does not address the issue of funding, and thus does not address the issue of the fourth criterion for a basic grant.

#### Supplemental Grants

Initially, the proposed rules for the grant program indicated four "significant" criteria and several additional criteria. As finally adopted, there are 21 criteria for supplemental grants. The scheme for qualifying states for supplemental grants by means of satisfying several criteria is quite complicated. The following factors are the key provisions:

-- a state must adopt at least eight criteria of their choosing to be eligible for a full supplemental grant of 20 percent

-- a state may choose to adopt a minimum of four criteria of its own preference; upon meeting those criteria, it qualifies for a supplemental grant of 10 percent

-- qualification for supplemental grants for a second and third year requires the adoption of two more criteria per year and the demonstration of increased performance in the criteria previously adopted

-- by the third year, a state will have to adopted and implemented 12 of the 21 criteria

-- credit for criteria adopted and implemented already will be given; a state with several criteria satisfied may not be required to adopt and implement more than a total of 15 criteria during the three years of the grant program.

The following are the 21 criteria for supplemental grants:

1. Raising the drinking age to 21 for all alcoholic beverages
2. Program coordination (a single individual or equivalent acceptable plan)
3. Rehabilitation and treatment

4. State and local task forces
5. Statewide driver record system
6. Locally coordinated programs
7. Prevention and education
8. Screening of drunk drivers (pre- or post-sentencing)
9. Evaluation systems (to evaluate programs)
10. Self-sufficiency of local programs
11. Use of roadside sobriety checks
12. Citizen reporting
13. Enactment of a BAC (blood alcohol concentration) of 0.08 percent as presumptive evidence of DWI
14. Uniform licensing procedures (participation in the National Driver Register and the Driver's License Compact, the one-license/one-record policy)
15. Preliminary breath tests
16. Plea-bargaining (reduction of charges; notation of why and that the original charge was alcohol-related)
17. Victim assistance, compensation and impact statements
18. Impoundment
19. Choice of test (peace officer's choice; second test may be required under certain circumstances)
20. Dram shop laws
21. Innovative programs

At this point it seems premature to discuss these criteria in any detail. Suffice it to say that some of these criteria may already be met and that some of them (the drinking age, rehabilitation and treatment, sobriety checks,

Senator Bill Ray  
Page 6  
May 21, 1983

preliminary breath tests, and impoundment) are addressed either in this bill or in other pending legislation.

Summary

It appears that the bill will meet the criteria for basic grants provided that it is amended to prevent the issuance of a limited license to a person who has refused a chemical test. As noted above, there are some concerns and differences that ought to be noted. Ensuring that license suspensions become final within 45 days on the average is one concern. The difference between the bill and the criterion regarding the period of time upon which the scheme is based has been noted. The same difference applies to the mandatory sentence provision. The bill and the criterion also differ on the use of limited licenses. Finally, adoption and implementation of supplemental grant criteria need to be considered both now and in the near future if the state desires to qualify for supplemental grants. Some of the supplemental criteria may be met by this bill or by other pending legislation.

RJ:ljb  
21/009

per centum of the amount apportioned to such State for fiscal year 1983 under section 402 of this title. Such supplemental grant shall be in addition to any basic grant received by such State.

23 USC 402.

"(e)(1) For purposes of this section, a State is eligible for a basic grant if such State provides—

State eligibility.

"(A) for the prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer;

"(B) for a mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than forty-eight consecutive hours, or (ii) not less than ten days of community service, of any person convicted of driving while intoxicated more than once in any five-year period;

"(C) that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated; and

"(D) for increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

"(2) For purposes of this section, a State is eligible for a supplemental grant if such State is eligible for a basic grant and in addition provides for some or all of the criteria established by the Secretary under subsection (f).

"(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

Effective program criteria.

"(1) for the establishment and maintenance of a statewide driver recordkeeping system from which repeat offenders may be identified and which is accessible in a prompt and timely manner to the courts and to the public;

"(2) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while intoxicated;

"(3) for the impoundment of any vehicle operated on a State road by any individual whose driver's license is suspended or revoked for an alcohol-related driving offense;

"(4) for the establishment in each major political subdivision of a State of locally coordinated alcohol traffic safety programs which are administered by local officials and are financially self-sufficient;

"(5) for the grant of presentence screening authority to the courts;

"(6) for the setting of the minimum drinking age in such State at twenty-one years of age;

"(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section.

Appropriation  
authorization.

23 USC 101 *et*  
*seq.*

"(g) There is hereby authorized to be appropriated to carry out this section, out of the Highway Trust Fund, \$25,000,000 for the fiscal year ending September 30, 1983, and \$50,000,000 per fiscal year for each of the fiscal years ending September 30, 1984, and September 30, 1985. All provisions of chapter 1 of this title that are applicable to Federal-aid primary highway funds, other than provisions relating to the apportionment formula and provisions limiting the expenditures of such funds to Federal-aid systems, shall apply to the funds authorized to be appropriated to carry out this section, except as determined by the Secretary to be inconsistent with this section. Sums authorized by this subsection shall not be subject to any obligation limitation for State and community highway safety programs."

(b) The analysis for chapter 4 of title 23, United States Code, is amended by adding at the end thereof the following:

"408. Alcohol traffic safety programs."

Regulations,  
publication in  
Federal  
Register.  
23 USC 408 note.

*Ante*, p. 1738.  
Disapproval by  
Congress.

(c) The Secretary of Transportation shall issue and publish in the Federal Register proposed regulations to implement section 408 of title 23, United States Code, not later than November 1, 1982. The Secretary shall allow public comment and hold public hearings on the proposed regulations to encourage maximum citizen participation. The final regulations shall be issued, published in the Federal Register, and transmitted to Congress before February 1, 1983. To the extent such regulations relate to the making of basic grants under such section 408, such regulations shall become effective on the date on which they are published in the Federal Register. To the extent such regulations relate to the making of supplemental grants under such section 408, such regulations shall become effective April 1, 1983, unless before such date either House of Congress by resolution disapproves such regulations to such extent. If such regulations are so disapproved by either House of Congress, the Secretary shall not obligate for such supplemental grants any amount authorized to carry out such section 408 for the fiscal year ending September 30, 1983, or any subsequent fiscal year, unless specifically authorized to do so by a statute enacted after the date of enactment of this Act.

National Driver  
Register Act of  
1982.

## TITLE II—NATIONAL DRIVER REGISTER

### SHORT TITLE

23 USC 401 note.

SEC. 201. This title may be cited as the "National Driver Register Act of 1982".

### DEFINITIONS

23 USC 401 note.

SEC. 202. For purposes of this title, the term—

(1) "alcohol" has the meaning given such term by the Secretary of Transportation under regulations prescribed by the Secretary;

(ii) resulted in the addition of two subparagraphs (j)(9) and (j)(10);\* and (iii) effected the revision of subparagraph (j)(2). Similarly, amendments to the Delegation to the Regional Administrators have: (i) Caused paragraphs (a), (b) and (d) of Article 30-6 to be redesignated as paragraphs (b), (c) and (f);\* and (ii) resulted in the addition of subparagraphs (b)(1) to Article 30-6.

In light of these changes in Articles 30-1 and 30-5, the delegation of authority to the Division Director contains references to other delegations that are currently incorrect. The Commission, therefore, is amending Article 30-5 by concerning the references in this Division's delegation of authority with the appropriate paragraphs in the delegations of authority to the Director of the Division of Corporation Finance and the Regional Administrators. Specifically, the Commission is amending paragraph (b) of Article 30-5 to delegate to the Division Director the same functions as are delegated to the Director of the Division of Corporation Finance in paragraphs (a), (c), and (f) of Article 30-1, and is also amending paragraph (b) of Article 30-5 to delegate to the Director the same functions as are delegated to the Regional Administrators in subparagraphs (b)(1), (b)(2) and (b)(3), and paragraphs (a) and (f) of Article 30-6.

#### Procedural Matters

The Commission finds, in accordance with section 553(d) of the Administrative Procedure Act ("APA") [5 U.S.C. 553(d)], that the foregoing action relates solely to rules of agency organization, procedure, or practice; that section 553(b) [5 U.S.C. 553(b)] of the APA makes it unnecessary to publish general notice of rulemaking as required by that section; and that, in view of the foregoing, good cause exists for dispensing with the normal 30-day delay in effectiveness. Accordingly, the amendments to Article 30-5 described in this release will become effective immediately upon publication in the Federal Register.

\* Securities Act Release No. 6209 (February 11, 1981) [46 FR 1660 (February 21, 1981)].

\* Securities Exchange Act Release No. 13101 (January 16, 1978) [43 FR 7010 (January 27, 1978)].  
\* Securities Exchange Act Release No. 13210 (November 29, 1977) [42 FR 57172 (December 9, 1977)].

\* Securities Act Release No. 6204 (November 11, 1981) [46 FR 5773 (November 21, 1981)].

\* Securities Act Release No. 6209 (February 11, 1981) [46 FR 1660 (February 21, 1981)].

\* Securities Act Release No. 6209 (February 11, 1981) [46 FR 1660 (February 21, 1981)].

\* Securities Act Release No. 6209 (February 11, 1981) [46 FR 1660 (February 21, 1981)].

#### Statutory Authority

The Commission hereby amends Article 30-5 paragraphs (b) and (f) of the rules of the Commission relating to general organization [17 CFR 200.30-5] pursuant to the authority contained in Pub. L. No. 87-502, 76 Stat. 591 [15 U.S.C. 77d-1, 77d-2].

#### List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Freedom of information, Privacy, and Securities.

#### Text of Amendment

Accordingly, 17 CFR Part 200 is amended as follows:

#### PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

By revising paragraphs (b) and (f)(1) of § 200.30-5 to read as follows:

§ 200.30-5 Delegation of authority to Director of Division of Investment Management.

(b) With respect to matters pertaining to investment companies registered under the Investment Company Act of 1940, pooled investment funds or accounts, and the general assets or separate accounts of insurance companies, all arising under the Securities Act of 1933, the Securities Exchange Act of 1934 and the Trust Indenture Act of 1939, the same functions as are delegated to the Director of the Division of Corporation Finance in regard to companies other than such registered investment companies in paragraphs (a) and (f) of Article 30-1 [§ 200.30-1 (chapter) of these

(1) The Director of the Division of Investment Management shall have the same authority with respect to the Securities Act of 1933 [15 U.S.C. 77a, et seq.], Regulation A [17 CFR 230.251, et seq.] and Regulation F [17 CFR 230.651, et seq.] as that delegated to each Regional Administrator in paragraphs (i)(1), (i)(2) and (i)(3), and in paragraphs (f) and (g) of Article 30-6 of the Commission's Statement of Organization, Conduct and Ethics and Information and Requests [17 CFR 200.30-6].

Dated January 21, 1981.

By the Commission,

George A. Fitzsimmons,

Secretary.

(JP Doc. 80-102 Filed 2-4-83 Page 2)

BILLING CODE 2010-01-M

#### National Highway Traffic Safety Administration

#### 25 CFR Part 1203

(Docket No. 82-18; Notice 5)

#### Incentive Grant Criteria for Alcohol Traffic Safety Programs

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

**SUMMARY:** This notice establishes criteria for effective programs to reduce crashes resulting from persons driving while under the influence of alcohol. This effort is undertaken pursuant to Pub. L. 97-364, which provides for two categories of federal incentive grants, basic grants and supplemental grants, to States that implement effective programs to reduce drunk driving. This final rule also sets forth the procedures a State must use to demonstrate its eligibility for a grant and the procedures NHTSA will use to award the grants.

**DATES:** These rules become effective by statute, February 7, 1983, except that § 1203.6 becomes effective by statute on April 1, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Reagin, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20591 (202-426-0637).

**SUPPLEMENTARY INFORMATION:** On November 4, 1982, (47 FR 51152) the National Highway Traffic Safety Administration (NHTSA) issued an advance notice of proposed rulemaking seeking comments on possible ways to implement the alcohol traffic safety incentive grant program established by Public Law 97-364 (23 U.S.C. 408, the Act). Based on the comments to that Notice, NHTSA issued a notice of proposed rulemaking on December 30, 1982 (48 FR 426). NHTSA primarily sought comments on what definitions and criteria the agency should establish for States to be eligible for both basic and supplemental grants, which can total up to 50 percent of the amount appropriated to a State in fiscal year 1983 under section 402 of the Highway Safety Act of 1978.

To provide an increased opportunity for public comment, NHTSA held public hearings on December 13, 1982, in Washington, D.C., and January 11, 1983, in Atlanta, Georgia on its proposals. Persons representing numerous States, professional organizations, citizen groups, and others testified. In addition,

many interested parties submitted written comments to the docket for this rulemaking.

The final rule being issued today is based on the agency's review of the hearing testimony, comments received on the notice of proposed rulemaking and the Interim Report to the Nation prepared by the Presidential Commission on Drunk Driving. Significant comments to the notice are addressed below.

#### Basic Grant Criteria

The Act established four criteria that must be met by a State in order to be eligible for a basic grant in the amount of 20 percent of each State's fiscal year 1983 apportionment under section 402 of the Highway Safety Act. The agency notes again that because the four basic criteria are statutorily mandated by Congress, the agency does not have the authority to change, by deletion or addition, the substantive requirements for a basic grant, as was requested by some of the commenters. As was also noted in the agency's prior notices, however, several of the terms used in the statutory language setting forth the basic grant criteria were undefined, and NHTSA sought comments on several possible definitions that the agency believed would be consistent with the legislative purpose of the Act. In addition, NHTSA sought comments on ways by which States might most easily and effectively demonstrate that they have met the basic grant criteria.

