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see

HB17/SB226

* see also HB 17, SB 226 +

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SB 61
 Title: "...relating to driving a motor vehicle."
 Sponsor: Sen. Josephson
 Requestor: Sen. Vic Fischer

II. FISCAL DETAIL

Agency Affected: Department of Law
 Program Category Affected: Gen. Gov.
 BRU, Program of Subprogram(s) Affected: Legal Services

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		240.0	305.3	323.6	343.0	363.6
200 TRAVEL		15.5	16.5	17.5	18.6	19.7
300 CONTRACTUAL		32.4	38.7	41.0	43.5	46.1
400 COMMODITIES		19.4	11.4	12.1	12.7	13.5
500 EQUIPMENT		35.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING	-0-	342.3	371.9	394.2	417.8	442.9
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	342.3	371.9	394.2	417.8	442.9
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME	-0-	5	5	5	5	5
PART-TIME		1	1	1	1	1
TEMPORARY						

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

Not specified by Sponsor.

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Richard L. Pegues, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: April 1, 1983

Approved by Commissioner: Richard L. Pegues / RAR
Norman C. Gorsuch, Attorney General
 Department: Department of Law

Date: April 1, 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)

SB 61
Analysis

This bill makes several significant amendments to the state laws pertaining to driving while intoxicated, including raising the mandatory minimum sentences which must be imposed upon conviction for driving while intoxicated or refusal to take a breath test. There is the distinct possibility that the number of guilty pleas for Driving While Intoxicated or Refusal to Take a Breath Test will decrease due to the generally more severe penalties specified. With the corresponding increase in trials, a need for additional prosecuting attorney positions may arise. This possibility is speculative and, consequently, no additional prosecution positions have been requested at this time. Any legislative action diminishing the resources available to the department in FY 84, coupled with the enactment of this and other crime bills requiring a greater prosecution effort, will severely hamper the department's overall ability to prosecute criminal offenses.

The bill also authorizes the impoundment or forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. If an impoundment or forfeiture is contested by the vehicle owner, or by someone who has financial interest in the vehicle, a court hearing must be held. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle. The hearings would create a substantial additional workload for Department of Law civil attorneys, and will require an increase in the number of attorneys and support staff in the large offices. The department estimates that an additional three and a half attorney positions will be required: one Attorney IV and one Attorney III in Anchorage, one Attorney III in Fairbanks and half of an Attorney III in Juneau. Two new clerical staff will be needed, one legal secretary in Anchorage and one legal secretary in Fairbanks.

A fiscal impact statement from the Department of Health and Social Services, Division of Corrections should also be sought, as the additional days in jail which a person would be required to serve after conviction under the bill will probably increase the number of beds in correctional institutions which are permanently filled by D.W.I. convictees and thus unavailable for other offenders.

1.	POSITION TITLE Attorney IV	RANGE/STEP 24A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT

3.	CONTINUATION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE	AMOUNT	
	1	2	3
	PERSONAL SERVICES		
5.	Salary 4,469/month	44,690	
6.	Benefits	6,890	
7.	Supplemental Benefits	2,240	
8.	Fixed Benefits	2,400	
9.	TOTAL PERSONAL SERVICES	01	56,220
10.	Travel	02	5,000
11.	Contractual	03	8,000
12.	Commodities	04	3,500
13.	Equipment	05	1,500
14.	Other		
15.	TOTAL COST		74,220

JUSTIFICATION

This is one of four attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the impoundment or forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when an impoundment or forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	74,220
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

FOR B&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM LEGAL SERVICES
BRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

FY 84

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Revised Date _____

1.	POSITION TITLE Attorney III				RANGE/STEP 22A	BARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.	
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.			
3.	CONTINUATION LEVEL		ADDITION		JUSTIFICATION						
4.	TYPE OF EXPENDITURE			AMOUNT							
	1		2		3						
	PERSONAL SERVICES										
5.	Salary	3,905/month			39,050						
6.	Benefits			6,020							
7.	Supplemental Benefits			2,240							
8.	Fixed Benefits			2,400							
9.	TOTAL PERSONAL SERVICES		01	49,710							
10.	Travel			02	3,000						
11.	Contractual			03	8,000						
12.	Commodities			04	3,500						
13.	Equipment			05	1,500						
14.	Other										
15.	TOTAL COST				65,710						
<p>This is the second of four attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the impoundment or forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when an impoundment or forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.</p>											
	RECEIPT CODE	FUNDING SOURCE									
16.		Federal Receipts 1002									
17.		G.F. Match 1003									
18.		General Funds 1004		65,710							
19.		I-A Receipts 1005									
20.		Program Receipts 1028									
21.		Other									
FOR B&H USE ONLY											
4A KEY NUMBER _____											

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM LEGAL SERVICES
BRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				ADDITION		JUSTIFICATION			
4.	TYPE OF EXPENDITURE			AMOUNT		<p>This is one of two secretary positions required to provide secretarial support for the four new attorney positions assigned to Juneau, Anchorage, and Fairbanks. This particular secretarial position will serve the needs of the two new attorneys assigned to Anchorage. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the criminal division who originally prosecuted the intoxicated operator of the motor vehicle.</p>				
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	1,817/month	18,170							
6.	Benefits		2,800							
7.	Supplemental Benefits		1,110							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	24,480						
10.	Travel		02	-0-						
11.	Contractual		03	2,200						
12.	Commodities		04	2,700						
13.	Equipment		05	14,500						
14.	Other									
15.	TOTAL COST			43,880						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts	1002							
17.		G.F. Match	1003							
18.		General Funds	1004	43,880						
19.		I-A Receipts	1005							
20.		Program Receipts	1028							
21.		Other								
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13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM GENERAL GOVERNMENT
BRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

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Revised Date _____

1.	POSITION TITLE Attorney III			RANGE/STEP 22A	BARG. UNIT X	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.	
3.	CONTINUATION LEVEL	ADDITION			JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2	3						
	PERSONAL SERVICES								
5.	Salary	4,469/month	44,690						
6.	Benefits		6,890						
7.	Supplemental Benefits		2,240						
8.	Fixed Benefits		2,400						
9.	TOTAL PERSONAL SERVICES		01	56,220					
10.	Travel		02	5,000					
11.	Contractual		03	8,000					
12.	Commodities		04	3,500					
13.	Equipment		05	1,500					
14.	Other								
15.	TOTAL COST			74,220					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Hatch 1003							
18.		General Funds 1004		74,220					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR B&H USE ONLY 4A KEY NUMBER _____									

This is the third of four attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the impoundment or forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when an impoundment or forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
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1.	POSITION TITLE Legal Secretary I				RANGE/STEP 10B	BARG. UNIT GGU	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT	LEG.		

3.	CONTINUATION LEVEL	ADDITION		
4.	TYPE OF EXPENDITURE			AMOUNT
	1	2		3
	PERSONAL SERVICES			
5.	Salary	2,048/month	20,480	
6.	Benefits		3,160	
7.	Supplemental Benefits		1,260	
8.	Fixed Benefits		2,400	
9.	TOTAL PERSONAL SERVICES		01	27,300
10.	Travel		02	-0-
11.	Contractual		03	2,200
12.	Commodities		04	2,700
13.	Equipment		05	14,500
14.	Other			
15.	TOTAL COST			46,700

JUSTIFICATION

This is the second of two secretary positions required to provide secretarial support for the four new attorney positions assigned to Juneau, Anchorage, and Fairbanks. This particular secretarial position will serve the needs of the new attorney assigned to Fairbanks. Included in the duties of this position will be the responsibility of coordinating the activities of the Civil Division attorneys handling the forfeiture action with the attorneys and support staff of the Criminal Division who originally prosecuted the intoxicated operator of the motor vehicle.

	RECEIPT CODE	FUNDING SOURCE	
16.		Federal Receipts 1002	
17.		G.F. Match 1003	
18.		General Funds 1004	46,700
19.		I-A Receipts 1005	
20.		Program Receipts 1028	
21.		Other	

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4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY DEPARTMENT OF LAW
PROGRAM GENERAL GOVERNMENT
BRU LEGAL SERVICES
COMPONENT LEGAL SERVICES OPERATIONS

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1.	POSITION TITLE Attorney III				RANGE/STEP 22A	UARG. UNIT X	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PPT	STAFF MONTHS 10	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL				ADDITION		JUSTIFICATION			
4.	TYPE OF EXPENDITURE			AMOUNT		<p>This is the fourth of four attorney positions required by the Department of Law in order to absorb the significant increase in workload which will result from new legislation authorizing the impoundment or forfeiture of motor vehicles driven by persons arrested for driving while intoxicated. The new legislation requires a court hearing when an impoundment or forfeiture is contested by the vehicle owner, or by someone who has a financial interest in the vehicle. It is anticipated that many of these hearings will involve representatives from banks or financing companies who retain a financial interest in the vehicle.</p>				
	1	2	3							
	PERSONAL SERVICES									
5.	Salary	1,952/month	19,520							
6.	Benefits		3,010							
7.	Supplemental Benefits		1,200							
8.	Fixed Benefits		2,400							
9.	TOTAL PERSONAL SERVICES		01	26,130						
10.	Travel		02	2,500						
11.	Contractual		03	4,000						
12.	Commodities		04	3,500						
13.	Equipment		05	1,500						
14.	Other									
15.	TOTAL COST			37,630						
	RECEIPT CODE	FUNDING SOURCE								
16.		Federal Receipts 1002								
17.		G.F. Match 1003								
18.		General Funds 1004		37,630						
19.		I-A Receipts 1005								
20.		Program Receipts 1029								
21.		Other								
FOR B&H USE ONLY										
4A KEY NUMBER _____										

AGENCY DEPARTMENT OF LAW

PROGRAM LEGAL SERVICES

BRU LEGAL SERVICES

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13 REQUEST FOR
NEW POSITION

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Revised Date	

Lucy Whitehead
1543 L St.
Anchorage, AK 99501

April 15, 1983

Senator Vic Finken
Alaska State Legislature
Juneau, Alaska

Dear Senator Finken:

Enclosed is a list of signatories from your district requesting that you give full support to Senate Bill 61. We strongly support raising the drinking age to 21 and to strengthen the offense of D.W.I.

Please note the signatories on the petitions as you will find many of your friends have signed it.

We must stop the slaughter on the highway and streets.

Sincerely

Lucy Whitehead

M. H. V. O.

261

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, ~~to raise the drinking age to 21~~
 We ask that this Bill be passed in it's entirety. To strengthen the offense of D.W.I.

<u>NAME</u>	<u>ADDRESS</u>	<u>ANCHORAGE, ALASKA</u>	<u>ZIP</u>
<i>[Signature]</i>	923 - 11th Ave	Anchorage	99501
Elizabeth H Roche	923 - 11th	Anchorage	99501
K.P. Hanson	802 Pine St #12	Anchorage	99504
Mella M. Howard	" " "	" "	" "
James W. Ruff	1534 K St	Anchorage	99501
Grace E. Ruff	1534 K St	"	99501
Gracie Newman	1521 L St	Anchorage	99501
Marlene G. Fulton	2306 Junction Dr	Anchorage	99503
Doree A. Fulton	2306 Junction Dr	Anchorage	99503
Mary Ann Erickson	221 E 7th Ave	Anchorage	99501
Doree A. Fulton	2306 Junction Dr	Anchorage	99503
Lolene Erickson	1949 Wisconsin Dr	Anchorage	99503
Russ C. Fulton	1949 Wisconsin Lane	Anchorage	99503
Flora A. Harwick	409 Eagle St	Anchorage	99501
Lois M. O'Clair	7100 W. Division Dr	Anchorage	99502
Skuldene McClain	2165 W. Division Dr	Anchorage	99502
Kathleen Eriksen	Anchorage	Anchorage	99502
Marilyn (B) Feil	618 1st St. (E. side)	Anchorage	99501
Mavis R. Logan	257 E. Heid	Anchorage	99501
Jane Burston	333 M St Apt 407	Anchorage	99501
Divina Arnold	525 W. 3rd apt 611	Anchorage	99501
Bette Bessie	2245 Chillingham Dr	Anchorage	99503
Kate Meyer	1328 W. 11th Ave	Anchorage	99501
Mary Ann Lindbeck	4007 Bowland Dr.	Anchorage	99503
Esther McElligott	500 N St.	Anchorage	99501
Alice Hockema	1028 N St.	Anchorage	99501
Marcel B. Knight	1522 Coffey Lane	Anchorage	99501

261

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, ~~xxxxxx and xxxxxx~~
 We ask that this Bill be passed in it's entirety. To strengthen the offense of D.W.I.
~~xxxxxx and xxxxxx~~ raise the drinking age to 21

NAME	ADDRESS	ANCHORAGE, ALASKA	ZIP
Patricia A. Jackson	8341 Ragged Top		99504
Anette C. Showalter	2320 Tasha Dr.		99502
Jean Adyama	4324 Beetle Cir		99504
Helen Gastlock	8331 Pioneer		99504
Carol Marker	1018 G -		99501
Norma J Hoyt	230 W 16 th		99501
Mary G. Peterson	1001 - W. 2 nd St		99503
Betty A. Stephens	1135 Hillcrest Dr		99503
Alice S Green	2405 Benjamine Stroy #33		99501
Grace Nurse	804 W 13 th		99501
Pauline V Burkner	341 W 11 th		99501
Maxine Roberts	1035 Barron St		99501
Joyce Lewis	1221 West 11 th Ave.		99501
Richard Michalski	809 W. 16 th	272-8377	
Jean Lindemuth	1218 F St	277-5287	
Marilyn Southam	SRA Box 1568-H		99507
Carol Wilson	1519 Hidden Lane		99501
Maire M Tepley	3324 Princeton Way		99504
Louisa K Schwantz	Box 2045 Anch.		99510
Nancy K Newell	145 West 6 th Anch.		99501
Belen Mc Dowell	139 - W 6 th Anchorage -		99501
Kenneth E Hall	131 W. 6 th AVE APT #3 Anchorage		99501
Susan Molder	527 B St Anchorage Ak.		99501
J. Donald L Chazy	527 B St Anchorage Ak.		99501

261

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, ~~xxxxxx~~
 We ask that this Bill be passed in it's entirety. To strengthen the offense of D.W.I. ⁴
 raise the drinking age to 21.

NAME	ADDRESS	ANCHORAGE, ALASKA	ZIP
Vieno N. Petersen	1046 Mila	anch. AK	99504
Marianne Vellow	2905 W. 34th	Anch. Ak.	99503
Carol Kunderson	6941 Gemini	Anch. Ak.	99504
Genevieve Griffith	3407 Spencord Rd.	Anch. AK	99503
Luis E. Bruck	1811 Crescent An	Anch AK	99508
Margaret Mageroch	2035 Cliffside Dr.	✓ ✓	99501
Esther Ball	2926 Winturck	✓ ✓	99504
Bredes, Malven	1835 - Bantlinger "E" Ave "		99501
Phyllis Stell	1730 Eastridge Dr	Anch AK	99501
Pat Wendling	283 MULDOON RD Box 142	" "	99504
Mary Ann Dodge	SRA Bx 1763D	Anch	99507
Doreen E. Schneider	2201 SENTRY	ANCH	99507
Nadine Richard	1405 Sunrise	Anch	99504
Claudette Hampton	434 Cherry	Anch.	99504
Ann Johnston	2075 Shepherdia	Anch	99504
Debra Babum	7600 Ravenna	Anch	99502
Pamela Sue Dipe	2500 Lawrence St	AK	99504
Eva M. Johnson	2233 - Knoll Circle	AK	99501
Pat Murray	1625 Birchwood	AK	99508
Bernice Andrews	841 Dogwood	AK	99501
Janie Mikkelsen	3825 Shalagon	Anchorage AK	99504
Kyle Weed	1037 - W - 16th	anchorage AK	99501
Nara Weed	1037 - W - 16th	Anchorage Ak.	99501
Anne E. Garfield	PO Box 10-1711	anchorage AK	99511
Tom M. Jenkins	510 - St # 202	Anchorage ak	99501
Alic Chadwick	P.O. Box 1761	Anchorage ak	99510
George P. Schwarz	PO Box 2045	Anchorage	99510

161

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, to raise the drinking age to 21 years. ✓
 We ask that this Bill be passed in it's entirety. *Must be off on DWI*

NAME	ADDRESS	ANCHORAGE, ALASKA	ZIP
Elizabeth A. Sherwood	9240 Ateliev Dr.	Anch., Alaska	99507
Marian Z. Hitchcock	2637 Shephardia Dr.	Anchorage	99504
Charlotte Hill	112 E. 24th Ave #40	Anchorage AK	99503
George Marvin	3421 W. 69 th Av	Anchorage, AK	99502
Pauline Tindian	1123 Valley	Anch.	99504
Margaret M. Madsen	2122 Forest Park Dr.		99502
Margaret M. Madsen	3532 North Point		99502
Connie Longacre	410 W. 15 th Ave.	PO Box 2621 Anchorage, AK	99510
Judy Clardy	SRA Box 2282	Anchorage	99507
Carol Wilson	1519 Hidden Lane		99501
Christina M. Hawk	2600 Lyrama Lane	Anch., Ak.	99502
Jane S. Clardy	S.P.A. Box 2282	Anch., AK.	99507
Robert S. Swetnam	2948 Princeton Way	Anch., AK	99504
Mrs Wilson	1519 Hidden Ln	Anch AK	99501
Lisa Lee Swetnam	2948 Princeton Way	Anch. Ak.	99504
Claire M. Teply	3324 Princeton Way	Anch. AK	99504
Elizabeth Johnson	813 1/2 W-3 rd Ave	Anchorage	99501
Mary Jane Landstrom	813 W. 3 rd Ave #4	Anchorage, AK	99501
Franklin C. Landstrom	813 W. 3 rd Ave #4	Anchorage, Ak.	99501
Margaret Donatelli	701 W. 11 th Ave.	Anchorage, AK	99501
Mrs Donatelli	701 W 11 th Ave	Anch	
Box J Donatelli	843 W. 14 th Ave	Anch AK	
Mrs Howard	9240 Ateliev Dr	Anchorage AK	99507
Mrs Howard	993 12 th St # 707	Anch	99501
L. Warren Hines	1300 W 7 th #404	Anch	99501
Mary J. Hines	1300 W. 7 th #404	Anch.	99501
Royal M. Brown	1517 W 15 th Ave	Anch.	99501
Jorahy V. Markley	1519 - H St.	Anch.	99501
Jack B. Markley	1519 - H St	Anch.	99501

M. A. D. D. (M) O'Brien Agreed Alaska House

Original Bill
61

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, ~~to raise the drinking age to 21 years.~~
 We ask that this Bill be passed in it's entirety. To strengthen the offense of D.W.I. ~~&~~
 raise the drinking age to 21

NAME	ADDRESS	ANCHORAGE, ALASKA	ZIP
Matthew G. Necker	101 East Cook Ave.	Anchorage	99501
Charles F. Heston	" " " "	" "	" "
Louis Thurner	7220 DAWN DR	ANCHORAGE	99502
Manou B. Foch	Cardigan Circle	-	99503
Ernest I. Brown	855 NORMAN ST.	L	99504
June Brown	955 NORMAN ST.	L	99504
Janne Edwards	4208 Harrison	✓	99503
Ellen C. Webb	2825 Redwood Place	✓	99504
Lorraine Idwell	1305 Ingle		99501
Lena E. Swain	1315 Cordova		99501
Dorothy Butrum	3138 Madison		99508
Dorothy J. Durnell	7911 Jewel Lake Rd. Apt. #2		99502
Jackie D. Smith	4224 Chess Dr.	Anch, AK	99504
Quinn B. Stewart	1703 Hansen Court	Anchorage, AK	99501
Bernice Palmer	3028 E. Tudor Rd		561-1501
Lee Wilson	4359 Kodiak Avenue	Anch, AK	99504
Anna Lee Jackson	58A Box 30484	Anch, AK	99507
Charlotta Lahti	9012 Jupiter	Anch, AK	99507
Green Goodwin	1408 W. 23 Ave	Anch	99503
G. P. Paul	15711 Inuvik Circle		99502
Deborah A. Clinton	7325 Madeline St	Anchorage	99504
Phyllis Eads	7830 Liana Circle	Anch.	99507
Shirley Preston	1729 Orca	Anch, AK	99501
Yoko Schimmgard	7413 E 17TH	ANCH. AK.	99504
Marian Rylabender	1440 K St	Anch AK	99501
Helen A. Joseph	1200 E ST #414	Anch	99501
Trichelle Vachss	3324 Old Muldrow Rd	Anch. AK.	99504

Sent
4/21

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, to raise the drinking age to 21 years.
 We ask that this Bill be passed in it's entirety. *Strengthen the offense of DWI*

<u>NAME</u>	<u>ADDRESS</u>	<u>ANCHORAGE, ALASKA</u>	<u>ZIP</u>
Beth J. Michel	1626 Garden St.	ANCH. AK.	99504
Mrs H. T. Marshall	1341 Hillcrest Dr.	Anch.	03
June Sherks	3201 Westmar Cir	Anchorage, AK	99504
Virginia Smith	1020 "L" St.	Anchorage, AK	99501
Helen Thompson	1228 Redwood Ct.	Anchorage, AK.	99504
Dee D. Alden	5137 Sillary	Anchorage, AK	99504
Carolyn Walter	2771 Pelican Ct.	Anchorage AK.	99502
Jan M. Datz	Se. ^{By Falls} Rd # 2563	Wasilla AK.	99687
Hilda Lewis	Box 1276	Anchorage AK.	99510
June Fullington	7333 Madeline Dr.	Anchorage	AK 99504
Lelah Armstrong	144 West 23rd	Anchorage, AK	99503
Janet D. Duvon	2744 Sycamore	Anch, AK	99503
LaVice Stephen	SRA Box 925	Anch, Alaska	99502
Roberta Clay	SRA Box 410	Anch AK.	99507
Janet A. Snyder	221 E. 7 th #201	ANCH AK	99501
Sharon A. Hebler	1510 Patterson St	Anchorage AK	99504
Alice L. Edwards	8624-1 Barclay	Anchorage	99504
Kara Faeo	1430 COLOMBINE	ANCHORAGE AK	
Linda Ann Franke	SRA STAR Route 372-L	Anchorage AK	
Wendy Metcalf	1006 E 26 th	Anchorage	
Kathleen C. Anderson	2003 Crestview Cir	Anchorage	99504
Ellen P. Vaulin	1751 E. 0TH Way	Anchorage AK.	99504
Virgula Heath	1751 Lab. Dr. Plany	Anchorage AK.	99504
Patsy Harmon	127 Pelican Dr.	Anchorage	99502
Doris Fabroner	3131 Lakeside Dr.	Anchorage	99502
B. Anger	221 E 7th #201	Anchorage AK	99501
Gibert D. Whitford	1573 L St.	Anchorage	99501

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
 Original sponsors: Abood, Furnace, Lindauer, ~~to raise the drinking age to 21 years~~
 We ask that this Bill be passed in it's entirety. To strengthen the offense of D.W.I.
 Raise the drinking age to 21.

NAME ADDRESS ANCHORAGE, ALASKA ZIP

- Mary Bauer 3406 Lincoln Anchorage AK 99503
- Janet DeWalt SRA Box 1272 CHUGIAK AK 99527
- Joseph S Budnow 2080 WALDORF ANCHORAGE AK 99507
- Messiah Hans Ottwood 1902 Talbot St Anch AK 99504
- Geneva P Walters 2606 E 17th Ave Anch, Ak 99504
- Charlotte M Lewis 2205 Daybreak Ct. Anch. AK 99501
- Tulma E. Gussom 3311 Wesleyan Dr. Anch. Ak. 99504
- Joan K. Larson 4002 Lois Ave Anch Ak 99503
- Elizabeth Henderson 2124 Seaside Dr Anch Ak 99508
- Maria Johnson 2761 Sanctuary Dr., Eagle River, AK 99577
- Alicia Anderson 3761 Pelenosa Circle Anchorage, 99502
- Jan Paul Cochran P.O. Box 100374 Anch. Ak. 99510
- Florence E. Schlegel 1921 So. Salem Dr. Anch. Ak. 99504
- Ann D. Gross 1714 Birchwood Anchorage 99504
- Evelyn N. McQuell 403 E 24 Ave. Anch. 99503
- Norma E. Sullivan 1831 Hobart Anchorage 99504
- Kimiko Alexander P.O. BOX EAGLE RIVER AK 99577
- Virginia Burke 3605 Arctic #1815 Anch. AK 99503
- Lee Groat 3200 Shuttle Cir Anch AK 99503
- Marie Molen 221 E 7th Ave #309 Anch AK 99501
- Lita Sillitti P.O. Box 6241 Anch. AK 99502-0241
- Janet Edwards 4208 Harrison Anch 99503
- Choko Chapin 3214 Wyoming Dr Anch 99503
- Roderic Carpenter 1410-E-16th Ave. Apt 11 Anch 99501
- Elmer L. Dyer 1535 L ST., ANCHORAGE AK 99501
- Bernadette L. Nodal 1535 L St. Anchorage, ak 99501
- Wendel Kemman P.O. Box 197 Anch, Ak 99510

5/1/61 *Rare the ducks*
 age 22

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs) ~~to raise the drinking age to 21 years.~~
 Original sponsors: Abood, Furnace, Lindauer, to ~~raise the drinking age to 21 years.~~
 We ask that this Bill be passed in it's entirety. strengthen the offense of D.W.I.

<u>NAME</u>	<u>ADDRESS</u>	<u>ANCHORAGE, ALASKA</u>	<u>ZIP</u>
Lucy Whitehead	1543 L St	" "	99501
Mary Digney	801 W. 7th Ave.	" "	99501
Ray Hathhorn	5531 Arctic Blvd	" "	99502
Patricia James	1559 K St	" "	99501
Vicki S. Singluff	3300 Iowa St	" "	99503
Ina Reekin	1311 G Street	" "	99501
Clare Howard	7200 Alaska St	" "	99502
Mildred Patricia Mantle	1600 W 11th Ave 35	" "	99501
Grace Abbas	1561 Muldoon Ave Anch.		99504
Inez Parkko	119 W. 12th	" "	99501
Colandrea M. Bend	4409 Forest Rd. #1A	" "	99503
Evelyn E. Martin	1309 Hillcrest Tr.	" "	99503
Harriet K. Kessel	1026 P St. Apt. 7	" "	99501
Misses Godfrey	1575 7th St #1		99501
Orelia Tomsted	P.O. Box 857 Anch.		99510
Muri Burnett	1225 "5" St		99501
Doris Jackson	1600 W 11th #307		99501
Flora Landi	905 S Street		99501
Carol Wilson	1519 Hidden Lane		99501
Laura Davis	1221 West 11th Col.		99501
Dean Donatello	701 W. 11th Ave		99501
Anthony Ferraro	Box 110413 Anch. Alaska		99570
J. M. Martin	1527 G St Anchorage		99501
Suzanne Heisner	1207 G St Anchorage		99501
Janet Martin	1527 G St Anchorage		99501
Louise Hill	1237 H St	" "	" "
Kenneth H. Norman	527 L St Anchorage		99501

We the undersigned ask your support of CS FOR HOUSE BILL NO. 6 (State Affairs)
Original sponsors: Abood, Furnace, Lindauer, to raise the drinking age to 21 years.
We ask that this Bill be passed in it's entirety.

NAME

ADDRESS

ANCHORAGE, ALASKA

ZIP

Katherine Steth 101 E 23rd Anch ak 99503

William C. Shouder 124 E 23rd Anch. Alaska 99503

Patricia J. Brewster 124 E 23rd Anch. Alaska 99503

CMOV N 70

The alcohol abuse prevention and treatment programs in the state would be a joke, if they weren't so expensive in money, time, and incredible waste of valuable lives, of abusers and their victims.

Enormous sums are spent and yet the problem is officially ignored in terms of prevention/correction of abuse. Fear of the liquor lobby--the consumer liquor lobby that includes Alaskans of all political persuasions, as well as lack of an effective plan to significantly reduce overall abuse without violating civil rights are two major stumbling blocks negating efforts beyond band-aid applications.

Acceptable and effective alcohol control programs of any scale seem non-existent. Prohibition, except in small villages, is impractical. Centers only address those who have decided to lick the problem on their own. Politicians of all stripes, with no qualms about attacking marijuana and cocaine users, are silent when it comes to alcohol.

Can anything be done? Perhaps...

A system which could work statewide must:

- a) be field tested in an Alaskan community;
- b) receive wide-spread community support from most political/social sub-groups;
- c) prove effective beyond any shadow of doubt, to all observers.

I believe, after a good deal of thinking, possibilities exist to develop such a program; a program that will protect civil liberties, encourage individual self-control, provide external control when essential, be administratively workable, politically popular and effective as proven through field validation with broad based

community support, in Alaska.

First, a community or communities of size must be provided financial incentive to pilot-test the program. Since alcohol is such an integral part of the individual life-style/social setting of nearly every Alaskan community, the financial reward must be exceptional in order to overcome fears and resentments of residents.

- a) A program to be field tested should pay each adult resident a \$50 stipend to respond to a two-part (pre and post) program questionnaire, to be distributed to all registered voters if the community chooses to participate in the pilot program.
- b) The city government would also receive \$100 (?) per resident adult to cover any unforeseen additional costs of program administration not covered in the pilot program's operating budget.
- c) Extra unforeseen administrative, police, alcohol treatment expenses would be absorbed by the program.
- d) Pilot program would be three years with a yearly renewal at the option of the community. Three to five communities should be involved if possible, with each having a total population of no less than 1000 and no more than 15,000.

THE PROGRAM:

There must be an accepted definition of drinking--like driving--as a privilege, not a right. Abuse of this privilege in a manner detrimental to the public or to other individuals can result in a loss of this privilege/mandated treatments for periods of time/depth of treatment directly related to the seriousness and frequency of the abuse. No criminal penalties are attached to such privilege loss unless a) a crime is committed along with the abuse, b) the subject is found to be guilty of violating a previous loss of privilege or c) the subject is found guilty of providing

or dispensing alcohol to someone who has lost such privilege.

The administrative system used to enact/operate/administer such a program is a permit system. Each resident individual in the community reaching majority would have the right to receive a "drinking license". No test except local residency. A numbered photo identification card would be issued at no or minimal cost to the resident.

Non-resident guests of residents would, upon presentation of out-of-state drivers license, voters registered card, etc., would be allowed a non-renewable, non-transferable 30-day permit.

Out of state hotel guests would be provided daily permits during their stay in the hotel.

Independent tourists (e.g. driving in) would be permitted up to thirty day permits with presentation of licenses. Escorted tours would prearrange completion of applications to be submitted to authorities on arrival in the field testing community. Permits would be for the duration of the tour.

Out of state fishermen, in ports of call, would be given permits for port of call visits of up to one week. Seasonal workers would be given renewable thirty day permits.

Violations/abuses by above temporary permit holders would deny them reapplication rights for one year.

Purveyors/dispensers of alcohol in pilot communities are obliged to verify that the individual served is indeed, a valid permittee.

ENFORCEMENT:

All bars and liquor stores would be provided with a free,

portable breathalyzer unit to satisfy/justify to their customers the correctness of their decision-making in denying a drink to a customer. Training in non-embarrassing use of the device would be provided.

Fear of not selling to a potentially violent customer plays an important role in some alcohol sales. A free "beeper" system with access to local police would be provided to bars/liquor stores for rapid enforcement response. Training in usage would be provided.

The pilot program would, in agreement with city officials, pay for extra "alcohol control" slots on the city force. These officers (and others) would receive intensive alcohol abuse control training, and would be assigned to problem alcohol areas. As with vehicles, officers would have the right to stop someone upon reasonable suspicion of alcohol abuse and request them to take a breathalyzer test. Refusal, as in driving, would be assumed admission of guilt with the accompanying loss of permit for a length as determined in the project guidelines.

(Someone in the position of being threatened by a suspected alcohol abuser can notify police. Such a suspect can be required to take a breathalyzer test. Failure would be noted in conjunction with the complaint, and taken into consideration in loss of license/permit.)

Extra judicial/magisterial and support positions would be funded by the project. Extra-alcohol counseling services would be supported by the project.

Expected support groups:

women's groups--antiviolence
churches--anti-alcohol
parental/school groups--antiviolence/anti-drunkdrivers
police groups--control and extra enforcement tools
property owners--\$ to community for pilot
individuals--\$50 payment per person for survey involvement

SAMPLE BUDGET

Community K: 1,000 registered voters:

1) Survey stipend to registered voters	\$50 x 1000= \$ 50,000
2) Payment to community for administration	\$100 x 1000= \$100,000
3) Costs for license issuing office:	
a) staff (2)	50,000
b) rent	5,000
c) equipment	3,000
d) phone/utilities	2,000
4) Beepers/breathalyzers	7,500
5) Extra police assistance (1)	30,000
6) Extra alcohol program staff (2)	60,000
7) Extra magisterial/judicial support	15,000

Estimate: \$337,500

This, of course, has its highest cost in selling the program to the community--thus items 1 and 2. The \$50 and \$100 figures are arbitrary. Item 1 could be cut in half the second year and eliminated after year three, and item 2 could be a one-time-only shot. The point is, it would be great to take a million or so, try three communities (e.g. Kotzebue, Petersburg and Seward/Wasilla, some place on a road) for implementing the program for three years, document and prepare a video-tape on results and, if it works, try to sell it statewide.

A M E N D M E N T

#2

Offered in the SENATE

By V.Fischer

TO: CSSB 61 (State Affairs)

Page 9, following line 27,

Insert a new section to read:

"* Sec. 13. AS 28.35 is amended by adding a new section to read:

Sec. 28. 35.029. OPEN CONTAINER. (a) A person may not operate a motor vehicle when there is an open bottle, can or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle.

(b) In this section,

(1) "open" includes having a broken seal;

(2) "passenger compartment" means the area of a motor vehicle normally occupied by the driver and passengers and includes a utility or glove compartment accessible by the driver or a passenger while the vehicle is being operated.

(c) A person who violates (a) of this section is guilty of an infraction."

Renumber subsequent sections.

A M E N D M E N T

#3

Offered in the SENATE

By V.Fischer

TO: CSSB 61 (State Affairs)

Page 11, line 8, following "addition,":

Insert: "the court shall order, and"

Page 11, line 9, following "undertake":

Insert: "treatment or education commensurate with the person's needs and the resources of the community where the person lives."

Page 11, line 9,

Delete ", for a term"

Insert: "[, FOR A TERM]"

Page 11, lines 10 - 12:

Delete: all material

Insert: "[SPECIFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION WHICH THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPELED UNDER (d) OF THIS SECTION, FJNDS APPROPRIATE.]"

Page 13, line 27, following "In addition,":

Insert: "the court shall order, and"

Page 13, line 28, following "undertake"

Delete all material and insert: "treatment or education commensurate

with the person's needs and the resources of the community where the person lives [, FOR A TERM SPECIFIED BY THE COURT, THAT PROGRAM OF]"

Page 13, line 29 - page 14, line 1:

Delete all material and insert: "[ALCOHOL EDUCATION OR REHABILITATION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (h) OF THIS SECTION,]"

Page 14, line 2

Delete: "finds appropriate"

Insert: "[FINDS APPROPRIATE]"



Amendment to Proposed CSSB 61 (State Affairs)

Page 9, delete lines 12 through 15 and substitute:

In addition, the person's privilege to drive must be suspended for not less than one additional [MAY NOT BE RESTORED FOR AN ADDITIONAL PERIOD OF ONE] year after the date that the person would have been entitled to restoration of driving privileges if the person had not been convicted under this section.

Dr
1 yr. suspension
may suspend,
for more than
one year

Amendment to Proposed CSSB 61 (State Affairs)

Page 9, at line 28 insert a new section as follows:

*Sec. 13. AS 28.35.030(a)(2) is amended to read:

(2) when, as determined by a chemical test given within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in that person's [HIS] blood or 100 milligrams or more of alcohol per 100 milliliters of that person's [HIS] blood, or when there is 0.10 grams or more of alcohol per 210 liters of that person's [HIS] breath; or



4 hrs.

No fiscal impact

4

Amendment to Proposed CSSB 61 (State Affairs)

On page 11, delete section 14 at line 13, et. seq. and insert a new section:

* Sec. 14. AS 28.35.031 is amended by adding a new subsection to read:

(b) A person who drives a motor vehicle that is involved in an accident, has committed an offense under AS 28.15.181(a), or has committed a moving traffic violation shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. The test shall be administered at the scene of the incident at the direction of a law enforcement officer who has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, drugs or a combination of drugs and alcohol, and that the person:

list of things for which license can be suspended
reasonable suspicion

DPS

- (1) drove a motor vehicle that was involved in an accident,
 - (2) has committed an offense under AS 28.15.181(a), or
 - (3) has committed a moving traffic violation.
- The result of the test may be used by the law enforcement

mandatory part

officer to determine whether the driver should be arrested. Before administering the test, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered. ~~Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.~~

①
②
7

Amendment to Proposed CSSB 61 (State Affairs)

Add a new section to the bill which provides:

Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CONSENT. (a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.35.031 and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034.

[Handwritten signature]
RSL



Alaska Chapter

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MAY 16 1983

10 May 1983

Dear Senator Vic Fischer

Contrary to some local opinions,
S 163 is not an infringement upon
individual liberties. The precedent that
children in Alaska have their own
individual Rights was established by
the issuance of Permanent Fund Dividends
to them. The attached copy of the
Colorado Law Review analyses the legal
precedents under the Constitution. This
also confirms the appropriateness of the
proposed statute.

Through this one law, You can
save more lives than we pediatricians
will in a life-time of practice

During the year prior to implementation,
the general public can be educated also.

Clinton B. Lillibridge M.D.
State President

CHILD SAFETY IN AUTOMOBILES: MANDATORY RESTRAINT-USE LAWS

Automobile safety is an issue of long-standing concern, but only recently has special attention been focused on the safety needs of young children, to whom cars pose one of the largest public health threats in the country.¹ This threat would be greatly diminished if each pre-school aged child were properly secured in a child restraint device (CRD) each time he or she traveled in a motor vehicle.

A CRD is a car seat, padded shell, or harness which is designed to protect infants and young children in the event of an accident, and which is usually secured in place by a vehicle's existing lap belts.² These devices are fairly inexpensive and readily available, yet they are rarely used. In fact, a leading study found that less than ten percent of children transported in motor vehicles were adequately protected against the possibility of injury.³

A growing awareness of this public health problem has resulted in passage of legislation mandating the use of CRDs in two states⁴ and proposed legislation in twenty-eight others.⁵ This Comment will examine the laws mandating the use of CRDs and the legal issues which may arise from them. The efficacy of the various statutes will be analyzed as well as their constitutional validity under state police powers. An evaluation of the potential impact of CRD laws on auto-

1. See text accompanying notes 6-8 *infra*.

2. Some CRDs are designed solely for use by infants while others protect only toddlers capable of sitting alone. Many restraint devices are convertible and can be used from birth until the child weighs more than forty to fifty pounds, at four or five years of age. For a complete description and evaluation of many of the CRDs marketed today, see MICHIGAN'S MOTOR VEHICLE OCCUPANT PROTECTION PROGRAM, MICHIGAN TRAFFIC SAFETY INFORMATION COUNCIL, A DETAILED REVIEW OF CURRENTLY MARKETED INFANT AND CHILD RESTRAINTS (1979); *Child Restraint Systems*, 42 CONSUMER REPORTS 314 (1977).

3. See Williams, *Observed Child Restraint Use in Automobiles*, 130 AM. J. DISEASES OF CHILDREN 1311 (1976).

4. CRD-use laws are in effect in Tennessee and Rhode Island. See notes 33 and 41 *infra*.

5. Child restraint bills have been proposed in the following states: Alabama, Arizona, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oregon, South Dakota, Virginia, Washington, West Virginia, and Wisconsin. See ACTION FOR CHILD TRANSPORTATION SAFETY, SUMMARY OF PROPOSED CHILD RESTRAINT LEGISLATION AND ALTERNATIVE MODEL LAWS (1979, updated May, 1980) (hereinafter cited as ACTS).

mobile accident litigation will follow. Before turning to those issues, however, the problem to which CRD laws are addressed will be more fully described.

THE PROBLEM

Motor vehicle accidents cause death and injury to more children than any other single cause, including childhood diseases.⁶ In 1979 alone, 1159 children under the age of five died, and at least fifty times that number were injured, in such accidents in the United States.⁷ Colorado contributed fourteen fatalities and 835 recorded injuries to that toll.⁸ These high numbers are due primarily to two factors: the physical characteristics of young children and the positions they usually occupy as unrestrained passengers in motor vehicles.

The unique center of gravity and small size of young children make them particularly vulnerable to serious injuries in automobile crashes.⁹ A child's head makes up a great proportion of his overall body weight, and this, coupled with an inability to brace himself with his short arms and legs, greatly increases the likelihood that he will be propelled head-first in the direction of any impact point. The result is a high incidence of head injuries and related deaths among accident victims in this age group.¹⁰ In fact, such injuries can occur even in the absence of an actual accident when an unsecured child is thrown against the automobile's interior by a sudden swerve or application of the brakes.¹¹ Larger and heavier passengers, on the other hand, are less likely to be shifted by abrupt driving maneuvers.

The physical characteristics of very young children also tend to

6. Automobile accidents are the leading cause of death and serious injury for all children beyond one month of age. See Shelness & Charles, *Children as Passengers in Automobiles: The Neglected Minority on the Nation's Highways*, 56 *PEDIATRICS* 271 (1975).

7. DEPARTMENT OF TRANSPORTATION, NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (NHTSA), *HIGHWAY SAFETY 1979: REPORT ON ACTIVITIES UNDER THE HIGHWAY SAFETY ACT OF 1966* (1980). This report contains only death statistics. Injury statistics are not published but are kept on file by NHTSA. The National Electronic Injury Surveillance System file kept at NHTSA shows that 60,408 pre-schoolers injured by motor vehicles were transported to emergency rooms in 1979. Telephone interview with Grace Hazzard, data retrieval specialist, National Center for Statistics and Analysis, NHTSA, Sept. 16, 1980.

8. MOTOR VEHICLE DIV., COLO. DEP'T OF REV., *STANDARD SUMMARY OF MOTOR VEHICLE TRAFFIC ACCIDENTS* (1979).

9. See Karwacki & Baker, *Children in Motor Vehicles: Never Too Young to Die*, 242 *J. AM. MED. ASSOC.* 2848 (1979); Alter, *Unsafe at Any Age? Children and Car Safety*, *PARENT'S MAGAZINE* Feb. 1979, reprinted in *INSURANCE INSTITUTE FOR HIGHWAY SAFETY (IIHS) STATUS REPORT 8* (Mar. 19, 1979).

10. Karwacki & Baker, *supra* note 9.

11. Alter, *supra* note 9, at 9.

and the forward-moving weight of the person holding him.¹⁸ This same crushing action can occur when a seatbelt is fastened around both the adult and the child on his lap. In a collision, the weight of the adult is forced against the child penned in the seatbelt with him, and the probability of serious abdominal injury to the child is greatly increased.¹⁹

The final variation of on-lap travel is a seatbelted adult holding an unrestrained child on his lap. In this position, the adult does not crush the child in an accident, but is powerless in most cases to prevent other harm to the child, for even the smallest infant weighs the equivalent of several hundred pounds at the instant of impact, and is likely to be torn from even the strongest of human arms.²⁰ In short, holding a child can never be an adequate safety alternative to the use of an appropriate restraint device.

The need for CRDs will not be obviated by the automatic restraint systems which federal legislation will require on all new cars by 1984.²¹ While manufacturers will be able to satisfy the requirements by providing either automatic seatbelts or airbags in their vehicles, neither option is fully adequate for child safety needs. Automatic seatbelts designed for average sized adults will not offer even minimal protection to infants. Airbags, on the other hand, will diminish the threat to children riding in the front seat, but present legislation does not require airbag installation for the protection of rear seat passengers, a class composed largely of children.²² Furthermore, airbags will provide little protection in side- and rear-impact collisions and rollovers.²³

Finally, unlike a CRD, an airbag would not play a role in preventing the occurrence of an accident. A study conducted at the University of North Carolina concluded that more than two hundred

18. *Id.* at 3.

19. *Id.* at 4.

20. The force that a child will exert upon impact can be roughly calculated by multiplying the child's weight and the vehicle's speed together. For instance, a fifteen pound infant will exert a force of three hundred pounds in a twenty mile per hour collision. See NHTSA, *An Evaluation of Adult Clasping Strength for Restraining Lap-held Infants*, discussed in NHTSA STAFF REPORT 6 (Mar. 19, 1979).

21. Automatic restraint systems are being phased in over several years with large cars being targeted first. All new cars will have to meet the requirement by the 1984 model year. 49 C.F.R. § 571.208 (1979).

22. One survey found that about seventy percent of the nearly 9000 children observed in motor vehicles were riding in the back seat. Riesinger & Williams, *Evaluation of Programs Designed to Increase the Protection of Children in Cars*, 62 PEDIATRICS 280, 286 (1978).

23. See Comment, *Occupant Protection in Automobiles*, 27 AM. U. L. REV. 635 (1978) for a thorough discussion of automatic restraint systems.

of that state's traffic accidents in 1977 were caused by unrestrained children who had distracted the driver of the vehicle in which they were riding. Children who fell off the seat or interfered with the operation of the motor vehicle were, in many instances, found to have been the direct cause of a crash.²⁴

All of the problems discussed above would be greatly alleviated by the use of CRDs. Experts in the field generally agree that the number of children killed and injured in automobile accidents would be minimized—some claim by as much as ninety percent—if CRDs were consistently and properly used.²⁵ Yet recent data shows that only seven percent of the children riding on the nation's roads are adequately secured for protection against possible harm.²⁶ Parents who wear their own seatbelts while transporting their children have been found to use child restraints more than any other group. Yet even in that situation, only twenty-two percent of the passenger children were secured by a CRD or seatbelt.²⁷ The great number of children harmed, coupled with the low voluntary usage rate of adequate restraints, has led to a growing interest in a statutory solution to this public health problem.

THE STATUTES

The field of automobile safety is one which legislators enter with trepidation. Traditional public hostility toward regulation of individual driving habits has led to a reluctance to impose safety requirements on individual drivers. Public sentiment was so strong against the federally mandated seatbelt-ignition interlock system,²⁸ for example, that Congress was forced to repeal the measure less than a

24. This study was summarized in MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* (Feb. 1980).

25. A study of crashes done in Washington state by Dr. Robert G. Scherz, for example, concludes that "[t]he difference between deaths and disabling injuries between the restrained and unrestrained pre-school children was highly significant. If all of the children in the 0-5 age group had been restrained at the time of the accident, then the . . . deaths may have been reduced from 124 to 13 (down 90%) and disabling injuries reduced from 716 to 238."

Altes, *supra* note 9, at 10.

The reduction in injuries in the Washington study is about 33%, a rate very similar to that obtained by analyzing accidents involving children under fifteen years of age in North Carolina. The North Carolina study found that "[u]se of restraints reduced the injury rate by 39% in the front seat and by 31% in back." Williams & Zador, *supra* note 16, at 10.

26. Williams, *supra* note 3.

27. *Id.* at 1315.

28. The seatbelt-ignition interlock system prevented a vehicle's engine from being started until seatbelts were buckled. An annoying buzzer sounded if seatbelts were unfastened while the seat was occupied.

year after it went into effect.²⁹ This public hostility explains the absence of mandatory seatbelt-use laws in any of the states.

The somewhat warmer reception given to CRD-use laws in state legislatures is undoubtedly due to the age of those who would benefit from such legislation. Because infants and young children are completely dependent on others for their well-being, state law has historically provided for their health and safety when those charged with their care fail adequately to do so.³⁰ The effectiveness and practicality of extending state protection to children as automobile passengers will be evaluated by examining the various CRD statutes which have been proposed.

The Existing Laws

Two states have succeeded in passing CRD legislation: Tennessee³¹ and Rhode Island.³² The pioneering Tennessee statute, which went into effect at the beginning of 1978, requires that all children under the age of four be secured in a CRD when riding in a vehicle owned and operated by their parents.³³ Exemptions are allowed for children riding on other passengers' laps, and for children riding in recreational vans and certain trucks.³⁴ The penalty for breaking this law is a moderate fine; and proof of the violation cannot be raised in civil suits for negligence.³⁵

29. 15 U.S.C. § 1410(b)(1)(B) (1976).

30. See text accompanying notes 83-92 *infra*.

31. TENN. CODE ANN. § 55-9-214(b) (1980).

32. R. I. GEN. LAWS § 31-22-22 (1980).

33. TENN. CODE ANN. § 55-9-214 (1980):

(b) Effective January 1, 1978, every parent or legal guardian of a child under the age of four (4) years residing in this state shall be responsible, when transporting his child in a motor vehicle owned by that parent or guardian operated on the roadways, streets or highways of this state, for providing for the protection of his child and properly using a child passenger restraint system meeting federal motor vehicle safety standards, or assuring that such child is held in the arms of an older person riding as a passenger in the motor vehicle. Provided that the term "motor vehicle" as used in this paragraph shall not apply to recreational vehicles of the truck or van type. Provided further that the term "motor vehicle" as used in this paragraph shall not apply to trucks having a tonnage rating of one (1) ton or more. Provided that in no event shall failure to wear a child passenger restraint system be considered as contributory negligence, nor shall such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

(c) Violation of any provision of this section is hereby declared a misdemeanor and anyone convicted of any such violation shall be fined . . . not less than two dollars (\$2.00) nor more than ten dollars (\$10.00) for each violation of subsection (b) of this section.

34. *Id.*

35. *Id.*

From a safety standpoint, the most controversial provision of this law is the so-called "babes-in-arms" exemption.³⁶ Holding a child in a passenger's arms has been shown to be an entirely inadequate substitute for the use of a restraint,³⁷ and there is hope among the original sponsors of the Tennessee law that this exemption will be repealed at some future date.³⁸ Unfortunately, similar provisions were included in bills introduced in four other states.³⁹

has been
repealed

A second aspect of the Tennessee law which may lessen its effectiveness is that it applies only to parents who are transporting their own children. Although the majority of children less than four years old are likely to be driven by a parent whenever they ride in a vehicle, the provision may nevertheless lead to enforcement problems. Since most children carry no identification, the temptation for any parent or guardian to simply assert that he is, for example, the child's uncle or babysitter when stopped for a possible violation is evident. A police officer faced with such a statement would in many cases lack probable cause to go forward and issue a citation.⁴⁰

Tennessee's final exempting provision, which excludes trucks and vans from the law's application, was probably viewed as a practical necessity because of the limited seating which is available in those vehicles. The addition of a further provision requiring that restraints be used if seating were available would strengthen the protective purpose of the law while still acknowledging those practical concerns.