#### Criterion No. 1: Prompt License Suspension

The first criterion established by Congress for basic grant eligibility requires:

The prompt suspension, for a period not less than ninety days in the case of a first offender and not less than one year in the case of any repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related traffic offense, and (i) to whom is administered one or more chemical tests to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests to be intoxicated, or (ii) who refuses to submit to such a test as proposed by the officer.

#### Terms Used: "Prompt"

The agency proposed to define "prompt" as a mandatory suspension of the privileges of a driver's license that occurs no later than 30 days after a person is arrested for drunk driving, in at least 60 percent of the cases. In addition, the agency proposed that the

average time to suspend a license could not exceed 45 days.

As in their responses to the agency's advance notice, numerous States voiced their concerns about the effect of the proposed definition of "prompt" on States that have judicially imposed, rather than administratively imposed, license suspension. While agreeing with the need to reduce the amount of time required to judicially impose a license suspension, numerous States, such as Florida, Georgia, Pennsylvania and Tennessee, urged the agency to establish a definition that would allow States to use an approved judicial suspension system.

They said that because of cost and other reasons, it may be difficult to convince their legislatures to adopt an administrative system. Florida, for example, noted that its legislature has twice turned down efforts to create an administrative system of license suspension. Tennessee said that its prior administrative system had been overturned in court, because it failed to meet due process requirements, and that reinstatement of an administrative system would not be cost beneficial.

States proposed a number of alternative ways to accommodate the use of a judicial system, while still requiring improvements in those systems. New Jersey, which said that it can probably meet a 45 day average requirement, urged the agency to consider establishing an initial requirement of suspension within 120 days and then require improvement in subsequent years to a level of 90, or 30 days. New Jersey said that without such an approach, the "States most in need of assistance to improve systems with serious problems will not qualify for the very funding needed to bring about improvements." Florida suggested that setting a requirement of 30 percent within 30 days, 60 percent within 60 days or less and 90 percent within 90 days or less would encourage States with judicial systems to improve those systems.

Numerous commenters, such as the National Association of Governors' Highway Safety Representatives (NAGHSR), Iowa, Maine, Missouri, New Mexico, and North and South Carolina, supported a requirement that the average time for suspension take no longer than 45 days.

States that currently have administrative systems of license suspension urged the agency to modify its proposed definition to account for procedural and due process considerations built into their current systems. Delaware noted that each party in its administrative proceedings

is allowed at least one continuance, which means that a certain percentage of cases stretch out beyond 90 days after arrest. Delaware suggested that the agency adopt an average of 45 days.

In formulating the final rule, the agency has attempted to fulfill the Congress's intention that States substantially reduce the current long delays between arrest and subsequent license sanction. Since one of the principal deterrents to drunk driving is the certainty and swiftness of punishment, it is crucial that States act promptly in imposing license suspensions. At the same time, the agency recognizes that if the time limit set for license suspension is too short, States that currently have long delays of five months or more may not have a realistic opportunity to meet the time limit and thus will be unable to receive the funds necessary to help them improve their program.

The agency has thus decided to define "prompt" as license suspension within an average of 45 days from time of arrest. However, States that have reached an average of 90 days from time of arrest may qualify for a basic grant, if they submit a plan showing how they will reduce that average to 45 days. In addition, the agency has decided to make this condition a prerequisite for each of the supplemental criteria, that a State have a license suspension system in which the average time to suspend a license does not exceed 45 days.

These criteria will have a twofold effect. First, they will serve as an incentive to States with long delays to cut those delays in order to be eligible for a basic grant. Second, with the funds received under the basic grant, those States can then make further improvements in their systems in order to receive a supplemental grant. The system adopted by the agency will also provide a substantial reward to those States that have already, either through an administrative or judicial suspension system, reduced their average time to suspend a license to 45 days from arrest. Those States, if they meet the other criteria for a basic grant, will be eligible for consideration for supplemental grants. Whereas States that do not meet the 45 day average will not be eligible for a supplemental grant until the average of 45 days is achieved.

#### "Suspension"

The agency proposed two alternative definitions of the term "suspension." The first would have defined suspension as including only a full loss of driving privileges for the statutorily mandated period of 90 days. The second would

have allowed the use of a 30-day full suspension, followed by a 60-day period of restricted driving privileges. The restricted license could only be issued, under State-wide published guidelines, in exceptional circumstances specific to each offender and for the limited purpose of driving between a residence and a place of employment, and/or to and from an alcohol education or treatment program.

The agency also proposed that restricted licenses not be available for repeat offenders or for those who refuse to take a chemical test under implied consent statutes.

Permitting the use of a restricted license for a first offender was widely supported by such commenters, as the American Automobile Association (AAA), Iowa, Maryland, Michigan, Mississippi, National Council on Alcoholism (NCA), New York, and Wisconsin. In urging the use of restricted licenses, many of those commenters referred to the problem of possible loss of employment and difficulty in attending treatment/rehabilitation programs for rural drivers who do not have access to public transportation systems. Several of the commenters that urged the use of restricted licenses, such as AAA, NCA, Illinois and Michigan, indicated that they supported the agency's proposed 30-day full suspension followed by a 60-day restricted license.

New Jersey supported prohibiting the use of any restricted licenses. It argued that such license restrictions are difficult to enforce and are often abused. In addition, New Jersey said that license suspension will be a serious deterrent only if a driver knows that he or she can not obtain a restricted license. Delaware also commented that it does not permit the use of restricted licenses for the first 90 days of a suspension.

The agency has decided to adopt the definition of suspension that would require a full suspension for 30 days and permit the use of a restricted, provisional or conditional license for the remaining 60 days. (Several States commented that they do not have restricted licenses, but use an equivalent type of conditional or provisional license; the agency's definition will permit the use of those other types of licenses as well.) The agency believes that requiring a full suspension for the first 30 days creates a substantial deterrent to drunk driving. Allowing the use of some type of restricted license during the remaining 60 days will reduce the loss of transportation problems for rural drivers. The agency emphasizes that restricted, provisional or conditional licenses must only be used

in exceptional circumstances unique to each offender. To promote Statewide uniformity in the use of such licenses, the agency is also adopting the proposed requirement that each State must publish guidelines governing the use of those licenses.

No commenter opposed the proposed requirement that restricted licenses not be available for persons that refuse to take a chemical test and the agency therefore has adopted that requirement in the final rule. The New York Department of Motor Vehicles requested the agency to permit the limited use of restricted licenses for repeat offenders. New Mexico also commented that it permits the use of restricted licenses for repeat offenders. The agency believes that the Act's provision on mandatory sentences or community service for repeat offenders shows that Congress intended stricter punishment for those offenders. NHTSA is therefore adopting the proposed requirement that repeat offenders not be eligible for restricted or other types of limited licenses.

#### *Repeat Offender*

The agency's proposal to define a repeat offender as anyone convicted of driving while intoxicated (DWI) or a similar alcohol-related traffic offense more than once in five years was supported by the commenters and is therefore adopted in the final rule. Michigan said that a person who has refused to submit to a chemical test more than once in five years should be considered a repeat offender. The agency considers a refusal to take a chemical test as an alcohol-related offense and thus such a person would be covered by the definition.

#### *Refusal of Second Test*

The agency proposed that mandatory license suspension apply to a refusal by a driver to take more than one chemical test, where a second test is authorized by State law. At least one commenter, Idaho, interpreted the agency's proposal to require States to adopt laws mandating a second test in order to be eligible under this criterion for a basic grant. Mandating the use of a second test in order to be eligible for a basic grant was not the agency's intent. The agency only wanted to specify that where a State currently authorizes the use of a second test, a refusal to take that test would be grounds for mandatory suspension. The agency believes that such a requirement is in line with Congress's intent for this criterion and is therefore adopted.

In the notice, the agency also proposed to adopt as a separate criterion for a supplemental, rather than

a basic, grant that States adopt laws permitting an officer to require a second test. As explained elsewhere, the agency is adopting that proposal as one of the criteria that can be met to qualify for a supplemental grant.

#### *Demonstrate Compliance*

Several commenters, such as Iowa, Michigan, and South Carolina, expressed concern about possible problems in obtaining data on the average number of days between the offense and the sanctioning action and the average length of suspension. To reduce possible data gathering problems, States can provide those data based on statistically valid samples. No commenter opposed the requirement that States provide the agency with a copy of the license suspension law and the regulations or guidelines governing license suspension and thus those requirements are adopted in the final rule.

#### *Criterion No. 2: Mandatory Sentence*

The second criterion established by Congress for basic grant eligibility requires:

A mandatory sentence, which shall not be subject to suspension or probation, of (i) imprisonment for not less than 48 consecutive hours, or (ii) not less than ten days for community service, of any person convicted of driving while intoxicated more than once in any five-year period.

Commenters uniformly supported the agency's proposed definition of "imprisonment" to include confinement not only in jails or prisons but also in such places as minimum security facilities or in-patient rehabilitation/treatment centers. The definition is therefore adopted in the final rule.

#### *Demonstrate Compliance*

No commenter opposed the proposed requirement that States demonstrate compliance by providing copies of existing legislation or regulations on mandatory sentences, and therefore it is adopted in the final rule. The agency also proposed that States provide information on the number of people convicted of an alcohol-related traffic offense more than once in a five year period. Wisconsin expressed concern about obtaining the necessary data on the average sentences imposed on repeat offenders. To lessen any possible data gathering problems, States can provide data on average sentences based on statistically valid samples.

Several commenters, such as Michigan and Pennsylvania, requested that States not be required to provide information of the place of confinement

used for each individual. It was not the agency's intention to require place of confinement information for each individual. States merely have to identify what general types of confinement (i.e., jails, treatment centers) they are using.

#### **Criterion No. 3: Illegal Per Se Laws**

The third criterion established by Congress for basic grant eligibility requires States to have a law that:

Provides that any person with a blood alcohol concentration of 0.10 percent or greater when driving a motor vehicle shall be deemed to be driving while intoxicated.

The agency's proposal to accept a State's *per se* law as evidence of compliance with this criterion was uniformly supported and is therefore adopted in the final rule.

Tennessee noted that its law establishes a blood alcohol concentration (BAC) of 0.10 percent as a presumptive level, rather than as illegal *per se*. Tennessee requested that the agency accept such a law as an acceptable equivalent if a State can demonstrate it is being effectively enforced. Kentucky also requested the agency to accept a presumptive statute as qualifying with this criterion. Given the narrow language of the statute that a BAC of 0.10 percent is deemed a violation, the agency does not have the authority to accept a presumptive statute as complying with this criterion.

Iowa raised the issue of how this criterion applies in a situation where a State has two separate *per se* laws with two different BAC levels. Under Iowa's administrative license suspension statute, a BAC of 0.10 percent is in itself grounds for license suspension. However, Iowa's criminal statute makes a BAC of 0.13 percent, rather than 0.10 percent, illegal *per se*. The agency believes that the language of the statute was meant to apply to any State law, whether administrative or criminal. Thus, each law must set a BAC of 0.10 percent as an offense in itself in order for a State to qualify under this criterion.

#### **Demonstrate Compliance**

No commenter opposed the proposed requirement that States demonstrate compliance by providing a copy of the applicable laws. The requirement is therefore adopted in the final rule.

#### **Criterion No. 4: Increased Enforcement/Public Information Efforts**

The fourth and final criterion established by Congress for basic grant eligibility requires:

Increased efforts or resources dedicated to the enforcement of alcohol-related traffic

laws and increased efforts to inform the public of such enforcement.

The commenters uniformly supported the agency's proposal to allow States to determine for themselves which indicators they believe are most appropriate to demonstrate their increased efforts and it is therefore adopted in the final rule. As mentioned in the prior notice, States could use such indicators as: development of supportive administrative policy, increases in arrests and convictions and license suspensions/revocations, increased training for law enforcement officers, prosecutors and judges, increases in rehabilitation referral rates, changes in the public's perception of risk, increases in the number of public service announcements on drunk driving, increased citizen involvement in reporting drunk drivers, and decreases in alcohol-related crashes.

Likewise, the commenters supported the agency's proposal that States demonstrate increases in their levels of effort by comparing fiscal year 1992 (or later years) with the prior preceding year or with the average of the State's enforcement and information efforts over the three years preceding the year in which a State first applies for a grant. That proposal is thus adopted in the final rule.

#### **Supplemental Grant Criteria**

##### **Need for Flexibility**

The agency's goal in establishing the supplemental grant criteria has been to give full effect to the Congress's intent that States make substantial progress in improving their alcohol safety programs. At the same time, the agency has attempted to provide States with maximum flexibility to design programs that will be effective in their jurisdictions.

In the notice, NHTSA proposed two alternative methods of establishing the criteria that a State must have in place and implement or adopt and implement in order to receive a supplemental grant. States uniformly supported the agency's first alternative that would provide a State with a grant of up to 20 percent of its section 402 apportionment if it implements some, but not all, of the twenty-one proposed criteria. They said that this alternative would give a State the maximum flexibility to choose criteria that are appropriate for and consistent with the goal of improving their alcohol traffic safety program.

The States generally urged the agency not to adopt the second proposed alternative, which would have required them to implement all of those criteria that the Governor of the State has the

current authority to implement without requiring the concurrence of another branch of the State government. Several States commented that such a requirement would have widely varying effects because of differences in the authority granted the Governor in different States. The Governor's Highway Safety Representative from Florida, for example, testified that because Florida has a fully elected cabinet, the administrative authority of the Governor is largely limited to issuing executive orders that are not binding on the agencies under cabinet control.

##### **Weighting**

Most of the commenters supporting the first alternative, such as Florida, Maryland, Michigan, and New Mexico, also urged that the agency not weigh the alternatives or make some of the criteria mandatory for all States. New Mexico, for example, said that "any weighted scale would not necessarily be reflective of a measure's relative effectiveness from state to state." Georgia and Iowa recommended making all of the criteria of equal weight by making a portion of each criterion qualify a State for one percent of the twenty percent supplemental grant. The NCA recommended a system which would assign a greater weight to the two alcohol criteria in the agency's proposal but.

##### **Minimum Number**

There were also varying opinions among States favoring the first alternative as to how many of the criteria a State would have to adopt in order to be eligible for a full twenty percent grant. Several States, such as Maine, Maryland and Michigan, recommended requiring a minimum of 8 criteria, while Mississippi and Pennsylvania recommended a minimum of 10. Several States also requested that the agency also set a minimum number for receiving a grant of less than 20 percent. Florida, for example, recommended setting a minimum number of four.

##### **Require Minimum of 8**

The agency has decided to adopt the first proposed alternative and require that States adopt a minimum of eight criteria of their choosing in order to be eligible for a full supplemental grant of twenty percent. The agency has also decided that adoption of a minimum of four criteria, of a State's choosing, will qualify a State for a supplemental grant of ten percent. The agency believes that this approach will enable States to choose those criteria that will most

effectively fit in with its current alcohol traffic safety program.

In order to be eligible for a supplemental grant for a second and third year, States will have to adopt two more criteria each year and demonstrate that they are increasing their performance in the criteria that they adopted in the prior year or years. This will mean that if a State is to be eligible for a full supplemental grant for all three years of the program, it will have had to adopt and implement a total of twelve of the twenty-one criteria by the third year. As a part of its Alcohol Safety Plan, discussed later in this notice, a State will have to explain how the criteria it adopts are related to its current alcohol safety program. This will ensure that States are adopting criteria that will enhance a comprehensive program.

The agency has also decided that States should not be required to adopt more than fifteen of the supplemental criteria. This will mean that a State that has already adopted a comprehensive program that, for example, meets thirteen of the supplemental criteria will not have to spend additional time and funds striving to adopt a total of seventeen criteria (thirteen in place the first year, plus two additional criteria each year for the second and third years) by the end of the three year funding period. States meeting fifteen criteria will have to show that they have increased their performance in the criteria that they have already adopted in order to be eligible for a supplemental grant in subsequent years.

#### Prior Adoption

In the notice, the agency proposed to recognize prior adoption and implementation of a criteria if it took place either in the legislative session current at the time of enactment of this Act (October 25, 1982) or during the previous legislative session. Since many States have two year legislative sessions, this meant that the agency would recognize actions taken within the past four years.

Many of the commenters such as Delaware, Pennsylvania, Michigan and New Jersey, urged the agency not to set a time limit on when a criteria had to be adopted and implemented. They argued that such a time limit could penalize progressive States that have had alcohol traffic safety programs in effect for a number of years. As the agency has previously noted, it appears to have been the primary intent of the Congress in establishing the incentive grant program to induce future action through new programs. On the other hand, the agency believes that States that have taken a leadership role in establishing

new alcohol traffic safety programs should be rewarded for those efforts as long as they have been actively implementing those programs. Therefore, the agency will recognize prior adoption of a criteria as long as a State can demonstrate that it has been actively implementing that criterion during the past four years.

#### Twenty-One Criteria

The agency has decided to adopt in the final rule the twenty-one criteria proposed in the notice. Each of the criteria is discussed below.

**1. Raising the Drinking Age to 21 for All Alcoholic Beverages.** All of the commenters addressing this criteria, with one exception, supported increasing the drinking age to 21. That commenter, the Distilled Spirits Council of the United States said that their research has not sufficiently demonstrated the effectiveness of setting the drinking age at 21. The agency strongly disagrees. The research on the effect of increasing the drinking age has been independently reviewed, at different times, by the agency, the Presidential Commission on Drunk Driving and the National Transportation Safety Board. All of those reviews came to the same conclusion, there is statistically valid data to show that increasing the drinking age results in a decrease in alcohol-related crashes among young people. The agency has therefore decided to retain this criterion.

As proposed in the notice, the agency will only recognize adoptions of legislation as qualifying for this criterion if the legislation immediately or over a three year period raises the drinking age to 21. In addition, the 21 age limit must apply to all alcoholic beverages. Thus a law, such as in Oklahoma, that defines 3.2 percent beer as a non-alcoholic beverage would not qualify.

**2. Program Coordination.** Several commenters, while agreeing with the need for a coordinated effort among the various State agencies involved in alcohol traffic safety programs, urged that the agency not require the designation of a single person as the state coordinator. Michigan, for example, said that a State should have the flexibility to structure the organization of its program without having to establish a specific individual as overall coordinator.

Since a comprehensive program will require the cooperation of numerous state agencies, the agency believes that there should be some mechanism to ensure a coordinated effort. However, to provide States with increased flexibility in designing their own programs, the agency has decided not to require the

designation of a single individual as coordinator. Instead, States can meet this criterion by providing an explanation of how they coordinate the work of the different State agencies involved in their alcohol traffic safety programs.

**3. Rehabilitation and Treatment.** Commenters addressing this criterion supported the agency's proposal on rehabilitation and treatment. Several of the commenters, such as National Association of Alcoholism and Drug Abuse Counselors and NCA, noted the importance of carrying out rehabilitation and treatment programs with qualified professionals in accordance with established guidelines.

The agency is therefore adopting the criterion as proposed, including the requirement that each State set minimum standards for rehabilitation and treatment programs.

Several of the commenters requested the agency to combine the rehabilitation and treatment criteria with the screening criterion. The agency recognizes that the two criteria are complementary and both are needed in a comprehensive program. The agency has decided to retain them as a separate criteria, however, in order to give States flexibility in implementing their programs. For example, a State may want to have its screening program conducted by traffic court personnel, or by State or local health agencies or by private sector rehabilitation and treatment groups.

**4. State and Local Task Forces.** Delaware, while agreeing with the need for task forces, commented that in small States there is no need for local task forces. It said that the concerns of local communities can be adequately represented by involving them in the work of a Statewide task force. The agency agrees and thus, while encouraging States to establish county, city or regional task forces when appropriate, will only require the establishment of a State task force to meet this criterion. However, if local task forces are not used, States must show that the interests of local communities are represented on the State task force.

**5. Statewide Driver Record System.** Commenters, such as Illinois, Mississippi and New Mexico, supported the proposed requirement that the driver record system be operated so that conviction information is recorded in the system within 30 days of a conviction. Because sanction of the completion of the appeals process is the 30 day requirement is therefore adopted.

Several commenters, such as NCA, Michigan and Wisconsin, again raised the issue of possible conflicts between disclosure of portions of a driver's records and State and Federal confidentiality and privacy law requirements. A frequently cited example was the U.S. Department of Health and Human Services confidentiality regulation concerning disclosure that a person has been a participating in an alcoholism treatment program. The commenters agreed, however, that information on drunk driving convictions should be public. The agency is therefore adopting a requirement that the public have access to the portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations.

Commenters did not object to the agency's proposed requirement that information in the record systems be retained for at least five years and therefore that requirement is adopted as proposed.

**6. Locally Coordinated Programs.** Several commenters, such as Delaware and Iowa, said that in their experience, effective management of alcohol safety programs can be done on the State or regional level, particularly in States that are geographically small or have their population concentrated in a limited area.

The agency recognizes that the degree of local control will necessarily vary from State to State. However, the need for some level of local coordination remains constant. As stated in the prior notice, the agency believes that the communities themselves should decide on the specific geographic area—city, county or regional—to be involved in a locally coordinated program. Because of the importance of involving the local communities in order to create a long-term successful alcohol traffic safety program, the agency has decided to adopt this criterion. In small States local coordination may be demonstrated by showing that the interests of local communities are recognized and how the overall State and local program is coordinated.

**7. Prevention and Education.** Commenters, such as AAA, Florida, NCA, and the National Safety Council, supported the proposed requirement that States have a prevention and education program designed to change the societal norm relative to drunk driving. The requirement is therefore adopted.

States can demonstrate compliance with this criterion by providing a brief discussion of their prevention and education program and explaining how it relates to changing societal attitudes and norms against drunk driving. As

mentioned in the notice, the State program should include a comprehensive kindergarten through twelfth grade education program as well as involvement of private sector groups and parents.

**8. Screening.** The NADAC and NCA supported the requirement that courts have the authority to order screening of drunk drivers. They both recommended that the screening be done prior to sentencing. New Mexico and Delaware also supported screening, but urged the agency to allow either pre- or post-sentence screening. Delaware noted the practical problem that a certain percentage of arrested drivers plead guilty at arraignment and thus may not be screened before sentencing. These drivers would, however, receive post-sentence screening.

The agency, while encouraging the use of pre-sentence screening, will permit the use of either pre- or post-sentence screening to comply with this criterion. States can demonstrate compliance by submitting a copy of the law authorizing screening and providing a brief description of the screening process.

Illinois requested the agency to define what level of sobriety is required to meet this criterion. As discussed in the agency's advance notice, the screening should, at a minimum, be based on BAC level at time of arrest, prior alcohol-related convictions and a self-administered questionnaire.

**9. Evaluation Systems.** The commenters supported the need for evaluation systems to determine the effectiveness of individual program countermeasures and the effectiveness of the program as a whole. Several States noted that they are currently carrying out such evaluations as a part of their highway safety programs.

The agency has decided, therefore, to adopt this criterion as proposed. States can demonstrate compliance by showing that they have an adequate State-wide data reporting and collection system and that the data is used in an evaluation process.

**10. Self-Sufficiency.** Several commenters, such as Georgia and Maine, expressed concern about possible abuses arising from the requirement that local programs become self-sufficient. They said that the need to generate revenue from fine monies could create a "bounty system."

The agency recognizes that there is the possibility of limited abuses. However, that problem can be resolved by having a system to identify and correct abuses, if they occur. The agency notes that several States, such as New York and Virginia, have already established programs moving toward

self-sufficiency without creating abuses. In addition, fine revenue is only one mechanism of making a program self-sufficient. There are other ways for having the DWI offender pay for the system, such as treatment fees and court costs. The important consideration is that the people who create the DWI problem pay for its solution.

As mentioned in the agency's prior notice, the purpose of the section 404 incentive grant program was to provide States "seed money" to attack the problem of drunk driving. If a mechanism is not created to make such programs self-sufficient, there is a real danger that the programs may be reduced or eliminated when the Federal funds are gone. The agency has, therefore, decided to retain self-sufficiency as a criterion.

States can demonstrate compliance by providing a plan showing how they intend to make their programs self-sufficient. Specific progress toward implementation of the plan must be shown in order to meet this criterion in future years.

**11. Use of Roadside Sobriety Checks.** As in the responses to the agency's prior notice, there was a sharp divergence of opinion among commenters on the use of roadside checks to detect drunk drivers. The California Highway Patrol again questioned its use of constitutional grounds. Other commenters, such as Delaware, Florida and Maryland, said that roadside checks have been successfully used in their States and are particularly effective in increasing the public's perception of the risk of being caught for drunk driving.

Since States have the flexibility of choosing which of the supplemental criteria they wish to implement, the agency has decided to retain roadside sobriety checks as one of the criteria. Thus, those States which have legal questions about the use of the checks are not compelled to use them, while those States that have successfully used them in the past can continue to do so and receive credit. States can demonstrate compliance by providing information showing that they are systematically using roadside sobriety checks. States must also provide a copy of the regulation, law or policy authorizing the use of roadside sobriety checks.

**12. Citizen Reporting.** Several commenters, such as Delaware, Maryland, and New Jersey said that they have successfully used citizen reporting programs in their States. Pennsylvania, however, raised the issue of whether these programs could be potentially abused by citizens making

false reports. Since the States actually implementing these programs have not reported problems with abuses and have reported strong citizen support, the agency is adopting the criterion as proposed.

Virginia expressed concern about a possible administrative problem in gathering citizen reporting information from each police dispatcher so that States can report the total number of reports and resulting arrests. To reduce possible data collection problems, States can demonstrate compliance with this criterion by providing information on the degree of participation, e.g., number of citizen reports and number of resulting arrests, based on statistically valid samples.

**13. Enactment of a BAC of 0.03 or Less as Presumptive Evidence.** Because of an inadvertent typographical error in the preamble to the agency's notice, several commenters thought that the agency was proposing to retain the criterion that States enact laws making a BAC of 0.05 percent as presumptive evidence of driving while under the influence. They urged the agency to set the level at 0.03 percent. Their recommendations coincide with the text of the proposed final rule which contained the correct version of the agency's proposal. The agency is therefore adopting the 0.03 percent BAC requirement in the final rule.

States can demonstrate compliance by providing a copy of the applicable law.

**14. Uniform Licensing Procedures.** Commenters addressing this criterion supported the agency's proposal that States fully participate in the National Driver Register and the Driver's License Compact and use a one-license/one-record policy. The agency is therefore adopting this criterion in the final rule.