A CRD-use law with quite different provisions went into effect in Rhode Island in July of 1980.⁴¹ Unlike the Tennessee statute, this

36. The exemption allowed for children who ride on another passenger's lap was added as an amendment by one of the bill's opponents. He argued that the happiest day of his daughter's life was when she brought her new baby home from the hospital in her arms and that the law would deny this pleasure to other new mothers. It was feared that the law would not be passed if the exemption were removed. R. Sanders, *Effective Interaction With State Legislatures* (paper presented at the Child Passenger Safety Conference, U. of Tenn. Transp. Center, Mar. 10, 1978, available from Action for Child Transportation Safety).

See text accompanying notes 17-20 *supra*.

Sanders, *supra* note 36.

39. Similar language was included in bills introduced in Illinois, Louisiana, New Hampshire, and New Jersey, none of which passed. ACTS, *supra* note 5.

40. Probable cause exists when the facts and circumstances within the officer's knowledge are sufficient in themselves to warrant a belief by a man of reasonable caution that an offense has been committed. *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949). More than mere suspicion is required. *Henry v. United States*, 361 U.S. 98, 101 (1959).

41. R. I. GEN. LAWS § 31-22-22 (1980):

(Child Passenger Restraint Systems. Any person transporting a child three (3) years of age or under in the front seat of a motor vehicle operated on the roadways, streets or highways of this state, will provide for the protection of the child and

law applies to all persons driving in Rhode Island and therefore avoids the potential enforcement problems posed by a "parents-only" provision. The unique feature of Rhode Island's law is that it requires CRD use by children under the age of four only while they are riding in the front seat of a vehicle.⁴³ The law thus addresses the most hazardous practices of unrestrained, or on-lap, front seat travel, but fails to provide protection for the majority of child passengers: those who ride in the back seat.⁴⁴ A more stringent bill, to be introduced in the South Dakota legislature,⁴⁵ would provide the added protection. That bill would require that children ride in the back seat *and* be secured in the vehicle's available seatbelts whenever possible. Should it be necessary for a child to be transported in the front seat, a restraint device appropriate for the child's age and size, such as is required in Rhode Island, would have to be used.

Pending Legislation: Some Further Options

The majority of CRD legislation introduced in other states is similar to the Tennessee law, but without the "babes-in-arms" exemption.⁴⁶ These statutes typically would require that a parent who is driving his own vehicle must have his young children secured in CRDs. The protected class of children is most often limited to those younger than four years, or alternatively, to those who weigh less than forty pounds.⁴⁶ These age and weight limitations provide convenient lines for the legislators to draw, since they encompass the class

properly use a child passenger restraint system approved by the United States Department of Transportation under Federal Standard 213, provided that in no event [shall] failure to wear a child passenger restraint system be considered as contributory negligence, nor [shall] such failure to wear said child passenger restraint system be admissible as evidence in the trial of any civil action.

Any person deemed to be in violation of this section shall be issued a citation with a fine of fifteen (\$15.00) dollars and it will be recorded on said person's driving record within the rules and regulations governing Section 31-43.

42. *Id.*

43. While one study found that a "back seat location reduced the injury rate by 28% among unrestrained child passengers and by 18% among restrained children," it further concluded that restrained children are safer than those who are unrestrained, regardless of their position in a vehicle. Williams & Zador, *supra* note 16, at 71.

44. The South Dakota proposal is described in ACTS, *supra* note 5.

45. Arizona H.B. 2418 (defeated in committee); Colorado H.B. 1440 (defeated in the House); Michigan substitute for H.B. 5327; Minnesota H.B. 156 and S.B. 274; Nebraska Leg. B. 79; North Carolina H.B. 1018 (defeated); North Dakota H.B. 1490 (defeated); Oregon H.B. 2667 (defeated in the House); Washington H.B. 199 and S.B. 2895 (withdrawn by sponsors); Wisconsin Asmb. B. 747. The sponsors of many of the defeated bills plan to reintroduce their respective proposals. ACTS, *supra* note 5.

46. *Id.*

of passengers for whom CRDs are typically designed.⁴⁷ Also, by drafting legislation concerned with CRD use only, legislators can minimize the political and public opposition which would accompany a more far-reaching restraint-use law.

The four year age limit is not universal, however. California has a bill pending which would encourage the use of appropriate restraint systems for all children under the age of sixteen.⁴⁸ This bill is designed primarily to educate the public and would allow law enforcement officers to issue verbal hazard warnings, but not citations, to non-complying motorists. Other age variations are found in the South Dakota legislation mentioned above,⁴⁹ which would apply to children up to thirteen years of age, and in a Maryland bill which would require restraint use for the protection of children who are less than eight.⁵⁰

Proposed CRD laws also vary in their determination of who will be responsible for complying with their respective terms. As noted, the majority would hold only parents or legal guardians liable for the failure to use restraint devices. Statutes with broader coverage usually are written to apply to all resident drivers,⁵¹ or to the drivers of all vehicles which are registered in the enacting state.⁵² One novel variation is the New York proposal,⁵³ which would impose a penalty on both the driver of a vehicle in which an unrestrained child was riding, and the vehicle owner who knowingly permitted a child to be transported in that manner.

Other provisions which may be incorporated into some proposed statutes include a ban on carrying passengers in the cargo areas of hatchbacks, station wagons, and pickup trucks,⁵⁴ and on the practice of buckling one seatbelt around two people.⁵⁵ One exemption under consideration in some states allows children with medical problems

47. See note 2 *supra*.

48. California Asmb. B. 1198, ACTS, *supra* note 5.

49. See note 44 and accompanying text *supra*.

50. Maryland H.B. 33, ACTS, *supra* note 5.

51. See, e.g., Maryland H.B. 33, ACTS, *supra* note 5.

52. See, e.g., Colorado H.B. 1440, ACTS, *supra* note 5.

53. New York S.B. 2623, ACTS, *supra* note 5.

54. See, e.g., Massachusetts S.B. 1269 which would prohibit the carrying of passengers in open trucks. ACTS, *supra* note 5. This particular provision has been enacted by city ordinance in Ogden, Utah. This five year old law forbids persons from riding in any portion of a motor vehicle not designed or intended for use by passengers. It further makes it illegal to operate a motor vehicle while any person is standing on the vehicle's seats. MICHIGAN ASSOCIATION FOR TRAFFIC SAFETY, FORMATS, *Child Passenger Safety News* 4 (Apr. 1980).

55. See, e.g., Maryland H.B. 33; Washington H.B. 199 and S.B. 2895, ACTS, *supra* note 5.

which may make the use of a CRD possible, to travel without being secured in such a device. To prevent possible abuse of this provision, a doctor's certificate of exemption would be required by some statutes.⁵⁷

In combining any of these provisions into a workable child restraint law, the interest in maximizing safety should be balanced against considerations of fairness and practicality. The statutes must be flexible. For example, a large family that can afford only a small car with inadequate seating for all family members should not be subject to a penalty each time they venture onto the public roads. A law which requires the use of CRDs for available seating and which further requires all unrestrained children to ride in the back seat might best accommodate both safety concerns and tight family budgets.

Flexibility and compromise is also necessary in striking a reasonable balance between the strictness of a restraint law's provisions and the determination of who will be subject to the law's terms. For example, a requirement that CRDs be obtained and used would be less controversial under a law that applies only to parents and legal guardians, rather than to all in-state drivers. Conversely, statutes which apply to all drivers might require only that the vehicle's available seatbelts be used for the protection of children. Under a law of the latter type, parents could still be encouraged to obtain CRDs by other means, such as by allowing a tax credit as an incentive for their purchase. The tax credit incentive is presently under consideration in some states.⁵⁸

Costs and Enforcement

The burden which would be imposed on members of the public by requiring them to obtain CRDs should not be viewed as an insurmountable problem. The cost of these devices, generally between twenty and forty-five dollars,⁵⁹ is not unreasonable when it is consid-

56. Members of Action for Child Transportation Safety find exemptions for "physical or medical" reasons unacceptable and argue that children unable to sit in the typical car seat style CRD — because of a bulky cast or perhaps some birth defect — are nevertheless entitled to protection. They suggest larger shield or harness type restraints as alternatives. ACTS, *supra* note 5. See also L. Schneider, J. Melvin, C.E. Cooney, *Impact Sled Test Evaluation of Restraint Systems Used in Transportation of Handicapped Children* (paper presented to the Society of Automotive Engineers, Detroit 1979) discussed in IIHS STATUS REPORT 5 (Mar. 19, 1979).

57. See, e.g., Colorado H.B. 1440; Massachusetts S.B. 1097, ACTS, *supra* note 5.

58. See, e.g., Michigan S.B. 394, ACTS, *supra* note 5.

59. See note 2 *supra*.

ered that a CRD provides up to four years of protection and that each CRD can be re-used by several children. The price of the device could simply be considered, along with license plates, safety inspections, and insurance, as one of the costs of owning and operating a motor vehicle.

On the other hand, CRD legislation would probably receive greater public acceptance if it were accompanied by programs designed to minimize the cost of compliance. Legislative efforts toward this end could include the tax credit mentioned above and, possibly, Medicaid coverage of CRD purchases for the poor. It has been suggested that Medicaid payments for CRDs could be justified under the same theory that applies to childhood vaccinations—that such devices constitute effective preventive medicine.⁶⁰

As an alternative to government help, many innovative private programs offer means of keeping compliance costs down. Examples include CRD rental programs which have been successfully established in several parts of the country, as well as programs which offer used restraint devices for sale at minimal cost.⁶¹ A different approach has been implemented by one insurance company which provides CRDs to its insured families without charge, thereby spreading the cost of the devices among all of its policy holders.⁶² Thus, several possibilities exist in both the government and private sectors which could minimize the financial burden imposed by CRD-use laws.

A final concern about the practicality of these statutes centers on the enforcement problems that they may present, although these problems appear to be no greater than those which accompany many other traffic regulations. As in the case of driving without a valid license, which is against the law⁶³ but usually goes undetected, CRD violations might often be found only after the driver of the car is stopped for another infraction. More likely, an officer would simply

60. Action for Child Transportation Safety is among those groups exploring the possibility of Medicaid payments for CRD purchases. Allowing such payments was urged by the safety coordinator of a pediatric preventive medicine program in testimony before the House Commerce Subcommittee on Oversight and Investigation. IHS STATUS REPORT 7 (May 17, 1979).

61. Several such programs are described in *Child Passenger Safety News*, *supra* note 24.

62. Robert E. Vanderbeck, president of the League General Insurance Companies of Southfield, Michigan told the House Commerce Subcommittee on Oversight and Investigation that "[t]he program . . . makes economic sense and we believe will be cost effective — it will pay for itself through reduced claims." IHS STATUS REPORT 6 (May 17, 1979).

63. See, e.g., COLO. REV. STAT. § 42-2-101 (1973).

notice a child standing on the seat of a vehicle or riding on another person's lap and then pull that vehicle over in order to issue a ticket to the driver. Children traveling in dangerous positions are often visible to other motorists on the road and no extraordinary surveillance techniques would be needed by police charged with halting that practice.

THE POLICE POWER

Each state possesses authority to pass laws which protect the health, safety, or welfare of the public.⁶⁴ This authority is an inherent aspect of the state's sovereignty and is known as its police power.⁶⁵ In determining the validity of any legislation passed pursuant to this power, courts typically employ a two-step analysis. Such a law will be upheld if it furthers a legitimate state objective and if the means employed to attain it are reasonably related to that end.⁶⁶

A Legitimate Objective

An appropriate state objective has been held to be any one which promotes or protects the public welfare.⁶⁷ This definition is elastic enough to encompass the wide variety of laws which are enacted in response to changing public needs. The shift from an agrarian to an industrial society, for example, created the need for regulations such as workmen's safety, pure food, and urban housing and sanitation laws.⁶⁸ More recently, the public welfare concept has been expanded to include rent control laws,⁶⁹ anti-deceptive credit practice laws,⁷⁰ and anti-billboard and landmark preservation statutes

64. See *Berman v. Parker*, 348 U.S. 26, 32 (1954); *East New York Bank v. Hahn*, 326 U.S. 230, 232 (1945); *Nebbia v. New York*, 291 U.S. 502, 523 (1934); *License Cases*, 46 U.S. (5 How.) 504, 583 (1847).

65. The term "police power" appears to have been first used by Justice Marshall in *Brown v. Maryland*, 25 U.S. (12 Wh.) 419, 433 (1827). It is a residuary power, one which was retained by the states after certain enumerated powers had been transferred to the new federal government.

66. "To justify the state in . . . interposing its authority in behalf of the public, it must appear, first, that the interests of the public . . . require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." *Goldblatt v. Hempstead*, 369 U.S. 590, 594-95 (1962) quoting *Lawton v. Steele*, 152 U.S. 133, 137 (1894).

67. See, e.g., *In re Interrogatories of the Governor*, 97 Conn. 587, 595, 52 P.2d 663, 667 (1935) which notes that this power is as "broad as the public welfare."

68. See *Morissette v. United States*, 342 U.S. 246, 253-54 (1952).

69. *Hutton Park Gardens v. West Orange Town Council*, 68 N.J. 143, 350 A.2d 1 (1975).

70. *Birkenfield v. City of Berkeley*, 17 Cal.3d 129, 550 P.2d 1001, 130 Cal. Rptr. 465 (1976).

designed to protect the aesthetic features of an area.⁷¹

Regulations such as these can be viewed as an attempt to redress an unequal balance of power. When members of the public are faced with some threat with which they cannot deal on an individual level, the constitutional niche known as the police power has enabled the state to attempt to protect their well-being by regulating the conduct of those who do have the power and ability to mitigate the potential harm. Thus, the acts of the employer, the manufacturer, and the polluter may be regulated for the benefit of the worker, the consumer, and the public at large.

The CRD statutes fit easily into this pattern. In passing these laws, states are seeking to protect a particularly powerless class of people by regulating the behavior of those in the best position to minimize the risk to that class. Insofar as they seek to promote safety, these statutes are at the core of the police power doctrine.⁷²

Highway Regulations. Specifically, CRD legislation is addressed to the problem of highway safety, an area in which the states have extensively exercised their rule-making powers.⁷³ Since the arrival of the automobile, both drivers and vehicles have been subjected to a variety of statutory requirements designed to protect the driving and riding public. In evaluating the validity of CRD laws as highway safety regulations, a useful analogy can be drawn from the motorcycle helmet laws which, like CRD laws, mandated the use of specialized equipment.

The controversial helmet laws, which swept the country approximately a decade ago, were sustained as valid police power legislation by the overwhelming majority of courts which faced the issue.⁷⁴ The Colorado Supreme Court's discussion in the case of *Love v. Bell*⁷⁵ is typical of many of these opinions. As with most of the courts across the country which addressed the problem, the Colorado

71. *Penn Central Transp. Co. v. New York*, 438 U.S. 104, 129 (1978); *John Donnelly & Sons v. Mallar*, 433 F. Supp. 1272 (S.D. Me. 1978).

72. *Kelley v. Johnson*, 425 U.S. 238, 247 (1976).

73. *South Carolina Highway Dep't v. Barnwell Bros.*, 303 U.S. 177 (1937); *Bible v. Navajo Freight Lines*, 359 U.S. 520 (1959); *People v. Brown*, 174 Colo. 513, 465 P.2d 500 (1971); *Zuba v. Motor Vehicle Div.*, 183 Colo. 335, 516 P.2d 634 (1973).

74. Helmet statutes were struck down in only two of the thirty-three states in which they were challenged: Illinois, *People v. Fries*, 42 Ill.2d 446, 250 N.E.2d 149 (1969) and Michigan, *American Motorcycle Association v. Davids*, 11 Mich. App. 351, 158 N.W.2d 72 (1968). The Michigan Supreme Court upheld a very similar municipal law several years later in *City of Adrian v. Poucher*, 398 Mich. 316, 247 N.W.2d 798 (1976). The helmet cases are collected in 32 A.L.R.3d 1270.

75. 171 Colo. 27, 465 P.2d 118 (1970).

court studiously avoided the most salient issue which grew out of the helmet legislation, the issue of whether mandatory self-protection and of regulating a person for his own good was a valid state objective.⁷⁶ Instead, the court sought to find some benefit which the helmet statutes provided to other highway users in order to sustain the law. It found one such benefit in the economic area, noting the "laws may be passed within the police power to protect the public from financial loss."⁷⁷ In drawing upon a record which showed a higher frequency of serious head injuries and deaths among bare-headed riders than among those who wore helmets, the court ruled that the law protected the public's financial health since it prevented motorists involved in accidents with motorcycles "from being required to respond in damages more heavily than might be the case if the motorcycle driver and passenger were wearing helmets."⁷⁸ Other courts also employed the "financial health" argument and cited increased public medical and welfare costs which would have to be paid to disabled cyclists, as well as higher insurance rates.⁷⁹

Most of the helmet law opinions did not rest solely on this economic protection analysis, but also sought some connection between helmets and the public's physical well-being. Many courts found such a connection in the "flying debris" theory, which is based upon the hypothesis that an unprotected cyclist might be struck in the head by loose gravel or other objects thrown up by passing vehicles, thereby causing the cyclist to lose control and possibly cause an accident.⁸⁰ The courts were unswayed by the argument that such a chain of events had never been known to have occurred.

If CRDs are substituted for helmets in the analysis above, the reasoning employed in the typical helmet case not only remains valid but is, in fact, strengthened. As with helmets, CRDs offer the potential for mitigating physical, and therefore, financial damages resulting from highway accidents. More importantly, a CRD law would not leave a court having to strain for a "loose gravel" rationale in

76. Few courts were willing to ground their opinions on the self-protecting aspect of helmet legislation. Two cases which did discuss this issue were *People v. Carmichael*, 56 Misc. 2d 388, 288 N.Y.S.2d 931 (1968) (state has an interest in preserving strong, healthy citizens) and *State v. Melo*, 103 N.J. Super. 353, 247 A.2d 176 (1968) (state has an interest in protecting people from their own carelessness).

77. 171 Colo. at 33, 465 P.2d at 121.

78. 171 Colo. at 33, 465 P.2d at 121-22.

79. See, e.g., *State v. Anderson*, 3 N.C. App. 124, 164 S.E.2d 44 (1968), *aff'd*, 275 N.C. 168, 166 S.E.2d 49 (1969).

80. See 171 Colo. at 33-34, 465 P.2d at 122 and the cases cited therein.

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searching for a connection between the regulation and the physical safety of non-regulated members of the public. In contrast to the helmet law discussions on this point, the potential beneficiaries of CRD legislation are not hypothetical; their existence is clearly documented in the "0-4 years" column of each state's accident reports.

The mandatory helmet statutes are perhaps on the periphery of valid police legislation. They raise the difficult problem of the extent to which an individual can be regulated for his own good. Shifting political attitudes on just this point have resulted in the repeal of helmet laws in twenty-eight of the forty-nine states which originally enacted them.⁸¹ The notion of protecting a person against himself is not a factor in CRD legislation, however, for in requiring the use of child restraints the state is attempting to protect those too young to make rational choices in their own best interest. In this vein, it is interesting to note that of those states which repealed helmet laws, nearly two-thirds reenacted such legislation applicable only to minors.⁸²

Parens Patriae. The state's interest in the well-being of its youth is of ancient origin. Plato believed that the good of the state as a whole justified the regulation of child-rearing practices.⁸³ His pupil, Aristotle, differed on this point, suggesting that regulations were necessary only to protect the interests of the individual child.⁸⁴ These two theories have survived to the present and are often meshed with a third concern, an interest in preserving the family structure as the basic unit in society.⁸⁵

81. California is the only state never to have enacted helmet legislation. A summary of the recent status of helmet laws in this country, including dates of enactment, repeal and pending legislation is compiled in IIHS STATUS REPORT 5-8 (Apr. 30, 1979).

82. *Id.*

83. PLATO, REPUBLIC Bk. V (E. Hamilton & H. Cairns, eds., THE COLLECTED DIALOGUES OF PLATO 1961, at 698-702), mentioned in *Meyer v. Nebraska*, 262 U.S. 390, 401-2 (1923).

84. ARISTOTLE, POLITICS 32-33 discussed in Kleinfeld, *The Balance of Power Among Infants, Their Parents and the State*, 4 FAM. L. Q. 411-12 (1970).

85. See text accompanying notes 105-08, *infra*. An example of the interweaving of these ideals is the preamble to the Colorado Children's Code. COLO. REV. STAT. § 19-1-102 (1973): The general assembly declares that the purposes of this title are:

- (a) To secure for each child subject to these provisions such care and guidance, preferably in his own home, as will best serve his welfare and the interests of society;
- (b) To preserve and strengthen family ties whenever possible, including improvement of home environment;
- (c) To remove a child from the custody of his parents only when his welfare and safety or the protection of the public would otherwise be endangered; and
- (d) To secure for any child removed from the custody of his parents the necessary

Reasonable Means

The legislature is given wide discretion in implementing its goals, and a presumption of validity attaches to each statute it enacts.⁹³ In order to rebut this presumption, an opponent must prove that a law, when applied, violates some provision of the state or federal constitution,⁹⁴ or that the law does not reasonably relate to the state's objective in passing it.⁹⁵ The question of its "reasonableness" is, in fact, the central issue in any challenge to a police power regulation.⁹⁶

Most statutes promulgated under the police power seek to protect public welfare by regulating conduct in the manufacturing and professional sectors. Individual behavior may also legitimately be regulated so long as the burden imposed does not infringe on a fundamental right.⁹⁷ A mere showing "that in its operation a police measure may increase their labor, decrease the value of their property or otherwise inconvenience individuals" will not suffice to render a law void.⁹⁸ Securing a child in a CRD before each automobile trip may at times be inconvenient, but the question of concern to a reviewing court would be whether a law mandating that action infringes upon a fundamental right.

An opponent of CRD legislation could claim that any one of several rights are infringed upon by such a law: the right to parental autonomy⁹⁹ and privacy;¹⁰⁰ the right to equal protection under the

93. *Kelly v. Johnson*, 425 U.S. 238 (1976); *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952); *Prince v. Massachusetts*, 321 U.S. 158, 168-70 (1944).

94. *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421 (1952); *Jackson v. Massachusetts*, 197 U.S. 11, 25 (1905); *City of El Paso v. Simmons*, 379 U.S. 497, 508-09, *rehearing denied*, 380 U.S. 926 (1964).

95. *See Paris Adult Theatre I v. Slayton*, 413 U.S. 49 (1973); *NAACP v. Alabama*, 377 U.S. 288 (1964); *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962).

96. "The legislature may devise *reasonable* schemes for regulations of activities which affect the health and safety of the public." *People ex rel. Dunbar v. Kogul*, 179 Colo. 394, 399, 501 P.2d 732, 740 (1972) (emphasis in original).

97. Fundamental rights are those rights "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

98. *In re Interrogatories of the Governor*, 97 Colo. 587, 596, 32 P.2d 663, 667 (1935). One example of a law which puts the burden of compliance on individuals is COLO. REV. STAT. § 73-31-105 (1973 & Supp. 1979). This law makes it the duty of a boat owner or operator — not of the boat manufacturer — to provide an adequate life preserver for each person on board.

99. Parental rights are afforded constitutional protection against unwarranted or unreasonable interference by the state. *Planned Parenthood v. Danforth*, 428 U.S. 52, 73 (1976); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Meyer v. Nebraska*, 262 U.S. 390 (1923). *See also Smith v. Organization of Foster Families*, 431 U.S. 816, 842-44 (1977); *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

The Platonic theory was mentioned more often in early cases dealing with child-related legislation than it is today. For instance, in sustaining the state's compulsory schooling law, the Colorado Supreme Court in 1927 stated flatly that "[t]he state, for its own protection, may require children to be educated. This needs no citation."⁸⁶ This "good-of-the-state" approach is also reflected in statutory provisions, such as those which override parental objections to immunization whenever a community is threatened with an epidemic.⁸⁷

Statutes usually demonstrate a more Aristotelian concern for the welfare of individual children, rather than for the state as a whole. Examples are child abuse laws,⁸⁸ child labor laws,⁸⁹ and those mandating specific medical procedures to prevent blindness⁹⁰ and mental retardation⁹¹ in newborns. The "child protection" rationale is also cited frequently by state courts since the United States Supreme Court has stated that "[t]he well-being of its children is of course a subject within the State's constitutional power to regulate. . . ."⁹²

Although CRD legislation arguably benefits the state as a whole by preserving the health of future productive citizens and by reducing the number of those who might require long-term public aid because of automobile injuries, its primary purpose is to prevent needless harm from being inflicted upon young children. This latter goal is an entirely appropriate one, as has previously been shown. The question that remains is whether requiring individual drivers to obtain and use child restraints is a reasonable method of attaining that objective.

care, guidance, and discipline to assist him in becoming a responsible and productive member of society.

86. *Vollmar v. Stanley*, 81 Colo. 276, 280, 255 P. 610, 613 (1927).

87. See, e.g., COLO. REV. STAT. §§ 25-4-303 to -305 (1973 & Supp. 1978).

88. See, e.g., COLO. REV. STAT. §§ 19-10-101 to -115 (1973) which deal with reporting abuse, and COLO. REV. STAT. § 18-6-401 (1973 & Supp. 1979) describing the crime of child abuse.

89. See, e.g., COLO. REV. STAT. §§ 8-12-101 to -117 (1973 & Supp. 1979), the Colorado Youth Employment Opportunity Act of 1971, which details the types of employment that youths of various ages may engage in.

90. See, e.g., COLO. REV. STAT. §§ 25-4-303 to -305 (1973), requiring that the eyes of all newborns be treated with a prophylaxis within one hour of birth.

91. See, e.g., COLO. REV. STAT. § 25-4-801 (1973): "The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic defects in order to prevent mental retardation resulting therefrom. . . ."

92. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

law;¹⁰¹ and the right to free and unrestricted travel between the states.¹⁰² The last claim can be quickly dispensed with by once again analogizing to the helmet cases, which consistently held that the right to travel was not unreasonably restricted by requiring motorcyclists to obtain and use a relatively inexpensive piece of safety equipment.¹⁰³ This right was not infringed even though the helmet statutes were written to apply to all, and not just resident, motorcyclists travelling on the enacting state's roads.¹⁰⁴ The CRD laws are not as broad as the helmet statutes since they typically apply only to resident parents or to those driving vehicles registered in the enacting state. Non-resident tourists therefore would not be subject to the law's provisions.

Parental Autonomy and Privacy. The allocation of power between parent and state in making decisions concerning the best interests of the child is always a sensitive issue. Supreme Court cases have "consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society."¹⁰⁵ Indeed, the integrity of the family unit has found protection in the Due Process¹⁰⁶ and Equal Protection¹⁰⁷ Clauses of the fourteenth amendment and in the ninth amendment.¹⁰⁸

Despite this high regard for the family unit, laws which restrict parental autonomy in order to further the welfare of children are usually sustained. Such laws are struck down only if they are arbitrary and capricious. For example, a law attempting to promote good citizenship by banning the teaching of foreign languages in elementary schools was struck down in *Meyer v. Nebraska* on these grounds.¹⁰⁹ Similarly, if the state's objective in passing the law is not sufficiently compelling to overcome a parental objection based on a

100. Fundamental rights include the "right of personal privacy, or a guarantee of certain areas or zones of privacy." *Roe v. Wade*, 410 U.S. 113, 152 (1973). The source of this right is not specifically defined, but is derived from the first, third, fourth, fifth, and ninth amendments, the penumbra of the Bill of Rights, and the guarantee of liberty in the fourteenth amendment. *Griswold v. Connecticut*, 381 U.S. 479, 481-85 (1965).

101. U.S. CONST. amend. XIV.

102. The states may not enact rules and regulations which unreasonably burden the right to travel freely between the states. *Shapiro v. Thompson*, 394 U.S. 618 (1969).

103. See, e.g., *Love v. Bell*, 171 Colo. 27, 36, 465 P.2d 118, 123 (1970).

104. See, e.g., *CULO. REV. STAT. § 42-4-231* (1973) (repealed 1977).

105. *Ginsberg v. New York*, 390 U.S. 629, 639 (1968).

106. *Meyer v. Nebraska*, 267 U.S. 390, 399 (1923).

107. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

108. *Griswold v. Connecticut*, 381 U.S. 479, 496 (1965) (Goldberg, J., concurring).

109. 242 U.S. 390 (1923).

freedom of religion claim it will be held void.¹¹⁰

CRD statutes could not be invalidated under either theory. These laws are narrowly drawn, requiring the use of an effective, readily available device designed specifically for the purpose of protecting children in motor vehicles, and are therefore not vulnerable to charges of arbitrariness or caprice. Nor could these laws, which are essentially traffic safety regulations, conceivably be subject to any objections based on religious grounds. In short, the statement that it is "fundamental . . . that parental rights must yield to the interest and welfare of the child"¹¹¹ would appear to be particularly uncontroversial when applied to the issue of highway safety.

Parental rights are based to a large extent on the broader claim of a right to privacy—the "right to be let alone."¹¹² This broader right itself is not unreasonably infringed upon by traffic regulations, as aptly pointed out by the Wisconsin Supreme Court:

There is no place where any such right to be let alone would be less assertible than on a modern highway. . . . When one ventures onto such a highway, he must be expected and required to conform to public safety regulations and controls, including some that would neither have been necessary nor reasonable in the era of horse-drawn vehicles.¹¹³

Equal Protection. CRD statutes distinguish between children less than four years old and all other highway users. If a court were convinced that no rational basis existed for this distinction, it could void such legislation on the ground that it denies the public equal protection under the law. A statutory discrimination will not be invalidated, however, if any state of facts reasonably can be conceived to justify it.¹¹⁴

When reviewing CRD legislation, a court could rely on several supporting factors to sustain the legislature's classification. A court could find that members of the statutorily created class of children four years of age or younger face a greater risk of injury or death than do others in accident situations, are incapable of making ra-

110. *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

111. *Stjernholm v. Mazaheri*, 180 Colo. 352, 356, 506 P.2d 155, 157 (1973). See also *Fulton v. Martensen*, 129 Colo. 125, 267 P.2d 658 (1954); *Graham v. Francis*, 83 Colo. 346, 265 P. 690 (1928).

112. *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

113. *Blaenius v. Karns*, 42 Wis. 2d 42, 55, 165 N.W.2d 377, 384 (1969), appeal dismissed, 395 U.S. 709 (1969).

114. *Dandridge v. Williams*, 397 U.S. 471, 485 (1970), rehearing denied, 398 U.S. 914 (1970).

tional choices to further their self-preservation, and are not afforded the same degree of protection by existing safety belts as are older passengers for whom such belts are designed.¹¹⁵ Furthermore, although all legislatively imposed age restrictions are arbitrary to some extent, the class delineated by CRD legislation is not unreasonable since it corresponds to that class for which CRDs are designed and manufactured.¹¹⁶ These factors could support a finding that a state of facts sufficient to justify the statutory distinction exists.

Finally, it should be noted that although all automobile passengers could benefit by mandatory seatbelt laws, the fact that such laws have not been enacted is insufficient to void CRD laws under the Equal Protection Clause. A law will not be invalidated for violating that Clause merely because the legislature has not "comprehensively remedied all problems at once—it is entitled to proceed one step at a time."¹¹⁷

In sum, CRD legislation is valid under both the "ends" and the "means" prongs of the police powers analysis. The state is operating in traditional areas when it seeks further highway and child safety, and no fundamental rights are threatened when the state mandates the use of appropriate equipment in attempting to attain that safety objective.

CIVIL PROCEEDINGS

Aside from the constitutional issues, the legal ramifications which could attend CRD legislation in certain civil cases remain to be examined.¹¹⁸ Although the only two CRD laws currently in force expressly provide that a breach of their respective terms may not be

115. See text accompanying notes 9-25 *supra*.

116. See note 2 *supra*.

117. *Bushnell v. Sapp*, 194 Colo. 273, 280, 571 P.2d 1100, 1104 (1977).

118. CRD statutes could also have an impact on certain criminal proceedings, particularly vehicular homicide and vehicular assault cases. Drunk driving typically is a misdemeanor, but if death to another results, it may be filed as vehicular homicide, a felony. If a drunk driver collides with a vehicle in which an unsecured child is riding and the collision results in the death of that child, a decision to file a felony charge against the drunk driver may pose problems. In Colorado, for example, such a charge can be brought only against a person whose wrongful acts were the "sole proximate cause" of a highway death. *Goodell v. People*, 137 Colo. 307, 309, 327 P.2d 279, 280 (1958). If the child would not have died had he been properly secured in a CRD, then the failure to use that device would be another proximate cause of his death. Hence, felony charges could not be lodged against the drunk motorist.

The problem is not merely a speculative one, for prosecutors in Michigan have contacted state highway officials to seek advice on this particular issue. Telephone interview with David Shinn, Driver and Vehicle Admin., Mich. Dep't of State, July 1980.

raised in any civil action,¹¹⁹ future enacting states may pass such laws without this limitation. The discussion below evaluates the impact which a CRD statute without a "no liability" clause could have in negligence lawsuits.

Civil Liability

Negligence per se. In the absence of CRD legislation, a suit for negligence brought on behalf of a child injured in an automobile accident against the child's driver would face serious obstacles. Typically, in order to support a negligence claim, the burden is on the plaintiff to establish by a preponderance of the evidence that the defendant owed him a certain standard of care, that the standard was breached, and that the breach was a cause of the harm suffered.¹²⁰ Without a CRD law in force the plaintiff's burden on the question of "standard of care" would be substantial. He would have to assume the burden of educating and persuading six or twelve peers from the community on the practicality and wisdom of CRDs. The fact that the community as a whole has shown little inclination to use child restraints indicates the size of the plaintiff's task in proving this element of the case.

Were a CRD-use law in existence, however, the mere fact of its enactment would greatly lessen the plaintiff's burden. In passing that law, the legislature would have established in specific language the appropriate standard of care which was owed by the defendant, and that question would be removed from the jury's consideration.¹²¹ In other words, the plaintiff could show that the defendant acted negligently simply by showing that the defendant breached the statute. The only further burden the plaintiff would have in this negligence *per se* claim would be to show a causal link between the harm suffered and the negligent act or omission.¹²²

As previously shown,¹²³ proof of causation should not be difficult, particularly if the child's injuries resulted from his ejection from the vehicle, or from his collision with some portion of its inte-

119. See notes 33 and 41 *supra*.

120. See cases cited in W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 143 (4th ed. 1971).

121. See, e.g., *Martin v. Herzog*, 228 N.Y. 104, 126 N.E. 814 (1920); *Konow v. Southern Pacific*, 105 Ariz. 386, 465 P.2d 366 (1970); *Zerby v. Warren*, 297 Minn. 134, 210 N.W.2d 58 (1973); *Stahl v. Cooper*, 117 Colo. 468, 190 P.2d 891 (1948).

122. See, e.g., *Plains Transport of Kansas v. Baldwin*, 217 Kan. 2, 535 P.2d 865 (1975); *Pratt v. Thomas*, 80 Wash. 2d 117, 491 P.2d 1285 (1971); *Hamilton v. Gravinsky*, 28 Colo. App. 408, 474 P.2d 185 (1970), *modified*, 174 Colo. 206, 483 P.2d 385 (1971).

123. See text accompanying notes 10-25 *supra*.

rior. The issue of failure to use a CRD would be irrelevant in only a small percentage of negligence suits, where such factors as excessive speed or gross disproportionality in the size of the vehicles involved would have rendered any restraint system useless.¹²⁴

Joint Liability. If an unrestrained child were injured in an accident caused by a second automobile,¹²⁵ compensation could be sought from the drivers of both vehicles involved. Joint tort liability is imposed on those whose independent acts or omissions combine to cause a single injury to a third person.¹²⁶ It is the contribution to the harm suffered and not to the cause of the accident itself which determines liability in such cases. The otherwise blameless driver who failed to secure the child would share responsibility with the accident-causing driver for the injuries which the child sustained.

If a suit were brought only against the driver of the second vehicle, that defendant could bring the child's driver into the action as a third party defendant "who is or may be liable to him for all or part of the plaintiff's claim against him."¹²⁷ This impleading action can be accomplished in any state which has adopted the Uniform Contribution Among Tortfeasors Act¹²⁸ and procedural rules which facilitate joinder.¹²⁹

By bringing the child's driver into the suit the defendant at-

124. An analysis of Maryland accident reports for the years 1973 through 1977 showed that only one of the thirty-eight pre-schoolers killed during that time was properly secured in a restraint device. That fatality was the result of a collision between the child's car and a tractor trailer. Karwacki & Baker, *supra* note 9, at 2849.

125. The Maryland study found that, [n]inety percent of all children less than ten years old and half of the older children were killed in multiple vehicle crashes. The majority of the multiple vehicle crashes appeared to have been initiated by vehicles other than those in which the children were killed (for example, by vehicles that crossed into the wrong lane or failed to yield right of way). . . .
Id. at 2850.

126. Dunham v. Kampman, 37 Colo. App. 233, 547 P.2d 263 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

127. COLO. R. CIV. PRO. 14.

128. COLO. REV. STAT. §§ 13-50.5-101 to -104 (1973 & Supp. 1979). This statute reads in part:

(1) Except as otherwise provided in this article, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgement has not been recovered against all or any of them.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than his pro rata share of the common liability, and his total recovery is limited to the amount paid by him in excess of his pro rata share. No tortfeasor is compelled to make contribution beyond his own pro rata share of the entire liability.

129. See, e.g., COLO. R. CIV. PRO. 14.

tempts to shift some of the responsibility for the harm done to the injured child to that third party, but no doctrine would provide this original defendant with complete immunity from liability. Contributory or comparative negligence statutes which limit or totally bar the payment of compensation to a plaintiff would be inapplicable to CRD related lawsuits. These statutes apply only when the plaintiff has been shown to have contributed to his injuries by his own careless actions.¹³⁰ A pre-school aged child is, in many states, legally incapable of negligence,¹³¹ and his failure to look out for his own safety cannot be raised as a defense in any suit in which that child is a plaintiff.¹³²

Nor can the defendant obtain complete immunity from liability by claiming contributory negligence due to the carelessness of a plaintiff child's parents. The "doctrine that the negligence of the parents of a child of tender years shall be imputed to the child" was dismissed in one early case as "not only unsound, but absurd and inhuman,"¹³³ and that doctrine is universally rejected today.

The child's driver, on the other hand, stands a better chance of claiming immunity if he is brought into the negligence case as a third party defendant. If he is unrelated to the plaintiff he can seek to avoid liability under any guest statutes which exist in that state. These laws, which are no longer as prevalent as they once were, prevent a person from suing his "host" driver for any injuries sustained while riding as a non-paying passenger in that driver's vehicle.¹³⁴ The laws have been justified in part by an "assumption of the risk" type of theory and for that reason have often been held inapplicable to young children.¹³⁵ The child's driver has a much better chance of claiming immunity, and therefore of imposing the full cost of compensating the child on any other defendants, if he is the plaintiff

130. See, e.g., COLO. REV. STAT. § 13-21-111 (1973 & Supp. 1979). The Colorado court has made it clear that "[t]he comparative negligence statute is inapplicable where no negligence on the part of the plaintiff can be proven." *Dunham v. Kampman*, 37 Colo. App. 233, 236, 547 P.2d 263, 266 (1975), *aff'd*, 192 Colo. 448, 560 P.2d 91 (1977).

131. See, e.g., *Lewis v. Buckskin Joes*, 156 Colo. 46, 396 P.2d 933 (1964) (children of "very tender years" are incapable of negligence and assume no risks).

132. See, e.g., *Majors v. J.C. Penney Co.*, 31 Colo. App. 568, 506 P.2d 399 (1972) (six year old child incapable of contributory negligence).

133. *Denver City Tramway Co. v. Brown*, 57 Colo. 484, 493, 143 P. 364, 368 (1914). See also W. PROSSER, *HANDBOOK OF THE LAW OF TORTS* 490 (4th ed. 1971).

134. See *Brown v. Merlo*, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

135. See, e.g., *Burhans v. Witbeck*, 375 Mich. 253, 134 N.W.2d 225 (1965); *Wood v. Morris*, 109 Ga. App. 148, 135 S.E.2d 484 (1964); *Green v. Jones*, 136 Colo. 512, 319 P.2d 1083 (1957).

such lawsuits will tend to preserve family harmony.¹⁴² In any CRD related action, the plaintiff would necessarily be a very young child, incapable of maliciously plaguing his parents with lawsuits. The decision to bring a suit on his behalf will most likely be made by the child's parents, with an awareness that their liability insurer will be the true defendant. Under those circumstances, commencing an action is not evidence of a family's internal strife, but rather of the "provident management of its affairs."¹⁴³

The invalidity of the first two arguments, which ignore the existence of liability insurance, must be conceded before credence can be given to the third argument: allowing children to sue their parents will lead to widespread collusion and fraud against insurance companies.¹⁴⁴ A trust in the jury system and its ability to distinguish between valid and fraudulent claims is the first step which must be taken to reject the argument. The courts have consistently reaffirmed that trust and have relied on juries to prevent injustice to insurance companies in automobile cases between husbands and wives¹⁴⁵ and between close friends.¹⁴⁶ No readily apparent reason exists for refusing to extend that trust to cases involving a parent and child.¹⁴⁷ Indeed, an attempt by a parent to defraud an insurance company in a case which centered on the lack of CRD use would be quite difficult. Because of his age, the plaintiff could not be an active participant in the scheme and could not be counted on to convincingly fake a non-existent harm.

The strongest reason for abrogating parental immunity, at least under the limited circumstances of a CRD law, is largely unrelated

142. The family harmony argument originated in *Roller v. Roller*, 37 Wash. 242, 79 P. 788 (1903), a much maligned case in which a daughter was prevented from bringing a civil action for rape against her father based on the family harmony theory.

143. *Badigan v. Badigan*, 9 N.Y.2d 472, 479, 174 N.E.2d 718, 723, 215 N.Y.S.2d 35, 41 (1961) (Fuld, J., dissenting).

144. See *Windauer v. O'Connor*, 13 Ariz. App 442, 477 P.2d 157 (1971), *modified*, 107 Ariz. 267, 485 P.2d 561 (1971); *Bremmecke v. Kilpatrick*, 336 S.W.2d 68 (Mo. 1960); *Small v. Rockfield*, 66 N.J. 231, 330 A.2d 335 (1974).

145. See, e.g., *Rains v. Rains*, 97 Cal. 19, 46 P.2d 740 (1935) (abolished interspousal immunity in the context of an automobile negligence case).

146. See, e.g., *Johnson v. Hassett*, 217 N.W.2d 771 (N.D. 1974) in which the court noted the "good sense of the juries" as a protection against fraud in the absence of a guest statute.

147. In abrogating parental immunity, one court stated: "Even assuming that a few fraudulent and collusive claims will slip through judges and juries (and there is no empirical [sic] evidence that the assumption is valid) we believe that this price would not be too great since the alternative is to continue a prophylactic rule which indiscriminately bars all claims." *France v. A.P.A. Transp. Corp.*, 56 N.J. 500, 505, 267 A.2d 490, 493 (1970).

CHILD PASSENGER SAFETY ASSOCIATION

Fatal motor accident analysis.

Washington State 1970-1979

39,500 accidents in which children were passengers.

6,300 were restrained; 2 killed. Death rate 0.0317%

33,200 were not restrained; 146 killed. Death rate 0.4397%

The death rate for unrestrained children was 13-fold increased over restrained children.

Twenty per cent of the unrestrained children were being held on an adult's lap but were killed. Nine out of every ten adults holding the child were not killed.

If all of the children had been properly restrained, how many would have died? Twelve, instead of 148.

One hundred thirty six children died needlessly because they were not properly restrained.

Profile of an accident.

The "typical" child who was killed would be a one year old male infant riding in the front seat of a passenger car without a restraint. The driver of the car was the mother, who was also not wearing a seat belt. The accident occurred between 8 a.m. and 3 p.m. within a few miles of home. The mother had not been drinking an alcoholic beverage. There were no defects in the family car that contributed to the accident. The accident occurred during daylight hours on a state route. The weather was clear or overcast and the surface was dry. In summary, the fatal accident involving a young child in Washington State usually occurred under ordinary conditions.

STATE OF ALASKA
FISCAL NOTE

Revision Date _____, 1983

I. REQUEST

Bill/Resolution No.: SCSCSHB 6 (SA)
 Title: Related to Driving a Motor Vehicle
 Sponsor: Rep. Abood
 Requestor: Senate State Affairs

II. FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Protection
 BRU, Program of Subprogram(s) Affected: Driver Services and AST

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
OPERATING						
100 PERSONAL SERVICES		116.4	148.1	157.0	166.4	176.4
200 TRAVEL		5.3	3.1	3.3	3.5	3.7
300 CONTRACTUAL		51.7	43.2	45.8	48.5	51.4
400 COMMODITIES		.7	.7	.7	.8	.9
500 EQUIPMENT		52.4				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
TOTAL OPERATING		226.5	195.1	206.8	219.2	232.4
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		226.5	195.1	206.8	219.2	232.4
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		4	4	4	4	4
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: 5-15-83

Approved by Commissioner: [Signature]
 Department: Public Safety

Date: 5/16/83

Distribution:

Original to Legislative Finance
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 Copy to Sponsor
 Copy to Requestor (if different from Sponsor)

3/8/83

Division of Motor Vehicles

FISCAL NOTE DETAIL

SCSCSHB 6 (SA)

Page 1

ASSUMPTIONS:

This fiscal note based on following assumptions: 1) SCSCSHB 6 (State Affairs) will be identical to CS HB 6 (Judiciary) with one exception. That exception being a person whose license is revoked under AS 28.15.165 could ask for an administrative hearing by the department rather than a court review. This includes requests for a limited license following an administrative revocation under AS 28.15.165, however, not in instances where the court takes the license action under AS 28.15.181. I have not seen a draft of the proposed committee substitute as it has not been prepared at the time of this writing; 2) In 1982 there were approximately 4,755 arrests for DWI. Of those who refused to take the breathalyzer test approximately 19% filed appeals in the district court, mostly to request limited driving privileges. The fiscal note is based on the assumption there will be 5,000 arrests for DWI in FY84, of which 99% will receive administrative license action under the proposed law. It is assumed 20% of those will ask for a hearing, mostly to request limited driving privileges; 3) 95% of defendants who take breath test will have .10% or higher results; 4) Effective date is October 1, 1983, with staff coming on board September 1, 1983, for training.

COMMENTS:

The present office space for the Driver Improvement Office in Anchorage, which includes all the hearing officers, will not accommodate any expansion. Therefore, the fiscal note provides for relocation and lease of new space for that section, which is currently within the Division of Motor Vehicles field office in Anchorage. Space can be made available within the Public Safety Building in Fairbanks for the hearing officer requested for that area.

DETAIL:

100 - Personal Services		
1 Driver Improvement Specialist II, Anchorage		34.2
1 Driver Improvement Specialist II, Fairbanks		39.1
1 Clerk Typist II, Anchorage		20.9
1 Document Processing Clerk II, Juneau		22.2
		116.4
200 - Travel		
210 - Field Travel		2.9
230 - Training		2.4
		5.3

300 - Contractural			
310 - Postage		7.9	
320 - Printing		.8	
330 - Lease Space (1,000 sq. ft.)		28.6	
360 - Equipment Rental (One AJIS terminal)		8.0	
380 - Professional Services (New Slides for written tests)		3.8	
382a- DP Chargeback (Program & Maintenance)		2.0	
390 - Tuition		.6	
			51.7
400 - Commodities			
480 - Normal office supplies, including tapes to record hearings.		.7	.7
500 - Equipment			
520 - Video player and monitor to review arresting agency video tapes at time of breath test, or refusal.		1.5	
550 - Office equipment (itemized on Forms 13)		10.9	
			<u>12.4</u>
	SUBTOTAL		186.5
<u>DIVISION OF ALASKA STATE TROOPERS</u>			<u>40.0</u>

Analysis: In order to comply with the provisions of this bill that requires the breathalyzer test to be administered at the scene of the incident, \$40,000 will be required to purchase 100 new portable breathalyzer units.

TOTAL	226.5
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1.	POSITION TITLE Driver Improvement Specialist II				RANGE/STEP 16A	BARG. UNIT GG	FORM 12 PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCH NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7-15	LEG.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		30,876							
6.	Benefits		5,422							
7.	Supplemental Benefits		1,893							
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES		01		41,071					
10.	Travel		02		3,100					
11.	Contractual		03		300					
12.	Commodities		04		100					
13.	Equipment		05		2,969					
14.	Other									
15.	TOTAL COST				47,540					
	RECEIPT CODE				FUNDING SOURCE					
16.					Federal Receipts 1002					
17.					G.F. Match 1003					
18.					General Funds 1004					
19.					I-A Receipts 1005					
20.					Program Receipts 1020					
21.					Other					
FOR D&M USE ONLY										
4A KEY NUMBER										

This position would hold administrative hearings in the Anchorage area under driver license administrative suspension/revocation programs. This would include hearings on requests to grant a limited license on administrative license actions resulting from chemical sobriety tests, and refusals to submit to tests. Considerable time is necessary to properly prepare for each hearing.

Travel is based on two trips to Southeastern annually, two trips to Kodiak annually, and other outlying areas in the Second and Third Judicial Districts as required. \$1,200 in travel, and \$300 in contractual is to cover a one week course for administrative hearing officers at the National Judicial College at the University of Nevada.

Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk \$426; File Cabinet \$235; Chair \$163; and Recording equipment \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
PROGRAM Life and Property Protection
BRU Driver/Vehicle Services
COMPONENT Driver Services

Page of
Revised Date

FY 84

1.	POSITION TITLE Clerk Typist II				RANGE/STEP 7B	DARG. UNIT CG	FORM 12 PAGE/LINE	COV.	APPRDV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anchorage	ELECTION DISTRICT 7-15	LEC.		
3.	CONTINUATION LEVEL				JUSTIFICATION					
4.	TYPE OF EXPENDITURE									
	1		2		3					
	PERSONAL SERVICES									
5.	Salary		18,120							
6.	Benefits		3,182							
7.	Supplemental Benefits		927							
8.	Fixed Benefits		2,880							
9.	TOTAL PERSONAL SERVICES		01		25,109					
10.	Travel		02							
11.	Contractual		03							
12.	Commodities		04		100					
13.	Equipment		05		2,947					
14.	Other									
15.	TOTAL COST				28,156					
	RECEIPT CODE		FUNDING SOURCE							
16.			Federal Receipts 1002							
17.			G.F. Match 1003							
18.			General Funds 1004		28,156					
19.			I-A Receipts 1005							
20.			Program Receipts 1020							
21.			Other							
FOR O&M USE ONLY 4A KEY NUMBER _____										

This person would handle necessary paperwork for scheduling hearings, notifying individuals of hearing date, time and location, and keep appropriate records.

Would transcribe hearing records as requested, and prepare certified copies for courts, prosecutors, private attorneys, etc, when necessary. Update computer files reflecting when license action is stayed and/or limited driving privileges granted.

Equipment breakdown for this position is as follows:
 Typewriter - \$1,245; Desk - \$426; File Cabinet - \$235;
 Chair - \$141; Transcriber - \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
 PROGRAM Life and Property Protection
 BRU Driver/Vehicle Services
 COMPONENT Driver Services

Page _____ of _____
 Revised Date _____

FY 84

1.	POSITION TITLE Document Processing Clerk II		
2.	TYPE OF POSITION PET	STAFF POSITION 12	PCN NUMBER
3.	CONTRIBUTION LEVEL	ADDITION	
4.	TYPE OF EXPENDITURE		AMOUNT
	PERSONAL SERVICES		
5.	Salary	19,176	
6.	Benefits	3,367	
7.	Supplemental benefits	1,175	
8.	Fixed Benefits	2,880	
9.	TOTAL PERSONAL SERVICES	91	26,598
10.	Travel	02	
11.	Contractual	03	
12.	Commodities	04	100
13.	Equipment	05	1,724
14.	Other		
15.	TOTAL COST		28,422

RANGE/STEP 8B	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAP
DRU PRIORITY	LOCATION Juneau	ELECTION DISTRICT 4	LEG.		

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 .10% 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.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

RECEIPT CODE	FUNDING SOURCE	AMOUNT
16.	Federal Receipts 1002	
17.	G.F. Match 1003	
18.	General funds 1004	28,422
19.	I-A Receipts 1005	
20.	Program Receipts 1020	
21.	Other	

FOR D&M USE ONLY
4A KEY NUMBER _____

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
PROGRAM Life and Property Protection
DRU Driver/Vehicle Services
COMPONENT Driver Services

Page _____ of _____
Revised Date _____

FY 84

1.	POSITION TITLE Driver Improvement Specialist II			RANGE/STEP 16A	BARG. UNIT GG	FORM 12 PAGE/LINE	GOV.	APPROV.	DISAPP.
2.	TYPE OF POSITION	STAFF MONTHS	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Fairbanks	ELECTION DISTRICT 18-21	LEG.	
3.	CONTINUATION LEVEL			ADDITION	JUSTIFICATION				
4.	TYPE OF EXPENDITURE			AMOUNT					
	1	2		3					
	PERSONAL SERVICES								
5.	Salary	35,580							
6.	Benefits	6,248							
7.	Supplemental Benefits	2,181							
8.	Fixed Benefits	2,880							
9.	TOTAL PERSONAL SERVICES	01		46,889					
10.	Travel	02		2,200					
11.	Contractual	03		300					
12.	Commodities	04		100					
13.	Equipment	05		3,269					
14.	Other								
15.	TOTAL COST			52,758					
	RECEIPT CODE	FUNDING SOURCE							
16.		Federal Receipts 1002							
17.		G.F. Hatch 1003							
18.		General Funds 1004		52,758					
19.		I-A Receipts 1005							
20.		Program Receipts 1028							
21.		Other							
FOR O&M USE ONLY									
4A KEY NUMBER _____									

This position would hold all administrative hearings for the department in Fairbanks and outlying areas in the Fourth Judicial District. This includes hearings on requests to grant a limited license on administrative license actions resulting from chemical sobriety tests and refusals to submit to tests. Considerable time is necessary to prepare for each hearing.

Travel is based on 10 days per diem, and transportation costs within Fourth Judicial District. \$1,200 in travel, and \$300 in contractual is to cover a one week course for administrative hearing officers at the National Judicial College at the University of Nevada.

Equipment breakdown for this position is as follows: Typewriter - \$1,245; Desk - \$646; File Cabinet - \$291; Chair - \$187; and Recording equipment - \$900.

Prepared showing full year costs. Only ten month cost reflected on fiscal note for FY84.

13 REQUEST FOR
NEW POSITION

AGENCY Public Safety
 PROGRAM Life and Property Protection
 BRU Driver/Vehicle Services
 COMPONENT Driver Services

FY 84

Page of
 Revised Date

STATE OF ALASKA
PRELIMINARY STATEMENT OF FISCAL IMPACT

Bill No: SB 61 Date on Bill: 1/19/83
 Title: An Act relating to driving a motor vehicle
 Sponsor: Josephson
 Requestor: _____

1. Estimated fiscal impacts on:

a. Expenditures:

(Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86
Capital	0	0	0	0
Operating	0	0	0	0
Total	0	0	0	0

b. Revenues:

Revenue	0	0	0	0
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2. Source of funds to offset fiscal impact of bill:

3. Assumptions:

4. Disclaimer:

This statement has not been reviewed by the OMB in the Office of the Governor. It therefore does not represent the final estimate of fiscal impact.

Prepared By: Kenneth C. Moore *Kenneth C. Moore* Phone: 465-2515
 Division: Insurance Date: 3/2/83

Approved by Commissioner: Richard A. Lyon *Richard A. Lyon* Date: _____
 Department: Commerce & Economic Development

5. Distribution:

- Original to Legislative Finance
- Copy to OMB
- Copy to Sponsor
- Copy to Requestor

2/15/83

1st offense: Ineligible for a driver's license or permit for a three months' period unless the court finds hardship and nullifies or modifies the suspension or revocation. If has prior DWI conviction, period of revocation or suspension is one year. First offense also carries minimum 72 consecutive hours' imprisonment. (AS 28.35.032)

1st offense: Driver's license seized if driving a motor vehicle. License is revoked or suspended for 90 days, unless has a prior DWI conviction. In that case, suspension or revocation is for one year. Vehicle impounded for 15 days. 72 consecutive hours imprisonment plus fine: \$250 minimum; \$500 maximum. (AS 28.35.032, secs. 9 - 12)

REFUSAL
TO
SUBMIT
TO
CHEMICAL
TEST
OF
BREATH

2nd offense: If has prior conviction for either DWI or refusal to submit to a chemical test of breath, suspension or revocation of license is for one year. A conviction for DWI or for refusal to submit to a chemical test of breath within previous five years yields a sentence of ten consecutive days' imprisonment. However, if the prior convictions for DWI or for refusal to submit to a chemical test of breath were within one year of this second conviction for refusal to submit to a chemical test of breath, imprisonment is for 20 days. The ten-day and 20-day sentences are both minimums. (AS 28.35.032)

2nd offense: If has either a prior DWI conviction or conviction for refusal to submit to a chemical test of breath, suspension or revocation is for one year. Second conviction for refusal to submit to a chemical test of breath or first such conviction of a person with a prior DWI conviction: minimum of 20 consecutive days imprisonment and a fine of \$500 minimum; \$1000 maximum. Driver's license seized if driving a motor vehicle. Vehicle impounded for 90 days and may be forfeited. (AS 28.35.032, secs. 9 - 12)

Conviction under AS 28.35.032 also requires participation in a program of alcohol education or rehabilitation for term the court finds appropriate.

3rd or subsequent offense: If for refusal to submit to a chemical test of breath or DWI in any combination, suspension or revocation of the driver's license is permanent. 30 consecutive days' imprisonment plus a fine of \$1000 minimum and \$2000 maximum. Same license seizure as for first offense. Vehicle impoundment and forfeiture provisions the same as for the second offense. (AS 28.35.032, secs. 9 - 12)

Alcohol program participation requirements are unchanged.

The five-year period for calculation of the number of offenses a person has committed, for the purposes of determining a penalty, has been eliminated for this offense.

Note provisions for seizure of driver's license in sec. 13 in addition to provisions for refusal to submit to a chemical test of breath as trigger for seizure (above).

1st conviction for DWI: 72 consecutive hours imprisonment (AS 28.35.030). Driver's license revoked for 30 days minimum, or limited license and revocation for 60 days minimum. (AS 28.15.181)

DWI

2nd conviction for DWI or for refusal to submit to a chemical test of breath: Driver's license revoked and limited license may not be granted for one year minimum (AS 28.15.181). If within five years of a conviction for DWI or for refusal to submit to a chemical test of breath, ten consecutive days minimum imprisonment, unless within one year of a previous conviction, then 20 days. Court may order participation in alcohol education or rehabilitation program (AS 28.35.030). Subsequent convictions treated by the same provisions except that limited driver's license privileges may not be granted for at three years upon a third or subsequent conviction. Sentence may be suspended after the minimum sentence has been served.

1st conviction for DWI or refusal to submit to a chemical test of breath: revocation of driver's license for 90 days minimum (sec. 3). Fine: \$250 minimum, \$500 maximum (sec. 8) in addition to jail time.

2nd conviction, DWI or refusal to submit to a chemical test of test of breath (or equivalent elsewhere): One year minimum driver's license revocation (sec. 3); 20 consecutive days minimum and 20 consecutive days minimum imprisonment and a fine of \$500 minimum and \$1000 maximum (sec. 8).

3rd or subsequent conviction for DWI or refusal to submit to a chemical test of breath (or equivalent elsewhere) in any combination of three or more: permanent revocation of driver's license (sec. 3). 30 consecutive days minimum imprisonment and a fine of \$1000 minimum and \$2500 maximum (sec. 8). No change in provision on alcohol education and rehabilitation assignments by court.

Limited license privileges are removed for all DWI offenders.

DRIVING
WITH
LICENSE
CANCELED,
SUSPENDED,
REVOKED,
VIOLATION
LIMITATION

Ten days' imprisonment minimum.
Suspension of sentence after minimum sentence served
is possible.

14 consecutive days, plus fines: \$500 minimum and
\$1000 maximum. No suspension of sentence.

IMPOUNDMENT No present provision.

Upon probable cause of peace officer that vehicle used in DWI offense. Unless released, impoundment is for 15 days if no prior convictions for DWI or for refusal to submit to a chemical test of breath. If a prior conviction in Alaska or elsewhere for either, impoundment is for 90 days.

FORFEITURE No present provision.

If a prior conviction in Alaska or elsewhere for DWI or for refusal to submit to a chemical test of breath (or equivalent elsewhere), vehicle may be forfeited.

	PRESENT LAW	SB 61	CSSB 61 (State Affairs)
Grounds for Immediate revocation of Driver's license.	Refusal of chemical test of breath was not included.	Adds the refusal to submit to a chemical test of breath to the grounds for the immediate revocation of a driver's license	Same as SB 61
License suspensions, revocations, and limitations for DWI	1st conviction: license revoked for 30 day minimum, or limited license and revocation for 60 days minimum. 2nd conviction: license is revoked for one year minimum. No limited license privileges. 3rd or subsequent conviction: license is revoked for 3 years. No limited license privileges.	1st conviction: driver's license is seized at the time of arrest if driving a motor vehicle. License is revoked or suspended for 90 days. No limited license privileges. 2nd conviction: driver's license is seized at the time of arrest. License is revoked for one year. No limited license privileges. 3rd or subsequent conviction: Driver's license is seized at the time of arrest. License is revoked permanently.	1st conviction: driver's license is seized at the time of arrest. License is revoked for 90 days. Limited License privileges may be granted for the last 60 days. 2nd conviction: same as SB 61. 3rd or subsequent conviction: Driver's license is seized at time of arrest. License is revoked for 10 years. No limited license privileges.
Imprisonment for DWI or refusal of breath test.	1st conviction: not less than 72 consecutive hours. 2nd conviction: not less than 10 consecutive days if offense was committed within 5 years of previous conviction, or, not less than 20 consecutive days if the offense was committed within one year of previous conviction.	1st conviction: same as present law. 2nd conviction: not less than 20 consecutive days. 3rd or subsequent conviction: not less than 30 consecutive days.	1st conviction: same as SB 61. 2nd conviction: same as SB 61. 3rd or subsequent conviction: same as SB 61.

	PRESENT LAW	SB 61	CSSB 61 (State Affairs)
License suspensions, revocations, and limitations for refusal of breath test	1st offense: ineligible for a driver's license or permit for a three months' period unless the court finds hardship and modifies the suspension or revocation. 2nd conviction: if there is a conviction for DWI or refusal of breath test, revocation is for one year.	All penalties for refusal to submit to a chemical test of breath are identical to the above penalties for driving while intoxicated.	All penalties for refusal to submit to a chemical test of breath are identical to the above penalties for DWI.
Fines for DWI or refusal of breath test	Not more than \$1000.00 →	1st conviction \$250 minimum-- \$500 maximum fine. 2nd conviction: \$500-- \$1,000 3rd conviction: \$1,000-- \$2,500	1st conviction: not less than \$250. 2nd conviction: \$500 minimum. 3rd conviction: \$1,000 minimum.
Impoundment of vehicle	no provision	1st offense: 15 days 2nd offense: 90 days	impoundment section has been deleted (see amendment to this bill).
Forfeiture of vehicle	no provision	If a person has been convicted more than once of DWI or refusing to submit to a chemical test of breath, the court may order the forfeiture of a motor vehicle.	Adds new sections. An additional provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings. A municipality is granted the authority to provide for impoundment and forfeiture of a motor vehicle in similar circumstances.

	PRESENT LAW	SB 61	CSSB 61 (State Affairs)
Administrative revocation of driver's license	no provision	On refusal to submit to a chemical test for breath or if a test indicates an alcohol concentration of 0.10 or more, the law enforcement officer shall seize the driver's license. The officer reads the a notice and give the driver a copy of the notice. The notice explains the revocation procedure. The notice is a temporary driver's license that expires in 7 days unless the driver initiates court proceedings to rescind the revocation of the license.	Adds additional language which will stay a revocation if the person initiates a court action to rescind the Department of Public Safety's action. Procedures for court review of an administrative revocation are set out.
Use of preliminary breath testing (PBT)	no provision	No provision	Section 15 requires a person involved in an accident or who commits certain serious traffic offenses, or who drives in a manner that creates a risk to a person or property to submit to a preliminary breath test that may be used by an officer in determining whether to arrest the person. Refusal to submit to the test is a violation punishable by a fine.
Driving while license is cancelled, suspended, revoked, or in violation of limitation.	not less than 10 days. no provision for a fine.	not less than 14 consecutive days. Fine- not less than \$500 nor more than \$1,000.	section 11 in CSSB 61 (State Affairs) provides a minimum penalty of 30 days imprisonment and a fine of \$500 for driving when driving privileges have been revoked for DWI or refusal to submit to a chemical test if the person has been convicted once within the last 15 years. If the person has been convicted more than once of DWI or refusal to submit to a chemical test and continues to drive while privileges have been revoked, the minimum penalty is 90 days imprisonment and a fine of \$1,000.

PRESENT LAW

SB 61

CSSB 61 (State Affairs)

<p>Requirements for Driver's license</p>	<p>no provision</p>	<p>Adds new requirements for the driver's license and application examination: (1)that the applicant know the effects of alcohol and and drugs on drivers and the related dangers of driving while under the influence; and (2) that the applicant know the laws relating to DWI.</p>	<p>Same as SB 61</p>
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ADDITIONAL PROVISIONS IN
CSSB 61 (State Affairs)

Section 1 makes it clear that a judge or employee of the court, in addition to other named persons, may take possession of a title, registration, or license that is revoked, canceled, limited or suspended. This is not a substantive change to existing law.

Section 5 extends the period of limited license privileges from 30 to 60 days for offenses that are grounds for the immediate revocation of a license. This does not apply to driving while intoxicated or refusal to submit to a chemical test of breath. Adds a requirement that a prior offense must occur within 15 years before longer periods of license revocation will be imposed.

Section 8 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges, since periods of revocation are established under Sec. 6 of this bill.

Section 9 provides that the license of a person on whom a limitation was placed is revoked after the period of limitation until the person provides proof of financial responsibility and receives a new license.

Section 10 limits the penalties imposed under existing law for driving while a license is canceled, suspended, revoked or in violation of limitation to situations involving loss of driving privileges for reasons other than driving while intoxicated or refusal to submit to a chemical test of breath. Those situations are dealt with under Sec. 11 of this bill.

Section 12 provides that upon expiration of a period of limitation the driver's license remains revoked until the person furnishes proof of financial responsibility. Under existing law the period of limitation continues and the person may continue to drive, subject to the limitation, until proof of financial responsibility is furnished.

Section 15 makes it clear that refusing to submit to a chemical test after being arrested constitutes the crime of refusing to submit to a chemical test. Refusing to submit to the preliminary breath test provided for in Sec. 13 of this bill is a separate offense.

Section 17 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 19 repeals provisions that have been repealed by other provisions throughout this bill.

" AN ACT RELATING TO DRIVING A MOTOR VEHICLE"

BILL COMPARISON

REP. ABOOD'S BILL

CURRENT ALASKA LAW

REVOCAION OF A DRIVER'S LICENSE

SEC. 2 AS 28.15.181 (A)

Adds the refusal to submit to a chemical test for breath to the list of grounds for the immediate revocation of a driver's license.

REVOCAION OF A DRIVER'S LICENSE

No Provision for refusal of breath test.

LICENSE SUSPENSIONS, REVOCATIONS & LIMITATIONS

SEC. 3 AS 28.15.17 (C)

① Penalties apply to DWI ~~and~~ or refusal of breath test.

② 1st offense - License is revoked for 90 days.
No limited license privileges.

2nd offense - License is revoked for one year.
No limited license privileges.

③ more than 2 offenses - License revocation is permanent.

LICENSE SUSPENSIONS, REVOCATIONS & LIMITATIONS

1st offense - 1) License is revoked for 30 days
or

2) Limited license privileges for 60 days.

2nd offense - License is revoked for one year.
No limited license privileges.

3rd offense - License is revoked for 3 years.
No limited license privileges.

DRIVING WHILE LICENSE IS CANCELED, SUSPENDED
REVOKED OR IN VIOLATION OF LIMITATION

SEC. 6 AS 28.15.291

Sentence - not less than 14 consecutive days.

Fine - not less than \$500 nor more than \$1,000.

DRIVING WHILE LICENSE IS CANCELED, SUSPENDED,
REVOKED OR IN VIOLATION OF LIMITATION

Sentence - not less than 10 days.

Fine - no provision.

REP. ABOOD'S BILL

CURRENT ALASKA LAW

PENALTIES FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS

PENALTIES FOR DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS

SEC. 8 AS 28.35.030 (C.)

Sentences

Sentences

1st offense - not less than 72 consecutive hrs.

1st offense - not less than 72 consecutive hrs.

2nd offense - not less than 20 consecutive days.

2nd offense - not less than 10 consecutive days if the offense is committed within 5 years of previous conviction.

more than

2 offenses - not less than 30 consecutive days.

or

not less than 20 consecutive days if the offense is committed within 1 year of previous conviction.

repealable

FINES

FINES

SEC. 8 " "

1st offense - not less than \$250 nor more than \$500.

not more than \$1,000.

2nd offense - not less than \$500 nor more than \$1,000.

MORE THAN

2 offenses - not less than \$1,000 nor more than \$2,500.

VEHICLE IMPOUNDMENT

VEHICLE IMPOUNDMENT

SEC. 15 AS 28.36

If a peace officer has probable cause to believe a motor vehicle was used in DWI or refusal to submit to a chemical test for breath, the vehicle shall be impounded by the peace officer. The owner or person in lawful possession of the motor vehicle shall pay the necessary costs of impounding & storing the vehicle.

No Provision

\$151.00

VEHICLE IMPOUNDMENT (continued)

5

1st offense - 15 days

2nd offense - 90 days

9

FORFEITURE

Upon a second conviction for DWI or refusal to submit to a chemical test for breath, the court may order the forfeiture of a motor vehicle.

FORFEITURE

No Provision

10

ADMINISTRATIVE REVOCATION OF A DRIVER'S LICENSE

SEC. 9 AS 28.35.032(a)

Applies to: 1) a chemical test for breath resulting in an alcohol concentration of .10 or more.

or

SEC. 11 2) a refusal to submit to a chemical test for breath.

The peace officer shall seize a person's operator's license, and shall notify the person of the state's intention to revoke the license. The notice shall advise the person of the right to obtain district court review of the revocation; the notice itself constitutes a temporary operator's license which expires 7 days after receipt by the person; and that the revocation of the person's license shall take effect upon expiration of the temporary license unless the person, within the 7-day period, initiates a district court proceeding to rescind the

ADMINISTRATIVE REVOCATION OF A DRIVER'S LICENSE

No Provision

REP. ABOOD'S BILL

CURRENT ALASKA LAW

revocation. Initiation of a district court proceeding after the 7-day period shall not stay the revocation.

The court proceeding shall be without jury and shall be limited to the issues of whether

- (1) the arresting officer had reasonable grounds to believe the person had been operating or driving a motor vehicle in the state while intoxicated;
- (2) the arrested person refused to submit to the breath test;
- (3) the accused defendant was informed fairly of the nature of the tests, the accuracy of the methods, machines, and instruments and equipment involved, the expertise of the person administering the tests, and the accused given such other reasonable information as may be requested by the accused.

PLACEMENT OF QUESTIONS RELATING TO DWI ON THE DRIVER'S LICENSE EXAMINATION

SEC. 1 AS 28.15.081(a)

The examination shall test the applicant's knowledge of the effects of alcohol and drugs on drivers and the dangers of driving under the influence of alcohol or drugs, and the applicant's knowledge of the laws relating to driving while intoxicated.

PLACEMENT OF QUESTIONS RELATING TO DWI ON THE DRIVER'S LICENSE EXAMINATION

No Provision

proposed by the department shall be submitted to the presiding officer of each house of the legislature on the day the house convenes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the proposed regulations. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members of the legislature in joint session, the regulations become effective at a date to be designated by the department. (§ 7 ch 144 SLA 1953; am § 1 ch 107 SLA 1968; am § 43 ch 69 SLA 1970; am § 16 ch 71 SLA 1972; am § 2 ch 161 SLA 1972)

Sec. 18.65.070. Destruction of department files a misdemeanor.

Repealed by § 21 ch 166 SLA 1978.

Cross references. — As to tampering with public records, see AS 11.56.820.

Editor's notes. — The repealed section derived from § 7, ch. 144, SLA 1953.

Sec. 18.65.080. Powers and duties of department and members of state troopers. The Department of Public Safety and each member of the state troopers is charged with enforcement of all criminal laws of the state, and has the power of a peace officer of the state or a municipality and those powers usually and customarily exercised by peace officers. Each member of the state troopers may prevent crime, pursue and apprehend offenders, obtain legal evidence, institute criminal proceedings, execute any lawful warrant or order of arrest, make an arrest without warrant for a violation of law committed in his presence, and may cooperate with other law enforcement agencies in detecting crime, apprehending criminals, and preserving law and order in the state. (§ 8 ch 144 SLA 1953; am § 2 ch 152 SLA 1955; am § 5 ch 117 SLA 1968)

Opinions of attorney general. —

Police jurisdiction on the Alaska State Ferry System. See 1964 Op. Att'y Gen., No. 5.

While this statute grants comprehensive enforcement responsibilities to the Department of Public Safety, the language used does not indicate that such responsibility is intended to be exclusive and therefore denied other departments within the executive branch. March 29, 1977, Op. Att'y Gen.

A comparison of the language of AS 18.65.010(b), which describes the general powers and duties of a specially commissioned officer, with that of this section,

which describes the powers and duties of commissioned officers to the Department of Public Safety with particular reference to "member" of the state troopers, supports the conclusion that a specially commissioned officer is a "peace officer" for purposes of both AS 01.10.060(6) and AS 11.55.020 (now AS 11.61.200) when performing law enforcement duties within the limitations set forth on the face of a special commission and furthermore, may carry concealed weapons without violating AS 11.55.010 (now AS 11.61.220) while performing these duties to the extent permitted by the commission itself. December 22, 1977, Op. Att'y Gen.

State troopers
Department of P
State Sup. Ct. Op. I
450 P.2d 1206 (197
Duty to rescue.
officers have no du
comport with publi

Collateral refer
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Causal connection
performance of offic
ability, for purpose of
benefits. 27 ALR2d

Delay in making
warrant for misdeme
peace. 58 ALR2d 105

Police officer's pov
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a warrant, for a sus
76 ALR2d 1432.

Liability arising
involving poli , vehi

Sec. 18.65.085.
lished in the Dep
narcotic drugs en
combating the illi
(b) The commis
within 30 days
concerning the ac
report shall inclu
the kind, amount
received by narco
drug problem in

Opinions of attorn
obvious purpose of thi
ate a special enforcem
division of state troo
responsibility for the e
narcotic laws. January
Gen.