States can demonstrate compliance by providing a copy of the executive order, regulation or law setting up a one-license/one-record system. In addition, States must show that they have signed the Driver's License Compact and are using the National Driver Register.

**15. Preliminary Breath Tests.** Several commenters, such as Iowa and Michigan, supported adoption of this criterion. The California Highway Patrol main commented that preliminary breath tests (PBT's) are unnecessary and may lessen the importance of other investigative techniques.

As noted in the agency's prior notice, NHTSA believes that the use of PBT's should complement, not supplant, an officer's observations in identifying drunk drivers. Research has shown that PBT's can increase the effectiveness of alcohol safety programs by increasing arrests and the agency is therefore

adopting this criterion in the final rule. States can demonstrate compliance by providing a copy of the law or regulation authorizing the use of PBT's.

The Illinois State Police requested the agency to substitute use of the Horizontal Gaze Nystagmus test in place of the PBT's. The agency is currently field testing the Horizontal Gaze Nystagmus test along with other psychomotor skill tests to determine their effectiveness. Until that testing is completed, the agency cannot make a determination of whether the Horizontal Gaze Nystagmus test is an acceptable substitute for a preliminary breath test.

**16. Plea-bargaining.** Commenters, such as Delaware, Idaho, International Association of Chiefs of Police, and New Mexico, addressing this criterion supported its adoption. Oklahoma said that plea-bargaining was necessary to promote judicial efficiency, but agreed that there should be some mechanism to ensure that if there is plea-bargaining, the record system should indicate that an alcohol-related traffic offense was involved. New York State Senator Smith also agreed with need to prevent alcohol-related offenses from being bargained down to non-alcohol-related offenses. He said, however, that the agency's proposal would unnecessarily limit prosecutors in reducing alcohol-related offenses to lesser included alcohol-related offenses.

The agency recognizes that plea-bargaining may promote the efficiency of the judicial system, however, it is essential to ensure that the alcoholic related nature of the original offense is retained on the driver's record. The agency has, therefore, decided to adopt a requirement that no alcohol-related charge be reduced to a non-alcohol-related offense or probation without judgment be entered without a written declaration of why the action is in the interest of justice. The law must also provide that if a charge is reduced, that the defendant's driving record must reflect that the reduced charge is alcohol-related. States can demonstrate compliance by providing a copy of the applicable law.

**17. Victim Assistance, Compensation and Impact Statements.** Commenters addressing this criterion generally supported its adoption. They expressed agreement with the Presidential Commission statement that such programs are needed to help the "forgotten victims of the 'bad system'" those injured by drunk driving. The agency is therefore adopting this criterion as proposed.

States can demonstrate compliance by providing a description of their victim assistance programs, their use of victim

impact statements and victim restitution.

**18. Impoundment.** There was a sharp difference of opinion on the proposed criterion on impoundment. Texas may supported the use of impoundment at the expense of the owner as a "significant sanction." Other commenters, such as Florida, Maine, New Mexico, and Pennsylvania, questioned its potential effectiveness and urged that it not be adopted as a mandatory criterion.

As with the criterion on roadside checks, the agency believes that States that have found impoundment to be an effective part of their alcohol traffic safety program should be encouraged to continue to use it. Since the States have the flexibility to determine which criteria to adopt, the agency has decided to retain impoundment of the vehicle or confiscation of the vehicle's tags as one of the final criteria.

General Motors Acceptance Corporation (GMAC) urged the agency to modify the impoundment criterion to recognize that rights of secured parties and lessors that had no knowledge of the suspension or revocation. GMAC said that otherwise there could be long delays when those parties attempt to recover possession of the vehicle. The agency has decided to adopt GMAC's suggestion.

States can demonstrate compliance with this criterion by providing the agency with a copy of the law or regulation authorizing impoundment of the vehicle or confiscation of the license plates or registration.

**19. Choice of Test.** Commenters, such as the Maryland State Police and the National Safety Council, supported the agency's proposal that States authorize the arresting officer to specify the type of chemical test to use. Maryland said that allowing the officer the choice of test is "an extremely valuable asset in reducing time required to process violators." The agency is, therefore, adopting this criterion.

The agency also proposed that States enact laws authorizing an officer to require a second chemical test under appropriate conditions. The California Highway Patrol said that a second test may be justified if and only if an officer has a reasonable belief that a suspect is injured because of the use of drugs or drugs and alcohol. Before administering either the first or second test the officers must have sufficient grounds to show that the suspect was impaired.

The agency has decided to adopt this criterion as proposed. To ensure that a suspect will submit to a second test, the agency is adopting the requirement that

refusal to submit to more than one test results in a license suspension. States can demonstrate compliance by providing a copy of the applicable laws.

**20. *Dram Shop Laws.*** Several commenters, such as Florida, the Distilled Spirits Council of the United States and the National Licensed Beverage Association, recommended that the agency not adopt the proposed criterion on dram shop laws. They said that there is no evidence that dram shop laws have reduced alcohol traffic safety problems. The National Safety Council, on the other hand, recommended the adoption of a dram shop criterion. The Presidential Commission on Drunk Driving has also recommended adoption of such laws.

The agency recognizes that the vast majority of licensed beverage retailers carries out their business in a responsible manner. Dram shop laws are only aimed at persons who serve visibly impaired customers and thus increase the risk of alcohol-related crashes. The agency has, therefore, decided to adopt this criterion in the final rule.

Maine asked the agency to specify whether the dram shop law must be civil or criminal to comply with this criterion. The agency believes either a civil or criminal statute would be effective and that it will accept either one. New Mexico recommended that States be allowed to demonstrate compliance by showing that dram shop liability has been established by court decision rather than statutory law. The agency agrees, and will accept a showing that common law dram shop liability has been upheld by a State's highest court.

**21. *Innovative Programs.*** No commenter opposed the agency's proposal to encourage States to develop new, unique and innovative alcohol traffic safety programs. The agency recognizes that there are potential creative measures that have not been developed that may be as effective as any of the other programs contained in the agency's other twenty criteria and thus wants to reward States for experimenting with new programs. The agency, therefore, adopts this criterion as proposed.

States can demonstrate compliance by providing a description of their innovative program and an evaluation showing why the program is as potentially effective as any of the other specified criteria.

#### General Requirements

The Act requires a State to maintain its aggregate level of funding from non-section 408 funds for existing alcohol traffic safety programs "at or above the

average level of such expenditures in its two fiscal years preceding the date of enactment . . ." in order to be eligible for a basic grant. No commenter opposed the proposal to permit States to select either Federal or State fiscal year in determining the level of expenditures that must be maintained. The agency is therefore adopting that requirement in the final rule.

Several commenters, such as Illinois and Oklahoma, recommended that a State should only be required to maintain its aggregate level of section 402 alcohol program expenditures, rather than its expenditures from all possible sources, as proposed by the agency. They said that it would be difficult to determine the precise level of expenditures, particularly at the county and local levels of government. Since section 402 funds may not represent a substantial percentage of a State's alcohol traffic safety expenditures, the agency has decided to retain the requirement that a State consider all non-section 408 funds in determining its prior level of expenditures. The agency recognizes the State does not control, in many instances, the expenditures of funds by the counties, cities, and towns. The agency also recognizes that a full audit of the prior level of expenditures would be time-consuming and expensive. Thus States should measure non-federal grant funds, specifically that the existing level of local expenditures will be maintained. The agency will accept a State's certification based on existing State budget documents, that the required level of State expenditures will be maintained.

#### Certification and Award Procedure

The commenters generally supported NHTSA's proposed alternative procedures for awarding grants. Oklahoma suggests another alternative award procedure which, in essence, would be based on NHTSA regional officials conducting on-site hearings in each State. The agency plans to involve heavily its regional offices in the administration of the 403 program. At least in the first year of the program, the agency believes that the program should be coordinated by the agency's Office of Alcohol Countermeasures to provide a competency in implementing the program. The agency is, therefore, adopting its proposed alternative procedures in the final rule. These procedures establish the following three-step process:

1. The state provides information to document and verify its eligibility for the basic and supplemental grant criteria.

2. Upon review by NHTSA, the State would be notified that it is or is not eligible for the grant award based upon the documentation submitted. If eligible for grant award, the State would also be advised of the amount of the grant to be awarded subject to the State and NHTSA formal approval of the State's Alcohol Traffic Safety Plan. The agency has decided to adopt the recommendation of several commenters to allow the Alcohol Safety Plan to be submitted as a portion of a State's section 402 Highway Safety Plan. The Plan must be submitted within 120 days of notification to retain award eligibility.

3. Upon receipt and subsequent approval of the Plan, the grant will be awarded by execution of a Federal Aid Agreement.

The commenters also supported the agency's proposal to use a "soft" match in determining which State expenditures are reimbursable under section 403, and that the agency will use a "soft" match in administering the program.

New Mexico recommended that a non-profit organization be eligible for section 403 grants. Under section 403, the statutory language of section 403 does not limit a State to either make grants to political subdivisions of a State. As long as a State can show that a non-profit organization is an integral part of a local alcohol traffic program or is working under the control of a State official, the agency believes that a State can receive a grant to such an organization.

#### Paperwork Reduction

Pursuant to the Paperwork Reduction Act, the agency has requested Office of Management and Budget approval for the recordkeeping requirements adopted in the final rule.

#### Regulatory Evaluation

The agency has determined that this rulemaking should be classified as significant under the Department's regulatory policies and procedures. The agency has prepared a final regulatory evaluation and placed it in the public docket for this rulemaking. The agency has determined that since this rule will not have an annual impact of \$100 million on the economy, it is not a major rule within the meaning of Executive Order 12291.

To develop the benefit estimates, the agency determined the degree to which proposals in the notice are presently being implemented. Estimates of safety benefits were then based on satisfying the criteria in those States that presently are not doing so. The impact of the criteria in one or more of four areas was

determined where applicable: (1) drunk drivers on the road, (2) alcohol-related crashes, (3) DWI arrests, and (4) DWI convictions. The agency quantified benefits in terms of reduced number of fatalities, injuries, or accidents where possible. Lack of data, or the nature of the criteria themselves at times, precluded quantifying benefits in every case. However, in such cases where quantification of benefits is not possible, the general magnitude of the impact is assessed to the degree possible. In some instances, benefits are estimated for specified levels of safety measure effectiveness in order to gauge the potential of the measure for improving highway safety.

#### Regulatory Flexibility Act

I hereby certify that the requirements that will be established by this rulemaking action will not have a significant economic impact on a substantial number of small entities because the States will be the recipients of any funds awarded under the regulation and, therefore, preparation of an Initial Flexibility Analysis is not necessary.

#### List of Subjects in 23 CFR Part 1209

Alcohol, Grant programs—  
transportation, Highway safety.

In consideration of the foregoing, a new Part 1209 is added to Title 23 of the Code of Federal Regulations to read as follows:

### PART 1209—INCENTIVE GRANT CRITERIA FOR ALCOHOL TRAFFIC SAFETY PROGRAMS

Sec.	
1209.1	Scope.
1209.2	Purpose.
1209.3	Definitions.
1209.4	General requirements.
1209.5	Requirements for a basic grant.
1209.6	Requirements for a supplemental grant.
1209.7	Award procedures.

Authority: 23 U.S.C. 409.

#### § 1209.1 Scope.

This part establishes criteria, in accordance with 23 U.S.C. 403, for awarding incentive grants to States that implement effective programs to reduce drunk driving.

#### § 1209.2 Purpose.

The purpose of this part is to encourage States who have adopted or do adopt and implement alcohol traffic safety programs by regulation or legislation which will significantly reduce crashes resulting from persons driving while under the influence of alcohol. The criteria established are

intended to ensure that the State alcohol traffic safety programs for which incentive grants are awarded meet or exceed minimum levels designed to reduce drunk driving.

#### § 1209.3 Definitions.

(a) "Imprisonment" means confinement in a jail, minimum security facility or in-patient rehabilitation or treatment center.

(b) "Prompt" means that the overall average time from arrest to suspension of a driver's license either cannot exceed an average of 45 days or cannot exceed an average of 90 days and a State submits a plan showing how it intends to achieve a 45 day average.

(c) "Repeat offender" means any person convicted of an alcohol-related traffic offense more than once in five years.

(d) "Suspension" means:

(1) for first offenses, the temporary debarring of all driving privileges for a minimum of 30 days and then the use for a minimum 60 days of a restricted, provisional or conditional license permitting a person to drive only for the purposes of going from a residence to or from a place of employment or to and from a mandated alcohol education or treatment program. A restricted, provisional or conditional license can only be issued in accordance with Statewide published guidelines and in exceptional circumstances specific to the offender.

(2) For refusal to take a chemical test, first offense, the temporary debarring of all driving privileges for 90 days.

(3) For second and subsequent offenses, including the refusal to take a chemical test, the temporary debarring of all driving privileges for one year or longer.

#### § 1209.4 General requirements.

(a) *Certification Requirements.* To qualify for a grant under 23 U.S.C. 403, a State must, for each year it seeks to qualify:

(1) Meet the requirements of § 1209.5 and, if applicable, the requirements of § 1209.6;

(2) Submit a certification to the Director, Office of Alcohol Countermeasures, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590 that: (i) It has an alcohol traffic safety program that meets these requirements. If the certification is based upon prior adoption of a criterion, a State must provide information showing that it has been actively implementing that criterion during the four years prior to application for a grant, (ii) It will use the funds awarded under 23 U.S.C. 403 only for the implementation and enforcement

of alcohol traffic safety programs, and (iii) it will maintain its aggregate expenditures from all other sources for its existing alcohol traffic safety programs at or above the average level of such expenditures in fiscal years 1981 and 1982 (either State or Federal fiscal year 1981 and 1982 can be used); and

(3) After being informed by NHTSA that it is eligible for a grant, submit to the agency an alcohol safety plan for one, two or three years, as applicable, that describes the programs the State is and will be implementing in order to be eligible for the grants and provides the necessary information, identified in §§ 1209.5 and 1209.6, to demonstrate that the programs comply with the applicable criteria. The plan must also describe how the specific supplemental criteria adopted by a State are related to the State's overall alcohol traffic safety program.

(b) *Limitations on Grants.* A State may receive a grant for up to three fiscal years subject to the following limitations:

(1) The amount received as a basic grant shall not exceed 30 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(2) The amount received as a supplemental grant shall not exceed 20 percent of a State's 23 U.S.C. 402 apportionment for fiscal year 1983.

(3) In the first fiscal year the State receives a grant, it shall be reimbursed for up to 75 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 403.

(4) In the second fiscal year the State receives a grant, it shall be reimbursed for up to 50 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 403; and

(5) In the third fiscal year the State receives a grant, it shall be reimbursed for up to 25 percent of the cost of its alcohol traffic safety program adopted pursuant to 23 U.S.C. 403.

#### § 1209.5 Requirements for a basic grant.

To qualify for a basic grant of 30 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement the following requirements:

(a)(1) The prompt suspension, for a period not less than 90 days in the case of a first offender and not less than one year in the case of a repeat offender, of the driver's license of any individual who a law enforcement officer has probable cause under State law to believe has committed an alcohol-related offense, and, (2) To whom is administered one or more chemical tests

to determine whether the individual was intoxicated while operating the motor vehicle and who is determined, as a result of such tests, to be intoxicated, or (3) who refuses to submit to such a test as proposed by the officer.

(2) To demonstrate compliance, a State shall submit a copy of the law or regulation implementing the mandatory license suspension, information on the number of licenses suspended, the length of the suspension for first-time and repeat offenders and for refusals to take chemical tests and the average number of days it took to suspend the licenses from date of arrest. A State can provide the necessary data based on a statistically valid sample.

(b)(1) A mandatory sentence, which is not subject to suspension or probation, of imprisonment for not less than 48 consecutive hours or community service for not less than 10 days, for any person convicted of driving while intoxicated more than once in a five year period.

(2) To demonstrate compliance a State shall submit a copy of its law adopting this requirement and data on the number of people convicted of DWI more than once in any five years, what general types of confinement are being used, and the sentences for those persons. A State can provide the necessary data based on a statistically valid sample.

(c)(1) Establishment of 0.10 percent blood alcohol concentration (BAC) as sufficient evidence for finding that a person driving a motor vehicle is intoxicated.

(2) To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(d)(1) Increased efforts or resources dedicated to the enforcement of alcohol-related traffic laws and increased efforts to inform the public of such enforcement.

(2) To demonstrate compliance, a State shall submit data showing that it has increased its enforcement and public information efforts.

#### § 1209.6 Requirements for a supplemental grant.

(a) to qualify for a supplemental grant of 20 percent of its 23 U.S.C. 402 apportionment for fiscal year 1983, a State must have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed an average of 25 days, and

(b) have in place and implement or adopt and implement eight of the following twenty-one requirements:

(1) Establishment of 21 years of age as the minimum age for drinking any

alcoholic beverages. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(2) Coordination of State alcohol highway safety programs. To demonstrate compliance, a State shall submit information explaining how the work of the different State agencies involved in alcohol traffic safety programs is coordinated.

(3) Rehabilitation and treatment programs for persons arrested and convicted of alcohol-related traffic offenses. To demonstrate compliance, a State shall submit a copy of its law or regulation adopting this requirement, and a copy of the minimum standards set for rehabilitation and treatment programs by the State.

(4) Establishment of State Task Forces of governmental and non-governmental leaders to increase awareness of the problem, to apply more effectively drunk driving laws and to involve governmental and private sector leaders in programs attacking the drunk driving problem. To demonstrate compliance a State shall submit a copy of the executive order, regulation, or law setting up the task force and a description of how the interests of local communities are represented on the task force.

(5) A State-wide driver record system readily accessible to the courts and the public which can identify drivers repeatedly convicted of drunk driving. The courts shall have access to those portions of a driver's record that are not protected by Federal or State confidentiality or privacy regulations. To demonstrate compliance, a State shall submit a description of its record system discussing its accessibility to prosecutors, the courts and the public and providing data showing the time required to enter alcohol-related convictions into the system is not greater than 30 days.

(6) Establishment in each major political subdivision of a locally coordinated alcohol traffic safety program, which involves enforcement, adjudication, licensing, public information, education, prevention, rehabilitation and treatment and management and program evaluation. In small States, local coordination may be demonstrated by showing that the interests of the local communities are recognized and coordinated by the State program. To demonstrate compliance, a State shall submit a description of the number of programs, type of programs and percentage of the State population covered by such local programs.

(7) Prevention and long-term education programs on drunk driving. To demonstrate compliance, a State shall

submit a description of its prevention and education program, of assessing how it is related to national research findings and surveys and of drunk driving with particular attention to the implementation of a comprehensive youth alcohol traffic safety program and the involvement of private sector groups and parents.

(8) Authorization for courts to conduct pre- or post-sentence screenings of convicted drunk drivers. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement and a brief description of its screening process.

(9) Development and implementation of State-wide evaluation system to assure program quality and effectiveness. To demonstrate compliance, a State shall provide a copy of the executive order, regulation or law setting up the evaluation program and a copy of the evaluation plan.

(10) Establishment of a plan for achieving self-sufficiency for the State's total alcohol traffic safety program. To demonstrate compliance, a State shall provide a copy of the plan. Specific progress toward achieving financial self-sufficiency must be shown in subsequent years.

(11) Use of roadside sobriety checks as part of a comprehensive alcohol safety enforcement program. To demonstrate compliance, a State shall submit information to show that it is systematic, systematic roadside sobriety checks. In addition, a State shall provide a copy of its regulation or policy authorizing the use of roadside checks.

(12) Establishment of programs to encourage citizen reporting of alcohol-related traffic offenses to the police. To demonstrate compliance, a State shall submit a copy of its citizen reporting guidelines or policy and data on the degree of citizen participation, e.g., number of citizen reports and the number of related arrests. A State can provide the necessary data based on a statistically valid sample.

(13) Establishment of a 0.08 percent blood alcohol concentration as presumptive evidence of driving while under the influence of alcohol. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(14) Adoption of a one-license/one-record policy. In addition, the State shall fully participate in the National Driver Register and the Driver License Compact. To demonstrate compliance, a State shall submit a copy of the order, regulation or law showing the State is a member of the Driver License Compact and has adopted a one-license/one-

record policy, and is participating in the National Driver Register.

(15) Authorization for the use of a preliminary breath test where there is probable cause to suspect a driver is impaired. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(16) Limitations on plea-bargaining in alcohol-related offenses. To demonstrate compliance, a State shall submit a copy of its law or court guidelines requiring that no alcohol-related charge be reduced to a non-alcohol-related charge or probation without judgment be entered without a written declaration of why the action is in the interest of justice. If a charge is reduced, the defendant's driving record must reflect that the reduced charge is alcohol-related.

(17) Provide victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all cases where death or serious injury results from an alcohol-related traffic offense. To demonstrate compliance, a State shall submit a description of its victim assistance and restitution programs, and its use of victim impact statements.

(18) Mandatory impoundment or confiscation of license plate/tags of any vehicle operated by an individual whose license has been suspended or revoked for an alcohol-related offense. Any such impoundment or confiscation shall be subject to the lien or ownership right of third parties without actual knowledge of the suspension or revocation. To demonstrate compliance a State shall submit a copy of its law adopting this requirement.

(19) Enactment of legislation or regulations authorizing the arresting officer to determine the type of chemical test to be used to measure intoxication and to authorize the arresting officer to require more than one chemical test. To demonstrate compliance, a State shall submit a copy of its law adopting this requirement.

(20) Establishment of liability against any person who serves alcoholic beverages to an individual who is visibly intoxicated. To demonstrate compliance, a State shall submit a copy of the law or court decision of a State's highest court establishing that liability.

(21) Use of incentive programs. To demonstrate compliance a State shall submit a description of its program and an explanation showing that the program will be as effective as any of the programs adopted to comply with the other supplemental criteria.

(c) To qualify for a supplemental grant of 10 percent of its 23 U.S.C. 402

apportionment for fiscal year 1983, a State must: (1) Have in place and implement or adopt and implement a license suspension system in which the average time from date of arrest to suspension of a license does not exceed 45 days; and (2) have in place and implement or adopt and implement four of the twenty-one requirements specified in section (b).

(d) To qualify for a supplemental grant for a second and a third year, a State must:

(1) Show that it has increased its performance for each of the requirements it adopted in the prior year; and

(2) Adopt two more requirements from section (b) for each subsequent year, except that a State does not have to implement more than a total of fifteen criteria.

#### § 1209.7 Award procedure.

For each Federal fiscal year, grants under 23 U.S.C. 403 shall be made to eligible States upon submission of the alcohol safety plan and certification required by § 1209.4. Such grants shall be made until all eligible States have received a grant or until there are insufficient funds to award a grant to a State. Time of submission shall be determined by the postmark for certifications delivered through the mail and by stamped receipt for certifications delivered in person.

(50c, 101, Pub. L. 97-764; 96 Stat. 4734 (23 U.S.C. 403); delegation of authority at 39 CFR 1.50)

Issued on January 31, 1983.

Raymond A. Peck, Jr.,

Administrator.

(40 Fed. reg. 1195 Filed 2-2-83; 11:27 am)

BILLING CODE 4910-59-01

## DEPARTMENT OF THE DEFENSE

### Department of the Navy

#### 32 CFR Part 770

Rules Limiting Public Access to Particular Installations; Base Entry Regulations for Naval Submarine Base, Groton, Conn.

Agency: Department of the Navy, (M.D.)

Action: Final rule.

**SUMMARY:** The Department of the Navy is adding Subpart E to 32 CFR Part 770 in order to set forth regulations governing entry upon Naval Submarine Base New London, Groton, Connecticut. It is intended that these regulations will

apprise members of the general public of the rules governing access to Naval Submarine Base New London, Groton, Connecticut.

**EFFECTIVE DATE:** October 4, 1982.

#### FOR FURTHER INFORMATION CONTACT:

Lieutenant Commander D. B. E. Red, JACC, U.S. Navy, Box 70, Naval Submarine Base, New London, Groton, Connecticut 06340. Telephone: (203) 449-4739.

#### SUPPLEMENTARY INFORMATION:

PLEASEST to the authority cited below, the Commanding Officer, Naval Submarine Base, New London, Groton, Connecticut, or, October 4, 1982, adopted entry regulations entitled "Entry Regulations for Naval Submarine Base New London" (SUBBASENLONRST 1510.15A). It is vital to the national defense that the operation of the submarine base continue without undue interruption. Accordingly, these regulations implement upon Naval Submarine Base New London to authorized personnel and those persons who have obtained advance consent pursuant to these regulations. It has been determined, in accordance with the public rulemaking provisions of 32 CFR Parts 295 and 701, that publication of these regulations for public comment prior to adoption would be impracticable, unnecessary, and contrary to the public interest because the nature and national importance of Naval Submarine Base New London mandate the immediate and uninterrupted effectiveness of these regulations.

#### List of Subjects in 32 CFR Part 770

Federal buildings and facilities, National defense, Restricted access areas, Security measures.

Accordingly, 32 CFR Part 770 is amended by adding a new Subpart E as follows:

#### PART 770—[AMENDED]

Subpart E—Base Entry Regulations for Naval Submarine Base, New London, Groton, Connecticut

Sec.  
770.41 Purpose.  
770.42 Background.  
770.43 Responsibility.  
770.44 Entry restrictions.  
770.45 Entry procedure.  
770.46 Violations.

Authority: 50 U.S.C. 751; DoD Directive 1200.2 of July 29, 1960; 32 CFR PART 701, 702 of December 30, 1960; 32 CFR PART 295 of April 19, 1974; 5 U.S.C. 551; 10 U.S.C. 10112; 32 CFR 700.702; 32 CFR 700.714.

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH N  
JUNEAU, ALASKA 99811  
PHONE:

465-4322

May 24, 1983

The Honorable Bill Ray  
Senator  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety submits this additional position paper on SC SC SHB 6 (SA).

The Department of Public Safety supports sobriety checkpoints but objects to the provisions of section 28.35.028. This section indicates that a preliminary breath test may be administered under AS 28.35.031 c (b). This section states that a driver involved in an accident or who has committed a moving violation shall be administered a preliminary breath test if the officer has reasonable grounds to believe that the person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, etc.

At a checkpoint, most people, hopefully, would not become involved in an accident or commit a traffic violation. Without these important elements, a preliminary breath test could not be requested even though the individual appeared intoxicated. Routine testing for probable cause to arrest would create a delay for other motorists waiting to pass the checkpoint.

This section also allows the individual to avoid the checkpoint if he can do so lawfully.

Other provisions of the Administrative Code require compliance to road blockage at equipment checkpoints. Roadside inspections under 13 AAC 06.040 require a motorist to stop and comply. Although 17 AAC 02.020 allows for road blockage, I do not feel it would be legal to use for sobriety checks.