It is clear that the law
to impose upon the unit
the enforcement of the
Drug Act, AS 17.10.010
uary 8, 1978, Op. Att'y

LETTER OF INTENT FOR CSSB 61 (State Affairs)

It is the intent of the Senate State Affairs Committee that existing authority be used to implement sobriety checkpoints to aid in the detection and apprehension of drivers who are under the influence of alcohol. Checkpoints should be conducted in a manner similar to the pilot project on sobriety checkpoints in the State of Maryland. Site selection should be designed to promote safety as well as isolate intoxicated drivers.

The location of the sobriety checkpoint should be kept confidential, but the date should be widely publicized to serve as a deterrent for potential drunk drivers.

Senator Vic Fischer,
Chairperson

Senator Bill Ray,
Vice-Chairperson

Senator Arliss Sturgulewski

Senator Tim Kelly

Senator Pat Rodey

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Senator Vic Fischer, /
Chairperson

Senator Bill Ray,
Vice-Chairperson

Senator Arliss Sturgulewski

Senator Tim Kelly

Senator Pat Rodey

M E M O R A N D U M

TO: Sen. Vic Fisher, Chairman
Senate State Affairs Committee
Sen. Bill Ray
Sen. Tim Kelly
Sen. Patrick Rodey
Sen. Arliss Sturgulewski

FROM: Karla Forsythe *Karla Forsythe*
General Counsel, Alaska Court System

DATE: May 10, 1983

SUBJECT: SB 61

Thank you for extending to the court system the opportunity to comment on SB 61, relating to driving a motor vehicle while intoxicated.

It is my understanding that the committee is now considering provisions contained in CSHB 6 as a possible committee substitute for SB 61.

Since these provisions increase penalties for drunk driving, based on past experience the court system anticipates an increase in trials, which will require additional judicial and clerical resources (noted in the fiscal note submitted in conjunction with SB 61). Once the legislature adopts the approach that stricter penalties will deter drunk driving, the need for additional court resources is unavoidable.

However, an amendment to section 3 of CSHB 6 could reduce the need for judicial resources while furthering the intent of the legislation, by providing for administrative rather than judicial revocation of licenses.

Proposed AS 28.15.166

Section 3 now provides that drivers who exceed .10 blood alcohol content or refuse to submit to a chemical test will have their licenses revoked.

The officer will take a person's license if she or he has it in her or his possession, and will give the person a notice of revocation which is also a temporary license good for seven days. Within that time, the driver can ask the court in writing for a hearing. Once the court determines that the person holds a valid license which has been surrendered, the court will issue a temporary driving permit which remains valid until the hearing. At the court hearing, the court decides by a preponderance of the evidence whether there is probable cause to believe the driver was intoxicated and either refused a chemical test or had a .10 blood alcohol content.

Consequences to the court system

- The court must adopt a standardized form and procedure for handling written requests for hearings. Otherwise requests will be submitted in different forms, to different court locations, creating an administrative nightmare.

- Since the district court calendar, especially in Anchorage, is filled to capacity, it will be impossible to schedule hearings immediately. It is anticipated that most drivers will request a hearing, simply to take advantage of the calendaring delay in order to extend their driving privileges.

- The court will have to determine whether a license is valid, which will be time-consuming since the Department of Public Safety and not the court system maintains this information.

- The court will issue temporary driving permits, which is an administrative rather than a judicial function.

- Since the court calendar is already crowded, the volume of new hearings will require new judges and support staff, as well as courtroom space, all of which is costly.

Consequences to the enforcement system

- The aim of the revocation provision is to remove drunk drivers from the streets quickly without violating due process rights. However, overburdened court calendars will prevent immediate hearings. Revocation must be stayed in the interim.

The result is that the driver remains licensed and can drive. Paradoxically, the court system is required to operate a new, high volume procedure which is administrative rather than judicial in nature, and which does not speed the removal of drivers from the roads.

- The bill results in a large volume of non-jury hearings with a civil rather than a criminal standard of proof. It is expensive to have judicial officers handle these hearings, which are essentially administrative matters. It is also disruptive of criminal case processing to place the responsibility for these hearings within the court.

Proposed amendment

The court system proposes that the committee adopt procedures set forth in the Model Revocation on Administrative Determination Law (ROAD), developed by the National Highway Traffic Safety Administration (pages 7 and 8 attached; copy of entire model act provided to committee staff). The features of this procedure include:

- Requests for hearings are made on a form available at the Department of Public Safety.
- The department and not the court determines that a license is valid, and takes possession of surrendered licenses.
- The department and not the court issues a temporary driving permit.
- The hearing is scheduled within 20 days.
- Court involvement is limited to a review on the record, without additional testimony.

Advantages and disadvantages

It is the understanding of the court system that the Department of Public Safety believes it has inadequate resources to conduct hearings, and for this reason does not favor the administrative approach.

New resources will be required to implement expedited revocation of licenses, no matter which agency handles the procedure. However, the court system believes the costs to DPS would be far less. Additionally, DPS revocation hearings would not have the effect of disrupting other judicial proceedings on the court calendar.

SB 61
May 10
Page Four

The administrative procedure (ROAD) has been adopted in some form by seven jurisdictions (Delaware, District of Columbia, Iowa, Minnesota, New York, Oklahoma, and West Virginia). It is the approach recommended by the National Highway Traffic Safety Administration in its model law.

Currently AS 28.35.032 provides for a district court proceeding to review DPS revocation based on refusal to submit to a chemical test. Any amendments should incorporate these provisions into the administrative procedure as well.

The court system will be glad to answer any questions or to provide additional information about these comments or about the proposed legislation.

cc: Rep. Abood
Chief Justice Edmond Burke
Arthur H. Snowden, II
Joe Brewer, Staff Counsel, House Judiciary Committee
Tamara Cook, Legislative Counsel
Gayle Horetski, Department of Law
Judge Elaine Andrews

Model Revocation on Administrative
Determination (ROAD) Law

Early License Revocation for Driving While Under the Influence

RECEIVED

MAR 14 1983

DEPARTMENT OF
PUBLIC SAFETY



US Department of Transportation
National Highway Traffic Safety
Administration

113 § 7—Request for hearing

114 (a) Any person who has received a notice of revocation may make a written request
115 for a review of the department's determination at a hearing. The request may be made
116 on a form available at each office of the department. If the person's drivers license has
117 not been previously surrendered, it must be surrendered at the time the request for a
118 hearing is made.

119 (b) The request for a hearing must be made within seven days after the person received
120 the notice of revocation as provided in section 4, or is deemed to have received the
121 notice by mail as provided in section 3. If written request for a hearing is not received
122 within the seven-day period, the right to a hearing is waived, and the determination of
123 the department which is based upon the enforcement officer's report becomes final.

124 (c) If a written request for a hearing is made after expiration of the seven-day period,
125 and if it is accompanied by the applicant's verified statement explaining the failure to
126 make a timely request for a hearing, the department shall receive and consider the
127 request. If the department finds that the person was unable to make a timely request
128 due to lack of actual notice of the revocation or due to factors of physical incapacity
129 such as hospitalization or incarceration, the department shall waive the period of
130 limitation, reopen the matter, and grant the hearing request. In such a case, a stay of
131 the revocation pending issuance of the final order following the hearing shall not be
132 granted.

133 (d) At the time the request for a hearing is made, if it appears from the record that the
134 person is the holder of a valid drivers license issued by this state, and that the drivers
135 license has been surrendered as required, the department shall issue a temporary permit
136 which will be valid until the scheduled date for the hearing. If necessary, the depart-
137 ment may later issue an additional temporary permit or permits in order to stay the
138 effective date of the revocation until the final order is issued following the hearing, as
139 required by section 5.

140 (e) The hearing shall be scheduled to be held within not more than 20 days of the
141 filing of the request for a hearing. The department shall provide a written notice of the
142 time and place of the hearing to the party requesting the hearing at least 10 days prior to
143 the scheduled hearing, unless the parties agree to waive this requirement.

144

145 § 8—Hearing

146 (a) The hearing shall be held in the county where the arrest occurred, unless the
147 parties agree to a different location.

148 (b) The presiding hearing officer shall be the commissioner or an authorized rep-
149 resentative designated by the commissioner. The presiding hearing officer shall have
150 authority to administer oaths and affirmations; to examine witnesses and take testi-
151 mony; to receive relevant evidence; to issue subpoenas, take depositions, or cause
152 depositions or interrogatories to be taken; to regulate the course and conduct of the
153 hearing; and to make a final ruling on the issue.

154 (c) The sole issue at the hearing shall be whether by a preponderance of the evidence
155 the person drove or was in actual physical control of a vehicle under any of the
156 circumstances set out in section 1 (a) of this Act. If the presiding hearing officer finds
157 the affirmative of this issue, the revocation order shall be sustained. If the presiding
158 hearing officer finds the negative of the issue, the revocation order shall be rescinded.

159 (d) The hearing shall be recorded. The decision of the presiding hearing officer shall
160 be rendered in writing, and a copy will be provided to the person who requested the
161 hearing.

162 (e) If the person who requested the hearing fails to appear without just cause, the
163 right to a hearing shall be waived, and the determination of the department which is
164 based upon the enforcement officer's report becomes final.

165

166 § 9—Judicial review

167 (a) Within 30 days of the issuance of the final determination of the department under
168 this Act, a person aggrieved by the determination shall have the right to file a petition in
169 (a court of record) in the county of (the county where the main office of the department

170 is located) for judicial review. (*Insert appropriate references within the parentheses*).
171 (b) The review shall be on the record, without taking additional testimony. If the
172 court finds that the department exceeded its constitutional or statutory authority, made
173 an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or
174 made a determination which is unsupported by the evidence in the record, the court
175 may reverse the department's determination.

176 (c) The filing of a petition for judicial review shall not result in an automatic stay of
177 the revocation order. The court may grant a stay of the order only upon motion and
178 hearing, and upon a finding that there is a reasonable probability that the petitioner will
179 prevail upon the merits, and that the petitioner will suffer irreparable harm if the order
180 is not stayed.

181
182 **§ 10—Administrative procedure act, application**

183 The administrative procedure act of this state [applies to the extent it is consistent
184 with] [OR] [does not apply to] proceedings under sections 7, 8, and 9 of this Act relating
185 to the administrative hearing and judicial review. (*Select one option.*)
186

187 **§ 11—Definitions**

188 The following words and phrases when used in this Act shall have the meanings
189 indicated in this section:

190 **Alcohol concentration.** Alcohol concentration shall mean either grams of alcohol
191 per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

192 **Commissioner.** Commissioner shall mean the commissioner of the department of
193 motor vehicles of this state.

194 **Department.** Department shall mean the department of motor vehicles of this
195 state.

196 **Drivers license.** Drivers license shall mean a license to drive a motor vehicle
197 issued under the laws of this state, and the certificate issued by the department which
198 provides evidence of the license.

199 **License.** License shall mean any drivers license or any other license, permit, or
200 privilege to drive a motor vehicle issued under or granted by the laws of this state. The
201 term includes any temporary license or instruction permit, any nonresident operating
202 privilege, and the privilege of any person to drive a motor vehicle whether or not the
203 person holds a valid drivers license.

204 **Revocation.** Revocation shall mean the termination by formal action of the de-
205 partment of a person's license. A revoked license is not subject to renewal or restora-
206 tion except that an application for a new license may be presented and acted upon by the
207 department after the expiration of the revocation period.

208 **State.** State shall mean a state, territory, or possession of the United States, the
209 District of Columbia, the Commonwealth of Puerto Rico, and any province of Canada.

210 **Suspension.** Suspension shall mean the temporary withdrawal by formal action of
211 the department of a person's license. The suspension shall be for a period specifically
212 designated by the department.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 18, 1983

SUBJECT: Driving a motor vehicle while intoxicated
(SB 61)

TO: Senator Vic Fischer

FROM:  Russ Josephson
Legislative Counsel

Following is the sectional analysis of SB 61 that you requested:

Section 1 adds new requirements for a driver's license application examination: (1) that the applicant know the effects of alcohol and drugs on drivers and the related dangers of driving under their influence; and (2) that the applicant know the laws relating to driving while intoxicated.

Section 2 adds a new basis for the immediate suspension or revocation of a driver's license by a court: the refusal to submit to a chemical test of breath under AS 28.35.032.

Section 3 requires a court convicting a person of driving while intoxicated or refusal to submit to a chemical test of breath to revoke the person's driver's license and not to grant limited license privileges. The period of revocation depends upon whether the person has been previously convicted in this or another jurisdiction of either offense. If the person has not been previously convicted, the period of revocation is 90 days. If the person has been convicted once, the period is one year. If the person has been convicted more than once, revocation is permanent. Under existing law the court shall revoke the license of a person for not less than 30 days for the first conviction and may grant the person limited license privileges. The court shall revoke the license for not less than one year for a second conviction and may not grant limited license privileges. The court shall revoke the license for not less than three years for a third or subsequent conviction and may not grant limited license privileges. See accompanying chart.

Section 4 removes the reference to a person convicted of driving a motor vehicle while intoxicated with reference to limited license privileges since, under Sec. 3 of this bill, a person convicted of driving while intoxicated may no longer receive limited license privileges.

Section 5 removes the references to the issuance of a new driver's licenses for persons convicted of driving a motor vehicle while intoxicated after a limited license period has expired because, under Sec. 3 of this bill, no limited license privileges may be granted.

Section 6 changes the penalty for violation of the prohibition against driving while a license is canceled, suspended, or revoked, or in violation of a limitation on the license. The minimum sentence is increased from 10 days to 14 consecutive days and a fine of \$500 - \$1000 is added. In addition, the provision allowing the sentence to be suspended after the defendant has been imprisoned for no less than the minimum period has been removed.

Section 7 requires a chemical test to be given within four hours after the alleged offense of driving while intoxicated if the amount of alcohol in a person's blood or breath is relied on as an element of the crime.

Section 8 changes the penalties for conviction of driving while intoxicated. If a person has not been previously convicted, a fine of not less than \$250 nor more than \$500 is imposed along with the minimum sentence of imprisonment. If a person has been previously convicted once, the minimum sentence of imprisonment is not less than 20 consecutive days and a fine of not less than \$500 nor more than \$1,000 is imposed. If a person has been previously convicted more than once, the minimum sentence of imprisonment is 30 days and a fine of not less than \$1,000 nor more than \$2,500 is imposed. The five-year period used for calculating the number of convictions required to increase the penalty has been eliminated, so that all previous convictions are considered. A conviction in this or another jurisdiction, if the elements are substantially similar, is counted for purposes of determining enhanced penalties. The provision for suspension of sentence after the minimum sentence is served has been eliminated. The vehicle used in commission of the offense shall be impounded and may be forfeited.

Section 9 authorizes, on refusal to submit to a chemical test of breath, the seizure of the driver's license by the law enforcement officer and revocation of the license by the Department of Public Safety. The officer reads the driver a notice and gives him a copy of the notice. The notice explains the revocation procedure and the right of court review. The notice itself is a temporary driver's license that expires in seven days unless the driver initiates court proceedings to rescind the revocation of license.

Section 10 provides that the notice of revocation or suspension of a driver's license also indicate that the action will be effective after the temporary driver's license provided for in Sec. 9 has expired. A revocation or suspension action is stayed if the person initiates a court action to rescind the Department of Public Safety's action. The three months' suspension or revocation period is eliminated from this section.

Section 11 provides new license revocation periods for the refusal to submit to a chemical test of breath under the implied consent statute. The periods are similar to those provided in Sec. 3 for the offense of driving while intoxicated.

Section 12 provides new penalties for refusal to submit to a chemical test which are similar to the fines and terms of imprisonment imposed for driving while intoxicated under Sec. 8 of this bill.

Section 13 provides for driver's license seizure and revocation by the Department of Public Safety if a chemical test of breath or blood produces results specified in AS 29.35.030(a)(2). The procedure is the same as that in Sec. 9. In addition, the new language limits the court proceeding in which the driver's action to rescind the suspension of revocation of the driver's license is heard to two issues: (1) whether or not the arrest for driving while intoxicated was valid; and (2) whether the chemical test produced the results specified in AS 29.35.030(a)(2). The periods of administrative revocation for driving while intoxicated are the same as those imposed by a court under Sec. 3 of this bill for driving while intoxicated.

Section 14 removes provisions allowing the district court to find extenuating circumstances and to modify or nullify the

Senator Vic Fischer

Page 4

March 18, 1983

suspension or revocation of a driver's license or permit for refusing to submit to a chemical test of breath.

Section 15 adds new sections providing for the impoundment and forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.030 (Operating a Vehicle, Aircraft or Watercraft While Intoxicated), and also for the forfeiture of a motor vehicle used in the commission of an offense under AS 28.35.032(f) (Refusal to Submit to a chemical Test of Breath). In addition, provision is made for the remission of forfeitures, a procedure to allow a person with ownership or security interests in a forfeited motor vehicle to claim the vehicle or interest in the vehicle through court proceedings.

Section 16 repeals AS 28.15.211(a)(4), a provision concerning the period of suspension, revocation, or limitation of the license of a person convicted of refusal to submit to a chemical test. The repealed provision has been replaced by other provisions throughout this bill.

RJ:ljb

STATE OF ALASKA
THE LEGISLATURE

POUCH Y. STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 4, 1983

SUBJECT: Consumption of alcoholic beverages
(CSHB 17 (Judiciary) am)

TO: Senator Vic Fischer

FROM:  Russ Josephson
Legislative Counsel

You have asked a number of questions pertaining to CSHB 17 (Judiciary) am.

Your first question concerns guardians with respect to the provisions of sec. 6 of the bill. (That section amends AS 04.16.049(c) in minor ways. The amendments do not affect the existing provisions in the subsection regarding guardians.) You have suggested that persons 18 years of age are their own guardians and thus could write a note of permission to work in a licensed premises under this subsection. I think that your confusion here is between the concept of guardianship and emancipation. A guardian is a person who acts in loco parentis, in the place of a parent, caring for a minor. Emancipation is a legal concept recognizing that certain persons are functioning independently and as adults despite the fact they have not yet reached the age of majority. Emancipated youths are not their own guardians. Persons cannot be their own guardians any more than they can be their own parents. So, the answer to your question is that a person 18 years of age cannot, under this section of the bill, be employed in a licensed premises without the written consent of a parent or guardian.

Your next question concerns AS 04.16.049(a), which the bill repeals and reenacts. You have asked, "What happens if a person 18 years of age -- having neither a parent or spouse over the age of 21 years -- wishes to go into premises licensed under Title 4. Can they legally enter be premises because they are their own guardian?" The answer is that they may enter the premises if the premises are designed as a restaurant, and they remain only for dining (page 2,

lines 5 - 7). Again, the persons would not be their own guardians.

You also have asked "What is to happen to those persons who are 16 who wish to eat in a restaurant serving alcohol when their guardian is not 21 years of age? Will it be legal to serve these people when it is clear that their guardian consents but their guardian is under the age of 21?" The section providing for court appointment of a guardian of a minor is AS 13.26.055. Although this section does not indicate that a guardian may not be a minor, it is quite clear from the context and also from practice, that a guardian will not be a minor. Minors are defined in the statutes, for different purposes as a person not yet 18, not yet 19, or as a person who has not yet reached the age of majority. In practice, it seems extremely unlikely that a person less than 21 years of age would be appointed a guardian. Assuming that there is a guardian less than 21 years of age somewhere, the answer to this question is that under AS 04.16.049(a)(2), the person 16 years of age clearly could eat in the restaurant. In fact, if the person were under 16 years of age, the person could still eat in the restaurant under AS 04.16.049(a)(3). In that case, the person would need to be accompanied by a parent or guardian, would need consent from a parent or guardian, and the premises which are entered only for dining would have to be designated as a restaurant. As you can see, subsection (a) has three independent paragraphs whose requirements vary. Under (a)(2), the consent and age of the guardian are irrelevant as they are not conditions set forth there. Under (a)(3), there is no requirement that a guardian be any particular age, just the requirement that the parent or guardian consents.

The next question you have asked is "Is it constitutional to require a person legally defined as an adult to leave premises where alcohol is served solely because they have not reached the age of 21?" First, it is important to reemphasize that the law defines a person as a minor or an adult at a particular age for one purpose, yet uses a different age to distinguish a minor from an adult for a different purpose. Therefore, when you use the phrase "a person legally defined as an adult", one must know for what purpose a person is being classified as an adult. I think that you are asking whether a person not yet 21 years of age can be asked to leave premises where alcohol is served solely because they have not reached the age of 21. First, I would note that the bill does not provide for that situation. The bill

Senator Vic Fischer

Page 3

April 4, 1983

allows a person less than 21 years of age in a licensed premises under certain circumstances. AS 04.16.049(b) does allow a person under the legal drinking age to be required to leave "the portion of the licensed premises in which alcoholic beverages are sold, served or consumed". (Except for changing the drinking age and minor technical amendments, this bill does not change that provision of law.) The answer to your question is that it is constitutional to restrict licensed premises entirely to persons age 21 or older. This is no different from prohibiting the purchase of alcohol by a person under a specified age, from setting a minimum age for a driver's license, or from age requirements for numerous other purposes in daily life.

Your final question was, "In your opinion does CSHB 17 (Jud) am require a separate definition of adult, minor, and guardian when related to the consumption of alcohol, and (or) when they are related to being on the premises where alcohol is being served as defined in title 4?"

In my opinion, the bill is clear that the drinking age is 21. Therefore, for purposes of drinking, the question of who is an adult or minor really is not an issue. One could indicate that, for purposes of drinking, an adult is a person 21 years of age or older and a minor is a person less than 21 years of age, but it is not necessary. Similarly, "guardian" is not used in this bill in any unusual way and the commonly understood meaning of the word suffices.

RJ:ljb
13/007

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

POUCH N
JUNEAU, ALASKA 99811
PHONE: 465-4322

April 7, 1983

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

Dear Senator Fischer:

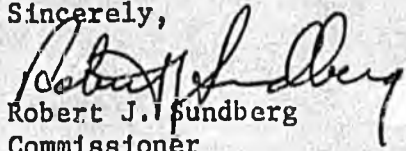
This is in reply to your request for a departmental position paper on SB-61 entitled "An Act relating to driving a motor vehicle".

As you are aware drunk drivers are a hazard to the general motoring public, and the cause of several deaths and disabling injuries on our highways every year. I support what SB-61 is attempting to accomplish, however, the department's position on SB-61 as written is neutral.

The department's fiscal note reflects most of my concerns with the bill as presently written.

Attached is a copy of amendments proposed by the Division of Motor Vehicles concerning actions against a driver's license.

Sincerely,


Robert J. Sundberg
Commissioner

Amendments Proposed - SB 61

1. Sec. 5, Page 3 (AS 28.15.201(c)), change to read as follows:

(c) After the termination of the limitation as shown on the certificate issued under (b) of this section, the license of a person on whom a limitation was imposed will become suspended unless the person has complied with AS 28.20.240. [IS NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE LICENSE UNDER AS 28.15.141.....]

The reason for this recommended change is because at the present time, and in the proposed new law, it states a person may apply for a duplicate license at the end of the limitation period, which is in conflict with AS 28.20.240. That section reflects the limitation will continue until the individual files proof of insurance. Also under AS 28.20.240, the limitation may continue for the three year period a person is otherwise required to file proof of insurance, thus circumventing the insurance requirement. This amendment would prevent that.

2. Sec. 11, Page 8, Line 11, amend to read:

"...shall be 3 months..." in place of "...shall be 90 days..."

Reason: Easier for the department to administer. Present law reads 3 months.

3. Sec. 14, Page 12 (AS 28.35.034) replace with language similar to following: "A person whose license or permit to operate or drive a motor vehicle has been revoked or suspended under provisions of AS 28.35.032 or AS 28.35.033 shall surrender the license or permit to the law enforcement officer who delivers to him a copy of the suspension or revocation notice. The law enforcement officer shall forward the license, and a copy of the suspension or revocation notice to the department. If the department determines that a person is subject to license suspension or revocation, and the notice has not already been served upon the person by a law enforcement officer as required in AS 28.35.032(a) or AS 28.35.033(g), the department shall issue a notice of suspension or revocation."

Reason for this recommendation is so it doesn't conflict with Sec. 9 and Sec. 13, which reflect the law enforcement officer shall seize the person's driver's license. It also specifies what the officer is to do with the license.

4. Sec. 10, Page 7, lines 8 thru 11 (AS 28.35.032(b), and Sec. 13, Page 11, lines 1 thru 5 (AS 28.35.033(h): "...the Department of Public Safety shall revoke or suspend [NOTIFY THE PERSON THAT] the person's license or nonresident privilege to drive or operate a motor vehicle in the state. [IS REVOKED OR SUSPENDED, OR THAT NO ORIGINAL LICENSE OR PERMIT WILL BE ISSUED] The revocation is effective upon expiration of the temporary....."

Reason: Allow the notice given by the law enforcement officer as mentioned in Sec. 9 and Sec. 13 suffice for notice, and not require additional notice via mail. This would save mailing costs on approximately 4,000 notices annually at current price of \$1.55 each, plus clerical time to process.