The Honorable Bill Ray

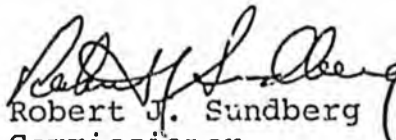
- 2 -

May 24, 1983

Section 28.35.029 is an open container law. This is further addressed in HB 421.

Although the Department of Public Safety supports the concept of both of these sections, we feel they should be addressed in separate bills. Both of these issues are complex in and by themselves.

Sincerely,



Robert J. Sundberg  
Commissioner

TO: Senator Ray

FROM: Paula Scavera

DATE: May 19, 1983

RE: Sectional Analysis SCSCHB 6 (State Affairs)

Section 1:

Technical Amendment adding judges and employees of the court to the list of those persons who may physically take a license which has been revoked etc...

Section 2:

Adds a section on alcohol and automobiles, to the written portion of the driver's license examination.

Section 3:

Provides for administrative license revocation for refusal to submit to a chemical breath test and for an illegal breath alcohol level; outlines the procedures for the revocation, and provides for review of the revocation.

Section 4:

Adds refusal to submit to a chemical breath test to the list of offenses for which a person's driver's license may be revoked.

Section 5:

Outlines the drivers license revocation for those persons convicted of certain driving offenses listed in section 4. The period of revocation is not less than 30 days for the first conviction. Limited driver's licenses may be granted at the discretion of the court. Ten years would be the period of time used to calculate whether a person had a prior conviction.

Section 6:

Outlines the license revocation for persons convicted of DWI and refusal to submit a chemical sobriety test. The period of revocation would be 90 days for the first conviction. Upon second conviction, the period of revocation would be one year. For the third conviction, the revocation would be 10 years.

Section 7:

Adds a new subsection which states that a limited license may be granted for the final 60 days of a revocation when the revocation is for DWI or refusal to submit to a chemical sobriety test.

Section 8:

Is a technical amendment removing what would be an outdated reference.

Section 9:

Adds a new subsection to the to the section on license limitations which states that a person may not receive a new license until they show proof of responsibility (AS 28.20.240)

Section 10:

States that a person who is convicted for driving in violation of their license revocation, suspension, or cancellation shall be punished by a minimum of 10 days incarceration. The persons license shall not be restored for an additional year from the time they would have been eligible to have their license restored.

Section 11:

States that a person whose license was revoked for DWI or refusal to submit to a chemical sobriety test is convicted of driving while license is revoked, the court shall impose 90 days incarceration and a fine of not less than \$1,000.

Section 12:

States that upon expiration of a period of limitation the driver's license remains revoked until the person furnishes proof of financial responsibility.

Section 13:

Sobriety Checkpoints--Similar to roadblocks--Enforcement officers can check for alcohol and administer preliminary breath tests (Department of Public Safety already has this power)(may want to take this out).Also Section 13 contains the Open Container Law - making it illegal to have unsealed containers of alcohol.

Section 14:

Outlines Fines and Incarceration periods for those convicted of DWI and refusal of chemical sobriety tests. Also states that the Court shall order treatment for the above offenses.

Section 15:

If you involved a traffic accident and suspected of alcohol or drug intake, the police officer may administer a preliminary breath test and refusal is an infraction --there by punishable by a \$300 fine.

Section 16:

Refusal of a preliminary breath test may be used against someone in court.

Section 17:

Outlines the penalties of refusing to submit to preliminary sobriety tests-(same as DWI).

Section 18:

Technical section which makes the person give up their drivers license where they receive a notice of revocation.

Section 19:

States that a unconscious person need not be arrested before a chemical sobriety test may be administered.

Section 20:

States that upon the 2nd conviction the court may forfeit the motor vehicle involved in the drunk driving or refusal of sobriety test offense. Also provides for a hearing procedure on forfeitures of the motor vehicles to protect 3rd party interests in the motor vehicles. This section also provides local option for impoundment of motor vehicles.

Section 21:

Repeals technical sections

There is no effective date clause for this bill.

**DEPARTMENT OF PUBLIC SAFETY**  
**OFFICE OF THE COMMISSIONER**

POUCH N  
JUNEAU, ALASKA 99811  
PHONE:

May 23, 1983

455-4322

The Honorable Bill Ray  
Chairman, Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ray:

The Department of Public Safety submits the following Position Paper on SCSCSHB 5(SA). The Department of Public Safety objects to the provisions in this Bill that allows a person whose license is revoked under AS 28.15.165 to ask for an administrative hearing by the Department of Public Safety rather than a court review.

The Department has objection to such action for the following reasons. The Department currently has hearing officers only in Anchorage. If a person in Ketchikan, Nome, Barrow, Unalaska, Fairbanks, etc., asks for an administrative hearing, we are required to hold that hearing at the office of the department nearest to the residence of that person unless the person agrees that the hearing can be held elsewhere. Whenever possible, in areas more than 50 miles from Anchorage, or outside Fairbanks, we presently attempt to handle administrative hearings by phone. If the individual objects, a hearing officer must schedule a hearing at the office nearest the individual's residence, and travel to that location to hold the hearing.

In instances such as outlined, there may be considerable delay between the time a hearing is requested and when it is held. During that time, the license action must be stayed until the hearing. In other words, the person arrested for drunk driving will be allowed to continue to drive until the hearing is held.

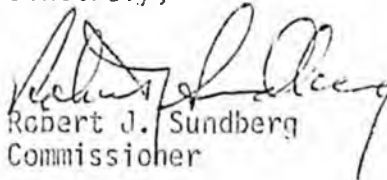
The Department holds hearings regularly in Anchorage, and approximately every two months in Fairbanks. However, not on a regular basis in other areas of the State. The court system has judges and/or magistrates scattered throughout the State who can handle the court review as outlined in present law. The Department only has hearing officers in Anchorage. If the proposed amendment is passed, and our fiscal note approved, a hearing officer would be added to Fairbanks. I feel, since the court system already has the staff throughout the State, no change should be made switching the responsibility to the Department of Public Safety, requiring an increase in staff, travel, and other expenses.

Senator Bill Ray  
May 23, 1983  
Page Two

It should also be pointed out that if the law is changed as proposed, and the person is unsatisfied with the administrative hearing results, such as non-issuance of a limited license, that person can appeal the decision of the hearing officer to the district court per AS 28.05.141(d). Over 95% of the court reviews under the present law have been to request limited driving privileges.

Another possible problem area is that there will be two different agencies with the authority to grant limited driving privileges, the Department of Public Safety and the courts. If one denies and the other grants, there will be confusion on the defendant's part as to whether or not he can legally drive, as well as creating a difficult situation for law enforcement officers and prosecutors.

Sincerely,



Robert J. Sundberg  
Commissioner

cc: Emil Hotti, Legislative Assistant, Office of the Governor  
Kevin K. Bruce, Special Assistant to the Governor

# Alaska State Legislature

INTERIM OFFICE:  
1024 WEST SIXTH AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 274-2843  
HOME (907) 274-3102

IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4547



HOUSE MAJORITY WHIP

CHAIRMAN  
STATE AFFAIRS

MEMBER  
TRANSPORTATION  
LEGISLATIVE COUNCIL

Representative Mitch Abood  
HOUSE DISTRICT 11

## MEMORANDUM

TO: Senator Bill Ray, Chairman  
Senate Committee on Judiciary

FROM: Representative Mitch Abood, Chairman  
House Committee on State Affairs

DATE: May 21, 1983

SUBJECT: HB 6

A handwritten signature in dark ink, appearing to read "M. Abood", is written over the "FROM" line of the memorandum.

I have reviewed the Senate State Affairs Committee Substitute for HB 6 and would like to point out some problem sections appearing in the bill.

Page 10, Section 13. AS 28.35.028. Sobriety Checkpoints. The Department of Public Safety currently has the administrative authority to set up checkpoints (17 AAC 20.020). The provision in HB 6 is unnecessary and should be deleted.

Page 10, following Sec. 13. (The section number has been deleted), should be section 14. Open Container. HB 421 is identical to this section and should be the vehicle for an open container law. It has no place in HB 6. Presently, 13 AAC 02.545 prohibits the driver of a car to drink while driving but there is no provision for the passenger.

Page 12, line 10 & page 14, line 29, page 15, line 1. The new language limits the court in assigning rehabilitation to the resources in the community where a person lives. What effect does this have on a chronic alcoholic in a rural area who may need treatment in a de-tox center or hospital, when none exists in his community. Would the court be prevented from assigning this type of treatment? They are trying to force the courts to do the job that they are supposed to do, but instead, have allowed a loophole and limited their authority.

A M E N D M E N T

Offered in the SENATE JUDICIARY COMMITTEE

By Abood

TO: SCS CSHB 6(SA)

Page 7, line 10:

After "if" insert "the person is convicted of driving while intoxicated,"

Page 7, line 11:

After "impaired" insert ","

I. REQUEST

Bill/Resolution No.: CSHB6 (Jud) # 1.  
Title: "An Act...Driving a Motor Vehicle"  
Sponsor: Abood, Furnace, Lindauer  
Requestor: \_\_\_\_\_

II. FISCAL DETAIL

Agency Affected: Dept. of Administration  
Program Category Affected: Public Defender  
BRU, Program of Subprogram(s) Affected:  
Third District, Fourth District

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		177.2	187.8	199.1	211.0	223.7
200 TRAVEL						
300 CONTRACTUAL		15.0	15.9	16.9	17.9	19.0
400 COMMODITIES		4.5	4.8	5.1	5.4	5.7
500 EQUIPMENT		6.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		202.7	208.5	222.4	234.3	248.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	202.7	208.5	222.4	234.3	248.4
FEDERAL FUNDS					
OTHER (Specify Source)					

POSITIONS:

FULL-TIME	3.0	3.0	3.0	3.0	3.0
PART-TIME					
TEMPORARY					

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

GENERAL FUND

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Bob Stokes, Admin. Officer

Division: for Dana Fake, Public Defender

Phone: 279-7541

Date: April 13, 1983

Approved by Commissioner: Lisa Rudd

Department: Administration

Date: April 14, 1983

Distribution:

Original to Legislative Finance

Copy to Office of Management and Budget (for Legislature introduced bills)

Copy to Department (for Governor introduced bills)

Copy to Sponsor

Copy to Requestor (if different from Sponsor)

There are several provisions within this bill which will require a substantial increase in the attorney time necessary to handle DWI and refusal of breathalyzer cases.

First, the increase in mandatory minimum penalties for second and subsequent offenders to 20 and 30 days respectively, as well as the increase in fines, will mean that a much higher number of defendants will exercise their right to a jury trial. Preparation for jury trial requires extensive interviews with the client and prospective witnesses, and the court time for the case is greatly increased, since a DWI change of plea in court may take 15 minutes while a jury trial in such a case usually lasts 1 - 2 days. We handle a high volume of not only State prosecuted DWI's but Municipally prosecuted DWI's as well. This increase in attorney time necessary for handling each drunk-driving case, given our already staggering misdemeanor caseloads, will require two additional attorneys for the Anchorage office, and one for the Fairbanks office.

Second, a drastic increase to a 90-day mandatory penalty for a first offender charged with driving with a suspended license will increase the number of jury trials which this office is required to handle.

Third, provisions in the statute which allow a police officer upon probable cause to seize the defendant's driver's license or impound his vehicle for a substantial period of time at the time of arrest will also require increased attorney time, due to the defendant's right to schedule a court hearing within 7 days to obtain return of his license or vehicle. Although the defendant may not have a right to an attorney to handle the hearing which he initiates to have his car or license returned, he will need an attorney's assistance at that hearing to the extent that it impacts his criminal case. Because anything that the defendant might say at that hearing regarding the facts of his case could be used against him at the subsequent criminal trial, he would need the assistance of counsel at that hearing. The attorney would have to obtain the immunity which would be due the client under the Alaska Supreme Court decision of McCracken v. Corey, as well as limit the scope of cross-examination at the hearing.

Because of the volume of DWI cases handled by this agency and the substantially increased attorney time necessary to comply with the provisions of the Statute, two additional attorneys for Anchorage and one for Fairbanks are requested.

I. REQUEST Page 1 of 3

Bill/Resolution No.: HB6/SB61 # 2  
 Title: Drunk Driving  
 Sponsor:                                       
 Requestor:                                     

II. FISCAL DETAIL

Agency Affected: Alaska Court System  
 Program Category Affected: Admin. of Justice  
 BRU, Program of Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		482.8	614.2	651.1	690.2	731.6
200 TRAVEL						
300 CONTRACTUAL		12.5	15.9	16.9	17.9	19.0
400 COMMODITIES		12.5	15.9	16.9	17.9	19.0
500 EQUIPMENT		31.2				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		539.0	646.0	684.9	726.0	769.6
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		539.0	646.0	684.9	726.0	769.6
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		12	12	12	12	12
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard Barrier *[Signature]* Phone: 264-0545  
 Division: Alaska Court System/Administration Date: 4/13/83

Approved by Commissioner:                                      Date:                       
 Department:                                     

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

The Court System currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. This legislation will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the Court System would experience an increase of approximately 250 trials per year.

This legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI ask the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year.

Once a motor vehicle has been forfeited to the state, the court must notice any interested party regarding this forfeiture and permit interested parties to submit a petition for remission of interest in the motor vehicle. Each petition filed will require a court hearing. It is estimated that this would lead to approximately 500 hearings per year.

Statewide, the major impact of this legislation would be an increase of approximately 250 DWI trials and 2,000 hearings per year. Along with the judicial manpower required to conduct the trials and hearings, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants in hearings, and perform other new clerical functions under this legislation related to impoundment of vehicles and forfeiture of vehicles.

The impact of this legislation will be felt in each court location in the state, though the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resources to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement this legislation would be one district court judge, with a support staff of a secretary and in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of

the state's caseload. While these courts may be able to get by without additional judicial resources, each would need at a minimum one additional court clerk II position.

A detailed breakdown of the cost associated with this legislation is provided below.

FY 84 COST OF IMPLEMENTING HB 6/SB 61

PERSONAL SERVICES:

SALARIES:

ANCHORAGE

District Court Judge	\$ 60,600
Secretary (Range 12B)	23,352
In-Court Clerk (Range 12B)	23,352
Court Clerk II (2 @ Range 10B)	41,424

FAIRBANKS

District Court Judge	69,084
Secretary (Range 12B)	26,616
In-Court Clerk (Range 12B)	26,616
Court Clerk II (2 @ Range 10B)	46,706

PALMER

Court Clerk II (Range 10B)	21,384
----------------------------	--------

KENAI

Court Clerk II (Range 10B)	<u>21,994</u>
----------------------------	---------------

\$361,118

BENEFITS:

Judges	139,659
Classified	<u>78,582</u>

Total Personal Services	579,359
-------------------------	---------

CONTRACTUAL	15,000
-------------	--------

COMMODITIES	15,000
-------------	--------

EQUIPMENT (one time costs)	<u>31,200</u>
----------------------------	---------------

TOTAL COST	\$640,559
------------	-----------

FIRST YEAR ADJUSTMENT:

Less two months recruitment time	<u>(101,560)</u>
----------------------------------	------------------

TOTAL COST FIRST YEAR	<u>\$538,999</u>
-----------------------	------------------

(Subsequent years' costs include inflation at 6%.)

I. REQUEST

Bill/Resolution No.: CS HB 6 (Judiciary)  
 Title: "Act Relating to Motor Vehicles"  
 Sponsor: Abood  
 Requestor: House Judiciary

II. FISCAL DETAIL

Agency Affected: Public Safety  
 Program Category Affected: Life & Prop. Pr  
 BRU, Program of Subprogram(s) Affected: Driver/Vehicle Services & AST

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		26.6	28.2	29.9	31.7	33.6
200 TRAVEL						
300 CONTRACTUAL		10.5	6.6	7.0	7.4	7.8
400 COMMODITIES		.2	.2	.2	.2	.3
500 EQUIPMENT		41.7	-0-	-0-	-0-	-0-
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		80.7	35.0	37.1	39.3	41.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		80.7	35.0	37.1	39.3	41.7
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

Not identified by sponsor

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Michael Orelove  
 Division: Administrative Services

Phone: 465-4349

Date: 4-26-83

Approved by Commissioner: [Signature]  
 Department: Public Safety

Date: 4/26/83

Distribution:

- Original to Legislative Finance
- Copy to Office of Management and Budget (for Legislature introduced bills)
- Copy to Department (for Governor introduced bills)
- Copy to Sponsor
- Copy to Requestor (if different from Sponsor)

Division of Motor Vehicles

ANALYSIS

Personal Services and Equipment breakdown is contained on attached Form 13 - Request for New Position.

\$4,300 of first year contractual is for new testing material and forms, and \$6,200 is for postage (all license actions must be sent via certified mail). Remaining years contractual is for postage only.

ASSUMPTIONS

1) Alaska Court System will handle "Revenue" fiscal note covering fines and vehicle forfeitures; 2) 98% of defendants who take breath test will have .08% or higher; and 3) Effective date is July, 1983.

Division of Alaska State Troopers

ANALYSIS

In order to comply with the "at the scene" provision in Section 13 of this Bill, 40.0 will be required to purchase 100 new portable breathalyzer units (\$400X100 = 40.0).

POSITION TITLE Document Processing Clerk II				RANGE/STEP 8B	BARG. UNIT CG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEC.		

CONTINUATION LEVEL		ADDITION	
TYPE OF EXPENDITURE			AMOUNT
1	2		3
PERSONAL SERVICES			
Salary	19,176		
Benefits	3,367		
Supplemental Benefits	1,175		
Medical Benefits	2,880		
TOTAL PERSONAL SERVICES	01		26,598
Travel	02		
Contractual	03		
Commodities	04		100
Equipment	05		1,724
Other			
TOTAL COST			28,422

JUSTIFICATION

One Document Processing Clerk II will be required to handle administrative license actions and related work for individual defendants whose breath test results are .08% or higher. Will prepare and mail license actions (of which it is estimated there will be an increase of 3,500 to 4,000 annually based on 1982 statistics); enter data on computer; prepare certified copies for prosecutors, courts, etc.; process stays; maintain proof of insurance filings; and maintain records. Equipment breakdown for this position is as follows: Typewriter - \$1,245; File Cabinet - \$291; and Chair - \$188.

RECEIPT CODE	FUNDING SOURCE	
	Federal Receipts 1002	
	G.F. Match 1003	
	General Funds 1004	28,422
	I-A Receipts 1005	
	Program Receipts 1020	
	Other	

FOR USE ONLY  
BY NUMBER \_\_\_\_\_

REQUEST FOR  
NEW POSITION

AGENCY Public Safety

PROGRAM Life and Property Protection

BRU Driver/Vehicle Services

COMPONENT Driver Services

CSHB 6 (Jud) # 3

Page 3 of 3

Revised Date \_\_\_\_\_

FY 84

STATE OF ALASKA  
FISCAL NOTE

Revision Date May 17, 1983

I. REQUEST SCSCS HB6 II. FISCAL DETAIL  
 Bill/Resolution No.: (State Affairs) Agency Affected: Alaska Court System  
 Title: Act Relating to Driving a Motor Vehicle Program Category Affected: Admin. of Justice  
 Sponsor: \_\_\_\_\_ BRU, Program of Subprogram(s) Affected: \_\_\_\_\_  
 Requestor: \_\_\_\_\_ Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		241.5	256.0	271.4	287.7	305.0
200 TRAVEL						
300 CONTRACTUAL		7.5	8.0	8.5	9.0	9.5
400 COMMODITIES		7.5	8.0	8.5	9.0	9.5
500 EQUIPMENT		22.1				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		278.6	272.0	288.4	305.7	324.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		278.6	272.0	288.4	305.7	324.0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		6	6	6	6	6
PART-TIME		2	2	2	2	2
TEMPORARY		4	4	4	4	4

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any analysis

Prepared By: Richard P. Barrier Phone: 264-0545  
 Division: Alaska Court System/Administration Date: May 17, 1983  
 Approved by Commissioner: \_\_\_\_\_ Date: \_\_\_\_\_  
 Department: \_\_\_\_\_

Distribution:

Original to Legislative Finance  
 Copy to Office of Management and Budget (for Legislature introduced bills)  
 Copy to Department (for Governor introduced bills)  
 Copy to Sponsor

## ANALYSIS OF FISCAL IMPACT OF SCSCSHB 6 (State Affairs)

The court system currently disposes of approximately 6,000 DWI cases each year. Presently, 8.6% of these cases are disposed of at trial, or approximately 500 trials per year. The bill will increase the number of cases proceeding to trial, since individuals faced with stiffer penalties and forfeiture of motor vehicles will be more likely to take their cases to trial than to plead guilty as they have in the past. Assuming that 5% of those individuals presently pleading guilty opted for a trial under the new statutes, the court system would experience an increase of approximately 250 trials per year. It is anticipated that this increase could be handled by use of retired judges on a part-time basis.

The house version of this legislation provides that individuals issued temporary licenses upon arrest on DWI have seven days in which to schedule a court hearing regarding extension of their temporary license. If 25% of the individuals charged with DWI asked the court for this seven day hearing, the court would experience an increase of approximately 1,500 hearings per year. However, the senate version incorporates an administrative rather than a judicial revocation, resulting in a substantially decreased cost to the court, since judicial involvement will be limited to appeals on the record.

Along with the judicial resources required to conduct the trials and appeals, the court needs supporting staff for the judges and clerical staff to process the case files, calendar and notice the participants.

The impact of this legislation will be felt in each court location in the state, although the major impact will be in the larger metropolitan areas. Both Anchorage and Fairbanks currently have a heavy caseload of DWI cases, with Anchorage reporting approximately 30% of the state's caseload and Fairbanks 25% of the caseload. In each of these locations the district courts are working at capacity, and would therefore need increased resources to handle the projected number of new trials and hearings to be held under this legislation. In each location, the minimal staffing required to implement the revised legislation would be one part-time retired district court judge, and an in-court clerk, and two court clerk II positions in the criminal sections to deal with the new clerical demands created by this legislation.

In addition to Anchorage and Fairbanks, both Palmer and Kenai have significant DWI caseloads, with each having nearly 10% of the state's caseload. Each would need at a minimum one additional court clerk II position.

Once the legislation comes into effect, the court system will monitor closely its impact on clerical and judicial resources.

IF the impact is substantially greater than anticipated, the court system will consider the need for a supplemental appropriation.

A detailed breakdown of the cost associated with the senate committee substitute is provided below.

FY 84 COST OF IMPLEMENTING SCSCSHB 6 (State Affairs)

Personal Services:	<u>Revised</u>
Salaries:	
<u>Anchorage</u>	
Part-time retired district court judge (4 mos)	\$ 15,150
In-court clerk (Range 12B) (4 mos)	7,784
Court clerk II (2 @ Range 10B) (12 mos)	41,424
<u>Fairbanks</u>	
Part-time retired district court judge (2 mos)	8,636
In-court clerk (Range 12B) (2mos)	4,436
Court clerk II (2 @ Range 10B) (12 mos)	46,706
<u>Palmer</u>	
Court clerk II (Range 10B) (12 mos)	21,384
<u>Kenai</u>	
Court clerk II (Range 10B) (12 mos)	<u>21,984</u>
	\$167,504
Benefits:	
Judges	27,154
Classified	<u>46,808</u>
Total Personal Services	\$241,466
- Contractual ..	7,500
Commodities	7,500
Equipment (one time costs)	<u>22,100</u>
Total Cost	<u>\$278,566</u>

(Subsequent years' costs include inflation at 6%)

**DEPT. OF HEALTH AND SOCIAL SERVICES**  
**OFFICE OF THE COMMISSIONER**

POUCH H 01  
JUNEAU, ALASKA 99811

PHONE:

DOCUMENT NO. 83-154

April 15, 1983

The Honorable Vic Fischer  
Senate State Affairs Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Fischer:

On Thursday April 7, 1983, your Committee requested that Corrections provide information regarding capital and operating costs for an institution which would house offenders convicted for drunk driving offenses (OMVI or DWI). In a short time we have reviewed available data and have formulated what we believe to be reasonable assumptions. This response is offered to your Committee with an understanding that the Sheffield Administration has not addressed the question as to whether this concept would be appropriate to pursue, and that funds are not available within current operating or capital requests to create an institution for this purpose. Further, this response is based on current statutes and law enforcement practices. Proposed changes under consideration could increase the numbers of offenders.

Sufficient numbers of offenders for a specialized facility to confine drunk drivers are only found in the southcentral region of the State. From data presently available we believe that a fifty five bed capacity would be necessary. It is likely that a site in the Matanuska Valley will be acquired for correctional purposes. Assuming the purchase of a 55 bed pipeline camp for transfer and setup it is estimated that capital costs for acquisition and site development would total \$3,350,000.

Twelve month operating costs for a 55 bed facility are estimated to be \$1,213,700. This figure includes a staff of nineteen, purchase and operation of two vans for transporting offenders to and from population centers, and routine operating costs.

Programmatic issues for a specialized facility of this type have not been fully addressed. Many believe that those serving short sentences of three or ten days for drunk driving are not necessarily candidates for alcohol treatment programs. Some argue that the punitive impact of incarceration is most appropriate, while others believe that needs assessment and referral are the proper goals for this setting and population. Still others support a full educational and treatment effort. Two Social Worker III positions have been included in the proposed staff to provide on site alcoholism counseling. With staggered shifts and days of work, the counseling can be provided seven days a week.

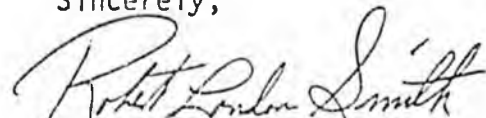
The Honorable Vic Fischer

Page 2

While funding for a 110 bed minimum custody facility has not been identified in budget requests, future planning calls for a facility of this size and custody classification. Due to initial site development and core facility costs for the first 55 bed facility, the remaining 55 bed capacity could be added for a comparatively small sum. Estimates to erect housing and core facility pipeline structures for the second 55 inmates at the same site are \$400,000, for a total capital investment of \$3,750,000. Twelve month costs for a 110 bed facility with a staff of 36 and related operational/inmate costs would total \$2,332,500. The additional 55 beds could be used for housing misdemeanor and minimum custody felony inmates.

It is my hope that this information is responsive to your inquiry. I wish to reiterate that the Administration has not developed a position regarding the appropriateness of a specialized facility for drunk drivers, nor would operating or capital funds be available for such a project within the Governor's FY'84 requests.

Sincerely,

  
Robert London Smith, Ph.D.  
Commissioner

POSITION PAPER

House Bill No. 6

"An Act relating to driving a motor vehicle."