Amendments Proposed - SB 61. (Cont')

5. Sec. 13, Page 11 (AS 28.35.033(j)): This section addresses revocation if defendant takes a chemical test, and results are .10% or higher. It mentions duration of the revocation if the defendant has previously been convicted, however, no mention is made as to duration if no previous convictions. Should have a sentence added similar to the first sentence in Sec. 11, page 8.

Reason: Self-explanatory.

6. A section of Title 28 not addressed in this bill, however, it is related in some ways, is AS 28.15.221(a). You may want to look at amending that section by adding, "or another law or ordinance with substantially similar elements if committed in another jurisdiction".

Reason: As presently written an out-of-state violation cannot be included as a violation against an Alaska driver's license, and be counted in the point total. Appears from this bill the intent is to count a DWI conviction in another jurisdiction the same as if it occurred in Alaska. The above change would allow entry of out-of-state DWI, or any other traffic violation, for people who possess an Alaska driver's license, and thus equal treatment for all violations, regardless of where the offense occurred.

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

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.

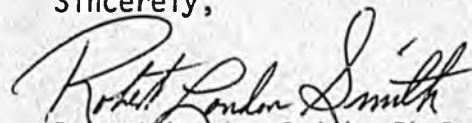
Programmatic issues for a specialized facility of this type have not been fully addressed. Many believe that those serving short sentences of three or ten days for drunk driving are not necessarily candidates for alcohol treatment programs. Some argue that the punitive impact of incarceration is most 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

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

May 5, 1983

BILL SHEFFIELD, GOVERNOR

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

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

Re: Senate Bill 61

Dear Senator Fischer:

This letter is response to your memorandum of April 28, 1983, to Attorney General Gorsuch requesting a review of the impoundment, forfeiture, and administrative license revocation provisions contained in SB 61. You also asked for an opinion regarding sobriety checkpoints and mandatory preliminary breath tests. Because your memo did not indicate what aspects of these provisions you wished to be discussed, I contacted Ms. Suzanne Tryck of your office for clarification. Ms. Tryck indicated that your request was directed toward possible constitutional problems in these provisions. They are discussed below in the order given in your memorandum.

The impoundment provision of SB 61 provides that a peace officer who has probable cause to believe that a motor vehicle was used in the commission of a DWI offense, the motor vehicle. The bill requires that the owner or a person with the right to possess the motor vehicle shall pay the costs of impounding and storing the vehicle. The bill does not address the situation of indigent persons who do not have the funds to pay the impound or the storage fees. If their cars were to be in effect, permanently forfeited because of an inability to pay the impound fees, this would violate due process of law. See, e.g., Sutton v. City of Milwaukee, 521 F.Supp. 733 (Wis.Dis.Ct. E.D.) and Lominac v. Municipality of Anchorage, Op. No. 220 (Ak.Ct.App., February 18, 1983).

There are some practical and administrative problems with the impoundment provision as currently drafted in SB 61. For example, section 15 of the bill cross references to AS 28.05.131. That section is a general hearing section, and is not specifically designed for an impoundment situation. The bill provides that a vehicle is to be returned to a first offender after 15 days. But, under AS 28.05.131, a hearing may

not be held less than 10 days after service of the notice upon the owner. Thus, by the terms of the statute, a first offender would seldom, if ever, receive a hearing before the period of impoundment has expired.

The provisions of the bill which allow an "innocent" person to redeem a car from impoundment are very narrow. The language is probably sufficient to meet the due process requirements of F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980) and State v. Rice, 626 P.2d 104 (Alaska 1981), but would in most cases probably prevent a spouse of a person arrested for DWI from redeeming the vehicle.

The forfeiture of the motor vehicle of a repeat DWI offender does not itself violate the constitution, provided that the statute supplies sufficient due process guarantees and is applied in a nondiscriminatory manner. There are some administrative problems with the forfeiture provisions as currently drafted, including the fact that the court is required to give notice to persons who have an ownership or security interest in the vehicles. (See, AS 28.35.038 on page 14.) The court is a neutral party in a legal action, and should not be expected to fulfill duties regarding notice and proof between the litigants. I direct your attention to the forfeiture provisions contained in section 13 of CSHB 6 (JUD). That language appears to achieve the aim of the comparable language in SB 61, but does not contain the drafting problems discussed above.

The notion of administratively suspending or revoking licenses for refusal to take a breathalyzer test or because of a breath test result of .10 or higher is not a new one, and differing versions of administrative revocation statutes have been in effect in virtually all states for several years. The administrative revocation procedures for breathalyzer refusal and a breath test result of .10 have been combined and included in new sections AS 28.15.165 and 28.15.166, section 3 of CSHB 6. I recommend that your committee consider substituting those provisions for the sections in SB 61 which deal with license revocations in these circumstances.

A possible problem with the license revocation provisions in SB 61 is that it does not indicate what happens to the person's license if he or she files for a review of the revocation within the seven-day period allowed. Also, there is no indication of what recourse, if any, a person has following the expiration of the seven-day period. This is of some concern, as our state supreme court has indicated in dicta that Alaskan law will be held to a higher standard in administrative license revocation proceedings than that imposed upon jurisdictions at the federal level. In Graham v. State, 633 P.2d 211 (Alaska 1981), the court indicated that a breathalyzer refusal was not the type of emergency situation which would justify summary

action in the suspension of a person's driver's license before a hearing could be held. 633 P.2d at 210. This is contrary to a holding of the United States Supreme Court in Mackey v. Montrym, 443 U.S. 1 (1979), where the court approved a pre-hearing revocation of the license of a person who refused to submit to a breath test.

I have reviewed the material which you supplied regarding the use of roadblock sobriety check points to detect the intoxicated driver. The cases and theories which were discussed in the legal analyses included in the materials confirms other research in this area. Thus, it appears that sobriety check points would be constitutional if reasonable in scope and duration, the intrusion upon privacy was minimal, every car or every car in a particular numerical sequence was stopped, and the roadblocks are at a fixed location. One note of caution, however. The Alaska Supreme Court has required a higher standard when stopping a citizen than that which the United States Supreme Court adopted in Terry v. Ohio, 392 U.S. 1 (1968). Our court has held that there must be a reasonable suspicion that imminent public danger exists. Coleman v. State, 553 P.2d 40, 46 (Alaska 1976). While our court has recognized that an intoxicated driver does constitute an immediate threat to the public safety, sobriety roadblocks result in the stopping of people who are not suspected of drunk driving, but are merely being checked for the possibility. There is no case decision which would preclude such procedures, if properly implemented, but our courts may subject the practice to a more thorough scrutiny than it might receive in other jurisdictions or at the federal level.

The final area upon which you asked for comment is a test of mandatory preliminary breath testing of persons who have been stopped for moving violations. Approximately 14 states currently have preliminary breath testing statutes of some sort. Some require a person to give a preliminary breath sample only if he or she is suspected of driving while intoxicated; others require the giving of a sample if a person has been involved in an accident or is suspected of having committed a traffic violation. Refusal to submit to a preliminary breath test is generally considered a minor violation, noncriminal in nature, and the sanction is generally revocation of the license. Preliminary breath testing presents substantial constitutional questions, although some judicial decisions in other jurisdictions which have upheld these statutes.

The potential problem with a statute of this nature is that a person may be stopped, and his or her breath "seized" upon less than probable cause. The United States Supreme Court in Terry v. Ohio, 392 U.S. 1 (1968) has approved the stop, search, and seizure of a person based on less than probable cause, i.e. "a reasonable suspicion." As stated earlier,

however, our court requires a higher standard for stops in this state than that in operation at the federal level. See, Coleman v. State, 553 P.2d 40, 46 (Alaska 1976).

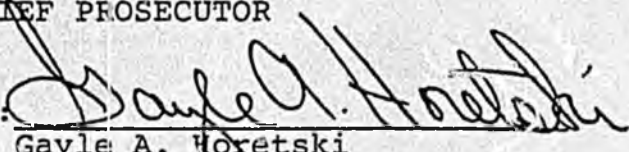
I hope these comments are of assistance to the committee in considering action on SB 61. I remain willing to work with the committee on improving the language of the bill, if requested.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By:


Gayle A. Horetzki
Assistant Attorney General

GAH/lb-91

Amendment to Proposed CSSB 61 (State Affairs)

Add a new section to the bill which provides:

Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT CONSENT. (a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.35.031 and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034.

officer to determine whether the driver should be arrested. Before administering the test, the officer shall advise the person that refusal may be used against the person in a civil or criminal action arising out of the incident and that refusal is an infraction. If the person refuses to submit to the test, the test shall not be administered. Refusal to submit to a preliminary breath test at the request of a law enforcement officer is an infraction.

Amendment to Proposed CSSB 61 (State Affairs)

On page 11, delete section 14 at line 13, et. seq. and insert a new section:

* Sec. 14. AS 28.35.031 is amended by adding a new subsection to read:

(b) A person who drives a motor vehicle that is involved in an accident, has committed an offense under AS 28.15.181(a), or has committed a moving traffic violation shall be considered to have given consent to a preliminary breath test for the purpose of determining the alcoholic content of the person's blood or breath. The test shall be administered at the scene of the incident at the direction of a law enforcement officer who has reasonable grounds to believe that a person's ability to operate a motor vehicle is impaired by the ingestion of alcoholic beverages, drugs or a combination of drugs and alcohol, and that the person:

(1) drove a motor vehicle that was involved in an accident,

(2) has committed an offense under AS 28.15.181(a), or

(3) has committed a moving traffic violation.

The result of the test may be used by the law enforcement

Amendment to Proposed CSSB 61 (State Affairs)

Page 9, at line 28 insert a new section as follows:

*Sec. 13. AS 28.35.030(a)(2) is amended to read:

(2) when, as determined by a chemical test given within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in that person's [HIS] blood or 100 milligrams or more of alcohol per 100 milliliters of that person's [HIS] blood, or when there is 0.10 grams or more of alcohol per 210 liters of that person's [HIS] breath; or

Amendment to Proposed CSSB 61 (State Affairs)

Page 9, delete lines 12 through 15 and substitute:

In addition, the person's privilege to drive must be suspended for not less than one additional [MAY NOT BE RESTORED FOR AN ADDITIONAL PERIOD OF ONE] year after the date that the person would have been entitled to restoration of driving privileges if the person had not been convicted under this section.

with the person's needs and the resources of the community where the person lives [, FOR A TERM SPECIFIED BY THE COURT, THAT PROGRAM OF]"

Page 13, line 29 - page 14, line 1:

Delete all material and insert: "[ALCOHOL EDUCATION OR REHABILITATION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (h) OF THIS SECTION,]"

Page 14, line 2

Delete: "finds appropriate"

Insert: "[FINDS APPROPRIATE]"

Dave - tell
airport - ~~20~~⁵⁵ mins

Alford + Martin + Josephson
ask Josephson whether he wants
to make a presentation.

DB 17) Lt. Vaden

3 Pat Gullapen - discussion
of the bills

4) S 226, sponsor substitute
an act relating to driver's
license, and curfews, and
revocations

5) sectional analysis

6) Gail Horetzki - to testify

7) call June Garrison, tell
her we need to hear from
her about the problem of
finding space for impound
vehicles: space on military
base.)

8) call Kelly tomorrow RE:
CS HB 17 (sub).

Imprisonment

Unless judge finds undue hardship to others than the driver.

Arrange for sides tapping
3/4" width

~~AB~~ Come up to / extract state,
technical problems

~~Get folks for rules committee
advise~~

fine fund

(12.55.100.(a)(2))

to a provision authorizing
judge to order ~~to~~ restitution
payment to victims.

Do we already have
violent crime compensation fund.

What was passed to increase fund.

could we have a fund during compensation fund.

Fines -

- 1) double maximums
- 2) add requirement that judge take with account the person's financial status or ability to pay.

(12-55-07)
 (50-55-07)
 (2) minor

Community Service

- 1) after incarceration
- 2) what are some appropriate

Rehab & Treatment

- 1) 103-44
- 2) 103-44
- 3) 103-44
- 4) 103-44



- 1 - Rehab, shall be performed
- 2 - therapy shall be provided
- 3 - care, facilities
- 4 - medical attention

(12-55-07)
 (12-55-07)

ENFORCEMENT

1) Roadblocks -

A) give troops authority

B) give municipalities authority

Memorandum on what is needed
for Federal Police - with
call charter with

Thursday

Impoundment

- taken by officer
- where does car go,
- who has liability for car
- municipality is not being sued over ~~the~~ 3rd party property.

Letter of intent

These corrections need more money - e.g. market for treatment
re: judge's order - request.

Education, rehab, treatment

3) I give money to corrections
and earmark it.

News:

Changes

- 1) technical amendment.
- 2) examination for driver's lic.
- 3) Administrative revocation for refusal & illegal BAC.

Changes:

1) ~~The seven day~~ hearing will be ~~seven days~~ ^{concluded by} ~~under~~ ^{DPS} under APA.

2) The temporary license and the time allowed for requesting a hearing will remain seven days.

(Art Peterson).

~~4)~~ grounds for immediate revocation (no changes made ~~to~~ ~~in~~ in SA committee)

5) technical amendment.
Changes made in SACS.

1) p.p.l. limit from 15y to 10y.

6) revocation for DWI.

1) Change to 15 to 10 years.

7) limited license provision for DWI for last 60 days of revocation.

8) Technical

9) spec 2/8. Revocation of license after limitation is worn off.

sec. 10. DWLS section.
punishable by 10 days in prison

Change: CS state affairs

lines 14 - pg. 8. revocation
of license, ~~stating~~ that license
may not be restored until 1 y. after
it would have been restored.

b)
Sec. 11.

Outlines the sanctions for
a person apprehended for DWLS
who was DWAS for DWI.

sec. 12. financial responsibility
before restoration of license.

sec. 13. Sobriety Checkpoints.
Open Container.

Both provisions were added
in this committee.

sec. 14. Sanctions IMPRISONMENT
and fines.

Changes. 15 y to 10 y

Section 15: PBTs ~~to~~ for moving violation
if officer has reasonable
suspicion ~~penal~~ ^{sanction} by ~~infraction~~
chemical test.

Sec 16: refusal of PBT ~~test~~ outlined
in sec. 15. Can be used in court.

~~sec. 16 Refusal to submit to chemical test. Notification of persons~~

sec. 17. ~~Sanctions for refusal = to those for DWI.~~

~~sec. 18~~ ¹⁸ outlines the procedures for the actual surrendering of a license once it has been suspended or revoked.

¹⁹ ~~sec. 19~~ adding in (SCS) ^{Chemical} states that a ~~person may~~ test may be administered w/out consent of the person if the arrest was the result of an accident.

sec. 20 forfeiture clause

sec. 21. repeals two sections.

A M E N D M E N T

#1

Offered in the SENATE

By V.Fischer

TO: CSSB 61 (State Affairs)

Page 10, line 2, following "\$250":

Insert: "or more than \$1,000"

Page 10, line 9, following "\$500":

Insert: "or more than \$2,000"

Page 10, line 18, following "\$1,000":

Insert: "or more than \$5,000"

Page 12, line 21, following "\$250":

Insert: "or more than \$1,000"

Page 12, line 28, following "\$500":

Insert: "or more than \$2,000"

Page 13, line 8, following "\$1,000":

Insert "or more than \$5,000"

AMENDMENT

#1

Offered in the HOUSE

By Clocksin

TO: CSHB 6(Jud)

Page 2, line 5:

Delete "CHEMI"

Page 2, line 6:

Delete "CAL SOBRIETY TESTS AND"

Delete "a chemi-"

Page 2, lines 7 and 8:

Delete all material.

Page 2, line 9:

Delete "35.030(a)(2) or if"

Page 3, line 3:

Delete all material.

Page 3, line 4:

Delete "(a)(2) or"

Page 4, line 13:

Delete "(1)"

Page 4, line 14:

Delete "; or" and insert "."

Page 4, lines 15 and 16:

Delete all material.

A M E N D M E N T

#5

Offered in the HOUSE

By Clocksin

TO: CSHB 6(Jud)

Page 2, line 11:

Delete "under AS 28.35.031(a)" and insert "of breath"

Page 3, line 4:

Delete "under" and insert "of breath"

Page 3, line 5:

Delete "AS 28.35.031(a)"

Page 4, line 13:

Delete "under" and insert "of breath"

Page 4, line 14:

Delete "AS 28.35.031(a.)"

Page 11, lines 13 - 29:

Delete all material.

Page 12, lines 1 - 3:

Delete all material and renumber following sections accordingly.

Page 12, line 6:

Delete "under AS 18.35.031(a)"

Page 12, line 7:

Delete "[OF BREATH" and insert "of breath ["

A M E N D M E N T

#7

Offered in the HOUSE.

By Clocksin

TO: CSHB 6(Jud)



Page 11, line 29:

Delete "and that refusal is an infraction"

Page 17, line 1:

Delete "Refusal to submit to a"

Page 12, lines 2 and 3:

Delete all material.

A M E N D M E N T

8
19

Offered in the HOUSE

By Clocksin

TO: CSHB 6(Jud)

Page 6, line 1:

Delete "15" and insert "5"

Page 6, line 14:

Delete "15" and insert "5"

Page 6, line 20:

Delete "15" and insert "5"

Page 6, line 26:

Delete "15" and insert "5"

Page 10, line 9:

Delete "15" and insert "5"

Page 10, line 19:

Delete "15" and insert "5"

Page 12, line 29:

Delete "15" and insert "5"

AMENDMENT

#6

Offered in the HOUSE

By Clocksin

TO: CSHB 6(Jud)

Page 11, line 22:

Delete all material after "driving" and insert "while intoxicated"

Page 11, line 23:

Delete all material.

Page 11, line 24:

Delete "creates an unjustifiable risk to a person or to property"

Page 11, line 26:

After "arrested" insert "for driving while intoxicated"

(adopted)

A M E N D M E N T

#3

Offered in the SENATE

By V. Fischer

TO: CSSB 61 (State Affairs)

Page 11, line 8, following "addition,":

Insert: "the court shall order, and"

Page 11, line 9, following "undertake":

Insert: "treatment or education commensurate with the person's needs and the resources of the community where the person lives."

mandatory treatment

Page 11, line 9,

Delete ", for a term"

Insert: "[, FOR A TERM]"

Page 11, lines 10 - 12:

Delete: all material

Insert: "[SPECIFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION WHICH THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (d) OF THIS SECTION, FINDS APPROPRIATE.]"

Page 13, line 27, following "In addition,":

Insert: "the court shall order, and"

Page 13, line 28, following "undertake"

Delete all material and insert: "treatment or education commensurate

treatment

A M E N D M E N T

#2

Offered in the SENATE

By V. Fischer

TO: CSSB 61 (State Affairs)

(automobiles only)

Page 9, following line 27,

Insert a new section to read:

"* Sec. 13. AS 28.35 is amended by adding a new section to read:

Sec. 28. 35.029. OPEN CONTAINER. (a) A person may not operate a motor vehicle when there is an open bottle, can or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle.

(b) In this section,

(1) "open" includes having a broken seal;

(2) "passenger compartment" means the area of a motor vehicle normally occupied by the driver and passengers and includes a utility or glove compartment accessible by the driver or a passenger while the vehicle is being operated.

(c) A person who violates (a) of this section is guilty of an infraction."

Renumber subsequent sections.

open container laws

5/10/83

with the person's needs and the resources of the community where the person lives [, FOR A TERM SPECIFIED BY THE COURT, THAT PROGRAM OF]"

Page 13, line 29 - page 14, line 1:

Delete all material and insert: "[ALCOHOL EDUCATION OR REHABILITATION THAT THE COURT, AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (h) OF THIS SECTION,]"

Page 14, line 2

Delete: "finds appropriate"

Insert: "[FINDS APPROPRIATE]"

Josephson
5/12/83.

Original sponsors: Josephson, Kelly
and Faiks

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE
2 CS FOR SENATE BILL NO. 61 (State Affairs)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to driving a motor vehicle."
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 * Section 1. AS 28.05.051(b) is amended to read:

9 (b) The commissioner, officers and employees of the department
10 designated by the commissioner, judges and employees of a court, and
11 all peace officers, may take possession of a certificate of title,
12 [OR] registration or license issued by this jurisdiction that [WHICH]
13 has been revoked, canceled, limited or suspended, or [WHICH] is
14 fictitious, stolen or altered.

15 * Sec. 2. AS 28.15.081(a) is amended to read:

16 (a) The department shall examine every applicant for a driver's
17 license. The examination shall include a test of the applicant's (1)
18 eyesight, (2) [HIS] ability to read and understand official traffic
19 control devices, (3) [HIS] knowledge of safe driving practices, (4)
20 knowledge of the effects of alcohol and drugs on drivers and the
21 dangers of driving under the influence of alcohol or drugs, and (5)
22 knowledge of the laws relating to driving while intoxicated and the
23 traffic laws and regulations of this state. The examination [, AND]
24 may include a demonstration of ability to exercise ordinary and rea-
25 sonable control in the driving of a motor vehicle of the type and
26 general class of vehicles for which the applicant seeks a license.
27 However, an applicant who has not been previously issued a driver's
28 license by this or another jurisdiction must demonstrate [HIS] abil-
29 ity, and must present medical information that [WHICH] the department

education

1 reasonably requires to determine [HIS] fitness to safely drive a motor
2 vehicle of the type and general class of vehicles for which the appli-
3 cant [HE] seeks a license.

4 * Sec. 3. AS 28.15 is amended by adding new sections to read:

5 Sec. 28.15.165. ADMINISTRATIVE REVOCATIONS RESULTING FROM CHEMI-
6 CAL SOBRIETY TESTS AND REFUSALS TO SUBMIT TO TESTS. (a) If a chemi-
7 cal test administered to a person driving a motor vehicle for which a
8 driver's license is required produces a result described under AS 28.-
9 35.030(a)(2) or if a person under arrest for driving a motor vehicle
10 for which a driver's license is required refuses to submit to a chemi-
11 cal test under AS 28.35.031(a), the law enforcement officer shall read
12 a notice and deliver a copy to the person. The notice shall meet the
13 requirements of AS 44.62.360 and shall advise that

14 (1) the department intends to revoke the person's driver's
15 license or nonresident privilege to drive, or refuse to issue an
16 original license to the person;

17 (2) the person has the right to administrative review of
18 the revocation or determination not to issue an original license in a
19 hearing conducted by the department under the Administrative Procedure
20 Act (AS 44.62);

21 (3) the notice itself is a temporary driver's license that
22 expires seven days after it is delivered to the person;

23 (4) revocation of the person's driver's license or nonresi-
24 dent privilege to drive, or a determination not to issue an original
25 license shall take effect upon expiration of the temporary driver's
26 license unless the person within ^{fifteen} ~~seven~~ days initiates court proceed-
27 ings to rescind the action.

28 (b) After reading the notice under (a) of this section, the law
29 enforcement officer shall seize the person's driver's license if it is

1 in the person's possession and shall deliver it to the department with
2 a sworn report describing the circumstances under which it was seized.

3 (c) Upon receipt of a sworn report of a law enforcement officer
4 that a chemical test produced a result described under AS 28.35.030-
5 (a)(2) or that a person refused to submit to a chemical test under
6 AS 28.35.031(a), that notice under (a) of this section was provided to
7 the person, and that contains a statement of the circumstances sur-
8 rounding the arrest and the grounds upon which the officer's belief
9 that the person was driving while intoxicated a motor vehicle for
10 which a driver's license is required was based, the department shall
11 revoke the person's license or nonresident privilege to drive a motor
12 vehicle in the state, or refuse to issue an original license effective
13 upon expiration of the temporary driver's license issued under (a) of
14 this section.

15 (d) The period of revocation of a driver's license by the de-
16 partment under this section shall be determined in accordance with
17 guidelines for court revocations under AS 28.15.181(c).

18 Sec. 28.15.166. ADMINISTRATIVE REVIEW OF REVOCATION. (a) A
19 person who has received a notice under AS 28.15.165(a) may make a
20 written request for administrative review of the department's action
21 under AS 28.15.165(c) in a hearing conducted by the department under
22 the Administrative Procedure Act (AS 44.62). If the person's driver's
23 license has not been previously surrendered to the department, it
24 shall be surrendered to the department at the time the request for
25 review is made.

26 (b) A request for review shall be made in accordance with
27 AS 44.62.390 or the right to review is waived and the action of the
28 department under AS 28.15.165(c) is final. However, if the person
29 shows that the person for good cause was unable to make a timely

shall (maybe)

1 request, the department ^[] may waive the period of limitation, reopen the
2 matter, and grant the hearing requested.

3 (c) Upon receipt of a request for a hearing, if it appears that
4 the person holds a valid driver's license and that the driver's
5 license has been surrendered, the department shall issue a temporary
6 driver's permit that is valid until the scheduled date for the
7 hearing. The department ^{yes} ~~may~~ ^{shall} issue additional temporary permits if
8 necessary to stay the effective date of its action under
9 AS 28.15.165(c) until the final order after the hearing is issued.

10 (d) The hearing under this section shall be limited to the
11 issues of whether there was probable cause to believe that the person
12 was driving a motor vehicle while intoxicated and whether

13 (1) the person refused to submit to a chemical test under
14 AS 28.35.031(a); or

15 (2) the chemical test administered to the person produced a
16 result described under AS 28.35.030(a)(2).

17 (e) If the issues set out in (d) of this section are determined
18 in the affirmative by a preponderance of the evidence, the hearing
19 officer shall sustain the action of the department. If one or more of
20 the issues are determined in the negative, the department's action
21 shall be rescinded.