House Bill No. 6 amends existing state law by increasing the length of sentence for first offense of driving with license suspended from 10 days to 14 days; second offense of operating a motor vehicle while intoxicated from 10 days to 20 days; third offense of operating a motor vehicle while intoxicated from 10 days to 30 days. It is estimated that the net effect of increasing the penalties for the specified offenses would increase the prison population by nine beds.

This bill would not significantly affect program objectives of the Division of Adult Corrections; however, it would have fiscal impact.

Recommended by:

*for Roger C. Lange*  
\_\_\_\_\_  
Roger V. Endeil, Director  
Division of Adult Corrections

Date:

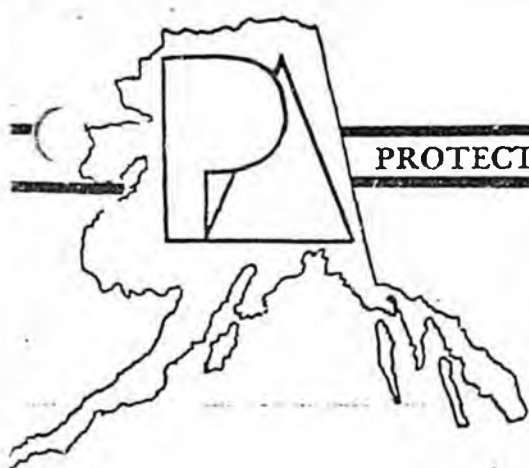
2/18/83

Approved by:

*Robert London Smith*  
\_\_\_\_\_  
Robert London Smith, Ph.D.  
Commissioner

Date:

2/19/83



PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

David Maltman-Director  
Jeff Jessee-Staff Attorney  
Annely Girard-Coordinator  
325 East 3rd, 2nd Floor  
Anchorage, AK 99501  
(907) 274-3658

Jan Maas-Advocate  
419 6th St., Rm. 232  
Juneau, AK 99801  
(907)586-1627

Patricia Pennella-Advocate  
763 7th Ave.  
Fairbanks, AK 99701  
(907)456-1070

April 13, 1983

Senator Vic Fischer  
Pouch V  
Mail Stop 3100  
Juneau, Alaska 99811

Dear Senator Fischer:

This letter concerns the need for the State of Alaska to obtain a minimum security facility for the treatment of drunk drivers.

I noticed in the papers that it has been suggested that surplus pipeline camps be purchased and renovated for this purpose. It is my suggestion that the state first look to existing facilities that are not being appropriately utilized. The most notable example of this type of facility is Harborview Developmental Center for the developmentally disabled in Valdez.

Harborview currently provides residential care for up to 96 developmentally disabled Alaskans. Unfortunately, Harborview was constructed before it was realized that the developmentally disabled could be better served in community settings. This has resulted in the unnecessarily institutionalization of many Alaskans. There is a tremendous loss of human dignity and potential which occurs because of this state policy of institutionalization. In addition, the \$85,000 per person per year spent on this primarily custodial care is staggering at a time when community services have been set back for three years in a row. There is a strong consensus growing that the people in Harborview must be returned to their families and communities as soon as possible. As a result, the state will need to find alternative uses for this building.

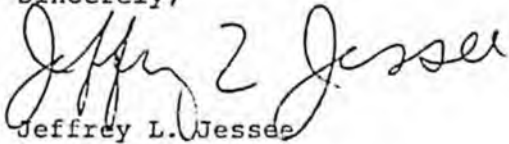
Harborview would be well-suited for use as a minimum security facility. Constructed after the earthquake of poured reinforced concrete, it contains a large cafeteria and laundry. In addition, each exterior door has an alarm system in place and the activities on each hall can be monitored from central nursing stations. The

local hospital is also located in the other end of the building. Renovations currently underway will result in a more efficient heating system and a new roof.

Alaskan's now believe that it is the drunken drivers that should be removed from the community, not the handicapped. I can think of no better expressions of this long overdue realization than by changing the use of Harborview.

Thank you for your consideration of this idea and please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey L. Jessee". The signature is written in dark ink and is positioned above the typed name.

Jeffrey L. Jessee  
Staff Attorney

JLJ:bk

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE COMMISSIONER**POUCH N  
JUNEAU, ALASKA 99811  
PHONE:

May 23, 1983

455-4322

The Honorable Bill Ray  
Chairman, Senate Judiciary Committee  
Alaska State Legislature  
Pouch V  
Juneau, Alaska 99811

Dear Senator Ray:

The Department of Public Safety submits the following Position Paper on SCSCSHB 6(SA). The Department of Public Safety objects to the provisions in this Bill that allows a person whose license is revoked under AS 28.15.105 to ask for an administrative hearing by the Department of Public Safety rather than a court review.

The Department has objection to such action for the following reasons. The Department currently has hearing officers only in Anchorage. If a person in Ketchikan, Nome, Barrow, Unalaska, Fairbanks, etc., asks for an administrative hearing, we are required to hold that hearing at the office of the department nearest to the residence of that person unless the person agrees that the hearing can be held elsewhere. Whenever possible, in areas more than 50 miles from Anchorage, or outside Fairbanks, we presently attempt to handle administrative hearings by phone. If the individual objects, a hearing officer must schedule a hearing at the office nearest the individual's residence, and travel to that location to hold the hearing.

In instances such as outlined, there may be considerable delay between the time a hearing is requested and when it is held. During that time, the license action must be stayed until the hearing. In other words, the person arrested for drunk driving will be allowed to continue to drive until the hearing is held.

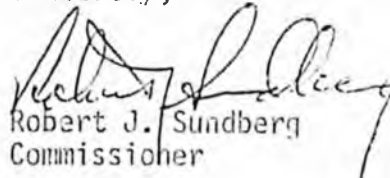
The Department holds hearings regularly in Anchorage, and approximately every two months in Fairbanks. However, not on a regular basis in other areas of the State. The court system has judges and/or magistrates scattered throughout the State who can handle the court review as outlined in present law. The Department only has hearing officers in Anchorage. If the proposed amendment is passed, and our fiscal note approved, a hearing officer would be added to Fairbanks. I feel, since the court system already has the staff throughout the State, no change should be made switching the responsibility to the Department of Public Safety, requiring an increase in staff, travel, and other expenses.

Senator Bill Ray  
May 23, 1983  
Page Two

It should also be pointed out that if the law is changed as proposed, and the person is unsatisfied with the administrative hearing results, such as non-issuance of a limited license, that person can appeal the decision of the hearing officer to the district court per AS 28.05.141(d). Over 95% of the court reviews under the present law have been to request limited driving privileges.

Another possible problem area is that there will be two different agencies with the authority to grant limited driving privileges, the Department of Public Safety and the courts. If one denies and the other grants, there will be confusion on the defendant's part as to whether or not he can legally drive, as well as creating a difficult situation for law enforcement officers and prosecutors.

Sincerely,

  
Robert J. Sundberg  
Commissioner

cc: Emil Notti, Legislative Assistant, Office of the Governor  
Kevin K. Bruce, Special Assistant to the Governor

TREATMENT SERVICES  
URBAN

Anchorage

- Inpatient (Alcoholism and Drug Abuse) 100 Beds
- Emergency Services/  
Detoxification 22 Beds
- Outpatient (Alcoholism and Drug Abuse)
- Special Services (e.g. special women's treatment center; prison counselors)
- Methadone Maintenance/Detox and Drug Free Counseling
- Intermediate Care 20 Beds

Ketchikan

- Intermediate care 8 Beds
- Outpatient
- Emergency/Detoxification Services

Kodiak

- Intermediate care 12 Beds
- Outpatient
- Emergency/Detoxification Services

Sitka

- Inpatient (PHS Hospital) 16 Beds
- Emergency Services/  
Detoxification
- Intermediate care 12 Beds
- Outpatient (Alcoholism and Drug Abuse)

Wasilla

Long term care 48 Beds

Fairbanks

- Inpatient 20 Beds
- Emergency Services/  
Detoxification 10 Beds
- Intermediate Care 21 Beds
- Outpatient (Alcoholism and Drug Abuse)
- Methadone Maintenance/Detox and Drug Free Counseling

Juneau

- Inpatient 15 Beds
- Emergency Services/  
Detoxification
- Intermediate Care 21 Beds
- Outpatient (Alcoholism and Drug Abuse)

Bethel

- Emergency Services/  
Detoxification 8 Beds
- Intermediate Care 8 Beds
- Outpatient
- Rural Village Counselors

Nome

- Emergency Services/  
Detoxification
- Intermediate Care 12 Beds
- Outpatient
- Rural Village Counselors

Kotzebue

- Emergency Services/  
Detoxification
- Intermediate Care 3 Beds
- Outpatient
- Rural Village Counselors

URBAN SERVICES

Combinations of outreach, public education, outpatient diagnosis and treatment, and aftercare are available in all large urban areas of the State. These same services are also found in all rural hub centers and through those programs to the surrounding villages.

TREATMENT SERVICES  
RURAL

Subregional/Rural Hub Centers/Village Programs

- Norton Sound (Nome)
- Mauneluk (Kotzebue)
- Bristol Bay Area Health Corporation
- Mat-Su Council on Alcoholism
- Seward
- Cook Inlet Council on Alcoholism
- Cook Inlet Native Association
- Copper River Native Association
- McGrath
- Petersburg
- Wrangell
- Upper Tanana Council on Alcoholism
- Cordova
- Yakutat
- South Kachemak
- North Slope (Barrow)
- Rural Cap/I.H.S. (Village Counselors-Illiamna, Aleutian-Pribilof Islands, St. Paul)
- Ft. Yukon/TCC
- Valdez
- Kuskokwim N. A. (Aniak)
- Minto
- Galena
- SEARHC
- Haines
- Klukwan
- Hoonah
- Angoon
- Hydaburg
- Craig/Klawock
- Kake
- Yukon-Kuskokwim HC (Bethel)
- Mountain Village
- Hooper Bay
- Mekoryuk
- Toksook Bay
- Nunapitchuk
- Napaskiak
- Akiachak
- Akiak
- Quinhagak
- Togiak
- Manokotak
- Koliganek
- New Stuyahok
- Levelock
- King Salmon
- Nondalton
- Newhalen
- Port Heiden
- Chevak

Rural Services

Each community listed here has at least 1 full time alcohol/drug abuse worker. Many of the above grantees offer services in areas surrounding their specific locations and some of these programs have letters of agreement with Regional Center programs for services not provided by them.

## DEPARTMENT OF PUBLIC SAFETY

## OFFICE OF THE COMMISSIONER

POUCH N  
JUNEAU, ALASKA 99811  
PHONE:

465-4322

May 24, 1983

The Honorable Bill Ray  
Senator  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety submits this additional position paper on SC SC SHB 6 (SA).

The Department of Public Safety supports sobriety checkpoints but objects to the provisions of section 28.35.028. This section indicates that a preliminary breath test may be administered under AS 28.35.031 c (b). This section states that a driver involved in an accident or who has committed a moving violation shall be administered a preliminary breath test if the officer has reasonable grounds to believe that the person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, etc.

At a checkpoint, most people, hopefully, would not become involved in an accident or commit a traffic violation. Without these important elements, a preliminary breath test could not be requested even though the individual appeared intoxicated. Routine testing for probable cause to arrest would create a delay for other motorists waiting to pass the checkpoint.

This section also allows the individual to avoid the checkpoint if he can do so lawfully.

Other provisions of the Administrative Code require compliance to road blockage at equipment checkpoints. Roadside inspections under 13 AAC 06.040 require a motorist to stop and comply. Although 17 AAC 02.020 allows for road blockage, I do not feel it would be legal to use for sobriety checks.

The Honorable Bill Ray

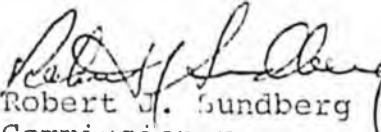
- 2 -

May 24, 1983

Section 28.35.029 is an open container law. This is further addressed in HB 421.

Although the Department of Public Safety supports the concept of both of these sections, we feel they should be addressed in separate bills. Both of these issues are complex in and by themselves.

Sincerely,

  
Robert J. Sundberg  
Commissioner

FILE WITH HV56

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY  
OFFICE OF THE COMMISSIONER

POUCH N  
JUNEAU, ALASKA 99811  
PHONE: 465-4322

June 6, 1983

The Honorable Bill Ray  
Senator  
Alaska State Legislature  
Pouch V  
Juneau, AK 99811

Dear Senator Ray:

The Department of Public Safety wishes to submit this position paper on Senate Committee Substitute for Committee Substitute for HB 6.

Position: Support.

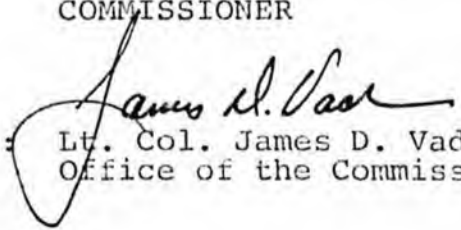
The Department of Public Safety supports this bill and feels that it will be beneficial in reducing the number of deaths and injuries on alaskan highways caused by drivers who are intoxicated.

We would propose that Section 17 and Section 18 of this version of the bill be eliminated. The statute numbers referred to in these two sections are repealed under Section number 24 of the bill, and the topics are addressed in Section 3.

Your consideration is appreciated.

Sincerely,

ROBERT J. SUNDBERG  
COMMISSIONER

By:  Lt. Col. James D. Vaden  
Office of the Commissioner