22 (f) If the action of the department in revoking a nonresident's
23 privilege to drive a motor vehicle is sustained by the hearing
24 officer, the department shall give written notice of action taken to
25 the motor vehicle administrator of the state of the person's residence
26 and to any state in which that person has a driver's license.

27 * Sec. 4. AS 28.15.181(a) is amended to read:

28 (a) Conviction of any of the [THE] following offenses is [ARE]
29 grounds for the immediate [SUSPENSION OR] revocation of a driver's

1 license:

2 (1) manslaughter or negligent homicide resulting from [THE]
3 driving [OF] a motor vehicle;

4 (2) a felony in the commission of which a motor vehicle is
5 used;

6 (3) failure to stop and give aid as required by law [UNDER
7 THE LAWS OF THIS STATE] when a motor vehicle accident results in the
8 death or personal injury of another;

9 (4) perjury or [THE] making [OF] a false affidavit or
10 statement under oath to the department under a law relating to motor
11 vehicles;

12 (5) [OPERATING OR] driving a motor vehicle while intoxi-
13 cated;

14 (6) reckless driving; [OR]

15 (7) using a motor vehicle in unlawful flight to avoid
16 arrest by a peace officer;

17 (8) refusal to submit to a chemical test under AS 28.35.-
18 032.

19 * Sec. 5. AS 28.15.181(b) is amended to read:

20 (b) A court convicting a person of an offense under (a)(1) -
21 (4), (6), or (7) of this section shall revoke that person's driver's
22 license for [A PERIOD OF] not less than 30 days for the first convic-
23 tion, unless the court determines that the person's ability to earn a
24 livelihood would be severely impaired and a limitation under AS 28.-
25 15.201 can be placed on the license that [WHICH] will enable the
26 person to earn a livelihood without excessive [RISK OR] danger to the
27 public. If a court limits a person's license under this subsection,
28 it shall do so for [A PERIOD OF] not less than 60 [30] days. Upon a
29 subsequent conviction of a person for any offense under (a)(1) - (4),

1 (6), or (7) of this section occurring within 10 years after a prior
2 conviction, the court shall revoke the person's license and may not
3 grant the person [ANY] limited license privileges for the following
4 periods:

5 (1) not less than one year for the second conviction; and

6 (2) not less than three years for a third or subsequent
7 conviction.

8 * Sec. 6. AS 28.15.181(c) is repealed and reenacted to read:

9 (c) A court convicting a person of an offense under (a)(5) or
10 (8) of this section arising out of the operation of a motor vehicle
11 for which a driver's license is required shall revoke that person's
12 driver's license and may not, except as provided in (d) of this sec-
13 tion, grant limited license privileges for the following periods:

14 (1) not less than 90 days if, within the preceding 10
15 years, the person has not previously been convicted of an offense

16 (A) under (a)(5) or (8) of this section; or

17 (B) under a law or ordinance in another jurisdiction
18 with elements substantially similar to an offense under (a)(5) or
19 (8) of this section;

20 (2) not less than one year if, within the preceding 10
21 years, the person has been previously convicted of one offense

22 (A) under (a)(5) or (8) of this section; or

23 (B) under a law or ordinance in another jurisdiction
24 with elements substantially similar to an offense under (a)(5) or
25 (8) of this section;

26 (3) not less than 10 years if, within the preceding 10
27 years, the person has been previously convicted of more than one of
28 the following offenses or has more than once been previously convicted
29 of one of the following offenses:

1 (A) an offense under (a)(5) or (8) of this section; or

2 (B) an offense under another law or ordinance in
3 another jurisdiction with elements substantially similar to an
4 offense under (a)(5) or (8) of this section.

5 * Sec. 7. AS 28.15.181 is amended by adding a new subsection to read:

6 (d) A court revoking a driver's license under (c)(1) of this
7 section may grant limited license privileges for the final 60 days
8 during which the license is revoked if the court determines that the
9 person's ability to earn a livelihood would be severely impaired and a
10 limitation under AS 28.15.201 can be placed on the license that will
11 enable the person to earn a livelihood without excessive danger to the
12 public.

13 * Sec. 8. AS 28.15.201(b)(1) is amended to read:

14 (1) require the surrender of the driver's license [AND, IF
15 THE PERSON IS CONVICTED OF AN OFFENSE UNDER AS 28.15.181(a)(5), REVOKE
16 THAT PERSON'S LICENSE FOR A PERIOD OF NOT LESS THAN 60 DAYS]; and

17 * Sec. 9. AS 28.15.201(c) is amended to read:

18 (c) After the termination of a limitation as shown on the certi-
19 ficate issued under (b) of this section, the license of a person on
20 whom a limitation was imposed is revoked until the person receives a
21 new [NO LONGER BOUND BY THE LIMITATION AND MAY APPLY FOR A DUPLICATE]
22 license in accordance with AS 28.20.240 [UNDER AS 28.15.141 OR, IF
23 OTHERWISE ELIGIBLE, FOR A NEW LICENSE IF THE LICENSE WAS REVOKED FOR
24 CONVICTION OF AN OFFENSE UNDER AS 28.15.181(a)(5) AND LIMITED LICENSE
25 PRIVILEGES WERE GRANTED UNDER AS 28.15.181(c)].

26 * Sec. 10. AS 28.15.291 is amended to read:

27 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
28 REVOKED OR IN VIOLATION OF LIMITATION. (a) A [NO] person may not
29 drive a motor vehicle on a highway or vehicular way or area [IN THIS

1 STATE] at a time when that person's [HIS] driver's license, or privi-
2 lege to drive [IN THIS STATE IF HE IS LICENSED IN ANOTHER JURISDIC-
3 TION,] has been canceled, suspended or revoked in this or another
4 jurisdiction, or when [HE IS] driving in violation of a limitation
5 placed upon that person's [HIS] license or privilege to drive in this
6 or [, EVEN WHEN HE IS DRIVING UNDER A LICENSE ISSUED IN] another
7 jurisdiction. Except as provided in (c) of this section, upon [UPON]
8 conviction of a violation of this section, the court shall impose a
9 [MINIMUM] sentence of imprisonment of not less than 10 days. The exe-
10 cution of sentence may not be suspended nor may probation or parole be
11 granted until the minimum imprisonment provided in this section has
12 been served; nor may imposition of sentence be suspended [, EXCEPT
13 UPON THE CONDITION THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN
14 THE MINIMUM PERIOD PROVIDED FOR IN THIS SECTION]. In addition, the
15 person's [HIS] license or privilege to drive shall be revoked, and the
16 person [HE] may not be issued a new license nor may the [HIS] privi-
17 lege to drive be restored for an additional period of one year after
18 the date that the person [HE] would have been entitled to restoration
19 of [HIS] driving privileges.

20 (b) When a person's license is canceled, limited, suspended or
21 revoked, that person [HE] shall be informed by the department or the
22 court that [WHICH] takes the action at the time of the action that,
23 upon a conviction of driving on a highway or vehicular way or area in
24 this state at a time when that person's [HIS] driver's license or
25 privilege to drive in this state has been canceled, suspended or
26 revoked, or upon a conviction of driving in violation of a limitation
27 of the [HIS] license, that person [HE] will be subject to the manda-
28 tory minimum sentence of [10-DAY] imprisonment under [(a) OF] this
29 section.

1 * Sec. 11. AS 28.15.291 is amended by adding a new subsection to read:

2 (c) The court shall impose a sentence of imprisonment of not
3 less than 30 days and a fine of not less than \$500 upon conviction of
4 a violation of this section if the person's driver's license was
5 revoked under AS 28.15.181(c)(1). The court shall impose a sentence
6 of imprisonment of not less than 90 days and a fine of not less than
7 \$1,000 upon conviction of a violation of this section if the person's
8 driver's license was revoked under AS 28.15.181(c)(2) or (3). The
9 execution of sentence may not be suspended nor may probation or parole
10 be granted until the minimum imprisonment provided in this subsection
11 has been served. Imposition of sentence may not be suspended. In
12 addition, the person's privilege to drive shall be suspended for an
13 additional period of not less than one year after the date that the
14 person would have been entitled to restoration of driving privileges
15 if the person had not been convicted under this section.

16 * Sec. 12. AS 28.20.240 is amended to read:

17 Sec. 28.20.240. PROOF REQUIRED WHEN DRIVING PRIVILEGE [USE OF
18 LICENSE] IS RESTRICTED. Whenever under a law of this state the li-
19 cense of a person is suspended, revoked, limited under AS 28.15.201,
20 or canceled for any reason, the department may not issue to that
21 person a new or renewal of license [IN HIS NAME] until permitted to do
22 so under the motor vehicle laws of this state. A period of suspen-
23 sion, revocation, [LIMITATION,] or cancellation [UNDER THIS SECTION]
24 continues until proof of financial responsibility for the future is
25 provided. Upon expiration of a period of limitation, the license
26 remains revoked until proof of financial responsibility for the future
27 is provided.

28 * Sec. 13. AS 28.35 is amended by adding a new section to read:

29 Sec. 28. 35.029. OPEN CONTAINER. () A person may not operate

1 a motor vehicle when there is an open bottle, can or other receptacle
2 containing an alcoholic beverage in the passenger compartment of the
3 vehicle.

4 (b) In this section,

5 (1) "motor vehicle" means a vehicle for which a driver's
6 license is required;

7 (2) "open" includes having a broken seal;

8 (3) "passenger compartment" means the area of a motor
9 vehicle normally occupied by the driver and passengers and includes a
10 utility or glove compartment accessible to the driver or a passenger
11 while the vehicle is being operated.

12 (c) A person who violates (a) of this section is guilty of an
13 infraction.

14 * Sec. 14. AS 28.35.030(a)(2) is amended to read:

15 (2) when, as determined by a chemical test given within
16 four hours after the alleged offense was committed, there is 0.10
17 percent or more by weight of alcohol in the person's blood or 100
18 milligrams or more of alcohol per 100 milliliters of blood, or when
19 there is 0.10 grams or more of alcohol per 210 liters of the person's
20 breath; or

21 * Sec. 15. AS 28.35.030(c) is amended to read:

22 (c) Upon conviction under this section the court shall impose a
23 minimum sentence of imprisonment of not less than 72 consecutive hours
24 and a fine of not less than \$250 if the person has not been previously
25 convicted in this or another jurisdiction of driving while intoxicated
26 under this or another law or ordinance with substantially similar
27 elements or refusal to submit to a chemical test under AS 28.35.032
28 or another law or ordinance with substantially similar elements. Upon
29 [A SUBSEQUENT] conviction under this section the court shall impose a

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1 minimum sentence of imprisonment of not less than 20 consecutive days
2 and a fine of not less than \$500 if, within the preceding 10 years,
3 the person has been previously convicted once in this or another
4 jurisdiction [WITHIN FIVE YEARS AFTER A CONVICTION] of driving while
5 intoxicated under this or another law or ordinance with substantially
6 similar elements or [IN THIS OR ANY OTHER STATE OR CONVICTION OF]
7 refusal to submit to a chemical test under AS 28.35.032 or another law
8 or ordinance with substantially similar elements. Upon conviction
9 under this section [OF BREATH UNDER AS 28.35.032,] the court shall
10 impose a minimum sentence of imprisonment of not less than 30 [10]
11 consecutive days and a fine of not less than \$1,000 if, within the
12 preceding 10 years, the person has been previously convicted in this
13 or another jurisdiction of more than one of the following offenses or
14 has more than once been previously convicted of one of the following
15 offenses: (1) driving while intoxicated under this or another law or
16 ordinance with substantially similar elements; (2) refusal to submit
17 to a chemical test under AS 28.35.032 or another law or ordinance with
18 substantially similar elements [UNLESS THE SUBSEQUENT CONVICTION IS
19 WITHIN ONE YEAR OF THE PREVIOUS CONVICTION, IN WHICH CASE THE COURT
20 SHALL IMPOSE A MINIMUM SENTENCE OF IMPRISONMENT OF NOT LESS THAN 20
21 CONSECUTIVE DAYS]. The execution of sentence may not be suspended nor
22 may probation be granted except on condition that [UNTIL] the minimum
23 imprisonment provided in this section is [HAS BEEN] served. Impo-
24 sition of sentence may not be suspended [, EXCEPT UPON THE CONDITION
25 THAT THE DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD
26 PROVIDED IN THIS SECTION]. In addition, if the offense involved
27 driving a motor vehicle for which a driver's license is required, the
28 person's driver's [HIS OPERATOR'S] license shall be revoked in accor-
29 dance with AS 28.15.181 and the vehicle used in commission of the

treatment

1 offense may be forfeited under AS 28.35.036. In addition, the court
 2 shall order, and a person convicted under this section [STATUTE] shall
 3 undertake, treatment or education commensurate with the person's needs
 4 and the resources of the community where the person lives [FOR A TERM
 5 SPECIFIED BY THE COURT, THAT PROGRAM OF ALCOHOL EDUCATION OR
 6 REHABILITATION WHICH THE COURT, AFTER CONSIDERATION OF ANY INFORMATION
 7 COMPILED UNDER (d) OF THIS SECTION, FINDS APPROPRIATE].

8 * Sec. 16. AS 28.35.031 is amended by adding a new subsection to read:

9 (b) A person who drives a motor vehicle that is involved in an
 10 accident, ~~has committed an offense listed in (AS 28.15.181(a))~~ ^{who} or has
 11 committed a moving traffic violation shall be considered to have given
 12 consent to a preliminary breath test for the purpose of determining
 13 the alcoholic content of the person's blood or breath. The test shall
 14 be administered at the scene of the incident at the direction of a law
 15 enforcement officer who has reasonable grounds to believe that the
 16 person's ability to operate a motor vehicle is impaired by the
 17 ingestion of alcoholic beverages, drugs or a combination of drugs and
 18 alcohol, and that the person was driving a motor vehicle that is
 19 involved in an accident, has committed an offense listed in
 20 AS 28.15.181(a), or has committed a moving traffic violation. The
 21 result of the test may be used by the law enforcement officer to
 22 determine whether the driver should be arrested. Before administering
 23 the test, the officer shall advise the person that refusal may be used
 24 against the person in a civil or criminal action arising out of the
 25 incident and that refusal is an infraction. If the person refuses to
 26 submit to the test, the test shall not be administered. Refusal to
 27 submit to a preliminary breath test at the request of a law enforce-
 28 ment officer is an infraction.

29 * Sec. 17. AS 28.35.032(a) is amended to read:

1 (a) If a person under arrest refuses the request of a law en-
2 forcement officer to submit to a chemical test under AS 28.35.031(a)
3 [OF BREATH AS PROVIDED IN AS 28.35.031], after being advised by the
4 officer that the refusal will, if that person was arrested while
5 operating or driving a motor vehicle for which a driver's license is
6 required, result in the [SUSPENSION,] denial or revocation of the
7 license or nonresident privilege to drive, that the refusal may be
8 used against the person in a civil or criminal action or proceeding
9 arising out of an act alleged to have been committed by the person
10 while operating or driving a motor vehicle or operating an aircraft or
11 a watercraft while intoxicated, and that the refusal is a misdemeanor,
12 a chemical test shall not be given, except as provided by AS 28.35.-
13 035.

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

15 (g) Upon conviction of a person under this section, the court
16 shall impose a minimum sentence of imprisonment of not less than 72
17 consecutive hours and a fine of not less than \$250 if the person has
18 not been previously convicted in this or another jurisdiction of
19 driving while intoxicated under AS 28.35.030 or another law or ordi-
20 nance with substantially similar elements or refusal to submit to a
21 chemical test under this or another law or ordinance with substan-
22 tially similar elements. Upon [A SUBSEQUENT] conviction under this
23 section the court shall impose a minimum sentence of imprisonment of
24 not less than 20 consecutive days and a fine of not less than \$500 if,
25 within the preceding 10 years, the person has been previously con-
26 victed once in this or another jurisdiction [WITHIN FIVE YEARS AFTER A
27 CONVICTION UNDER THIS SECTION OR] of driving while intoxicated under
28 AS 28.35.030 or another law or ordinance with substantially similar
29 elements or refusal to submit to a chemical test under this or another

1 law or ordinance with substantially similar elements. Upon conviction
2 under this section the court shall impose a minimum sentence of im-
3 prisonment of not less than 30 consecutive days and a fine of not less
4 than \$1,000 if, within the previous 10 years, the person has been
5 previously convicted in this or another jurisdiction of more than one
6 of the following offenses or has more than once been previously con-
7 victed of one of the following offenses: (1) driving while intoxi-
8 cated under AS 28.35.030 or another law or ordinance with substan-
9 tially similar elements; (2) refusal to submit to a chemical test
10 under this or another law or ordinance with substantially similar
11 elements [IN THIS OR ANY OTHER STATE, THE COURT SHALL IMPOSE A MINIMUM
12 SENTENCE OF IMPRISONMENT OF NOT LESS THAN 10 CONSECUTIVE DAYS UNLESS
13 THE SUBSEQUENT CONVICTION IS WITHIN ONE YEAR OF THE PREVIOUS CONVIC-
14 TION, IN WHICH CASE THE COURT SHALL IMPOSE A MINIMUM SENTENCE OF
15 IMPRISONMENT OF NOT LESS THAN 20 CONSECUTIVE DAYS]. The execution of
16 sentence may not be suspended nor may probation be granted except on
17 condition that [UNTIL] the minimum imprisonment provided in this
18 section is [HAS BEEN] served. Imposition of sentence may not be
19 suspended. If the offense involved driving a motor vehicle for which
20 a driver's license is required, the person's driver's license shall be
21 revoked under AS 28.15.181 [, EXCEPT UPON THE CONDITION THAT THE
22 DEFENDANT BE IMPRISONED FOR NO LESS THAN THE MINIMUM PERIOD PROVIDED
23 IN THIS SECTION]. In addition, the court shall order, and a person
24 convicted under this section shall undertake, treatment or education
25 commensurate with the person's needs and the resources of the
26 community where the person lives [FOR A TERM SPECIFIED BY THE COURT,
27 THAT PROGRAM OF ALCOHOL EDUCATION OR REHABILITATION THAT THE COURT,
28 AFTER CONSIDERATION OF ANY INFORMATION COMPILED UNDER (h) OF THIS
29 SECTION, FINDS APPROPRIATE]. The sentence imposed by the court under

1 this subsection shall run consecutively with any other sentence of im-
2 prisonment imposed on the committed person.

3 * Sec. 19. AS 28.35.034 is amended to read:

4 Sec. 28.35.034. SURRENDER OF LICENSE OR PERMIT [PERIOD OF REVO-
5 CATION]. A person whose license or permit to operate or drive a motor
6 vehicle has been [SUSPENDED OR] revoked under AS 28.15.165 or AS 28.-
7 15.181 [THE PROVISIONS OF AS 28.35.032] shall surrender the [HIS]
8 license or permit to the department on receipt of notice of the revo-
9 cation. [SUCH A PERSON IS INELIGIBLE FOR AN OPERATOR'S LICENSE OR
10 PERMIT FOR THREE MONTHS FOLLOWING THE DATE ON WHICH THE LICENSE OR
11 PERMIT WAS RECEIVED BY THE DEPARTMENT, UNLESS THE DISTRICT COURT FINDS
12 THAT EXTENUATING CIRCUMSTANCES EXIST WHICH WOULD CAUSE EXTREME HARD-
13 SHIP, IN WHICH CASE THE SUSPENSION OR REVOCATION MAY BE MODIFIED OR
14 NULLIFIED.] After the [THREE MONTHS'] period of revocation has ex-
15 pired, the person may make application for a new license as provided
16 by law.

17 * Sec. 20. AS 28.35.035 is amended to read:

18 Sec. 28.35.035. ADMINISTRATION OF CHEMICAL TESTS WITHOUT
19 CONSENT. (a) If a person is under arrest for an offense arising out
20 of acts alleged to have been committed while the person was driving a
21 motor vehicle [THE CRIME OF DRIVING] while intoxicated, and that
22 arrest results from an accident that causes death or physical injury
23 to another person, a chemical test may be administered without the
24 consent of the person arrested to determine the amount of alcohol in
25 that person's breath or blood.

26 (b) A person who is unconscious or otherwise in a condition
27 rendering that person incapable of refusal is considered not to have
28 withdrawn the consent provided under AS 28.35.031 and a chemical test
29 may be administered to determine the amount of alcohol in that

1 person's breath or blood. A person who is unconscious or otherwise
2 incapable of refusal need not be placed under arrest before a chemical
3 test may be administered.

4 (c) If a chemical test is administered to a person under (a) or
5 (b) of this section, that person is not subject to the penalties for
6 refusal to submit to a chemical test provided by AS 28.35.032 and
7 28.35.034.

8 * Sec. 21. AS 28.35 is amended by adding new sections to read:

9 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) After convic-
10 tion of an offense under AS 28.35.030 or AS 28.35.032 involving a
11 motor vehicle of a type for which a driver's license is required and
12 upon motion by the state, the court shall hold a forfeiture hearing
13 and may order the forfeiture of the motor vehicle involved in the
14 commission of the offense if the person has been previously convicted
15 in this or another jurisdiction of more than one of the following
16 offenses or has more than once been previously convicted of one of the
17 following offenses:

18 (1) driving while intoxicated under AS 28.35.030 or another
19 law or ordinance with substantially similar elements; or

20 (2) refusal to submit to a chemical test under AS 28.35.032
21 or another law or ordinance with substantially similar elements.

22 (b) Upon forfeiture of a motor vehicle the court shall require
23 the surrender of the registration and certificate of title of that
24 motor vehicle. The registration and certificate of title shall be
25 delivered to the department.

26 (c) If not released under AS 28.35.037, a motor vehicle for-
27 feited under this section may be disposed of at the discretion of the
28 department.

29 Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon moving for

1 forfeiture of a motor vehicle under AS 28.35.036, the state shall
2 provide to every person who has an ascertainable ownership or security
3 interest in the motor vehicle written notice that includes

- 4 (1) a description of the motor vehicle;
5 (2) the time and place of the forfeiture hearing;
6 (3) the legal authority under which the motor vehicle may
7 be forfeited;
8 (4) notice of the right to intervene to protect the inter-
9 est in the motor vehicle.

10 (b) Upon receipt of a motion to intervene in a forfeiture hear-
11 ing the court shall order the satisfaction of the interest from the
12 proceeds of the sale of the motor vehicle or order the motor vehicle
13 to be released to the petitioner together with title to the motor
14 vehicle if the petitioner shows by a preponderance of the evidence
15 that

- 16 (1) the petitioner has an interest in the motor vehicle
17 acquired in good faith;
18 (2) a person other than the petitioner was convicted of the
19 offense that resulted in the forfeiture;
20 (3) the petitioner was not negligent in parting with the
21 motor vehicle.

22 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
23 standing other provisions in this title, a municipality may adopt an
24 ordinance providing for the impoundment or forfeiture of a motor
25 vehicle involved in the commission of an offense under AS 28.35.030,
26 28.35.032, or an ordinance with elements substantially similar to
27 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
28 is not required to be consistent with this title or regulations adopt-
29 ed under this title.

1 * Sec. 22. AS 28.15.211(a)(4) and AS 28.35.032(b),(c), and (d) are re-
2 pealed.
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ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



M E M O R A N D U M

TO: Senate State Affairs Committee

FROM: Senator Vic Fischer, Chairman
Senate State Affairs

RE: Drunk driving legislation

DATE: April 16, 1983

Enclosed you will find the list of options heard before the committee during recent hearings on drunk driving.

Please circle options you prefer to alleviate drunk driving in our state. Vehicles for implementing some of these programs are already in place-- funds simply need to be provided.

Two areas of concern specific to Alaska which were isolated during the hearings were:

1. incompatibility between the record systems of the state courts, police stations, and the DMV.
(Could be standardized through appropriate legislation)
2. that persons may be released on their own recognizance when they have an illegal BAC reading. (This situation is more complicated to address because of constitutional bail requirements.)

These two situations are not readily grouped with other anti-drunk driving measures as they represent loopholes in the current system. I'd appreciate hearing your thoughts on how to deal with them during the Thursday, April 28th committee hearing.

I'll need the results of the attached poll by April 27th in order to tabulate them by the April 28th hearing.

Directions: Please circle the best options					
OPTION:	SB 61	CSHB 17 (Jud)am	SB 226	Current Law	Recommendations /Explanations
<u>ENFORCEMENT</u>					
1. Selective enforcement roadblocks	no provision	no provision	no provision	no provision	Anchorage Muni. Prosecutor, Allen Baily, suggested that this program be implemented at the municipal level (see attachment 1).
2. Mandatory breath alcohol content tests for those stopped for moving violations	no provision	no provision	no provision	PBTs are used in the Anch. area	Dennis Kelso, and Larry Ross recommended this as a successful deterrent (see attachment 2).
3. Implied consent	no provision	no provision	no provision	consent for BAC tests is given upon receiving driver's license	
4. back up crews to decrease police officer off-road time.	no provision	no provision	no provision	no provision	increase enforcement efforts (see attachment 3).
5. purchase more accurate Breathalizers	no provision	no provision	no provision	no provision	evidence in court would be more reliable

ADJUDICATION AND SANCTIONING	SB 61	CSHB 17(Jud) am	SB 226	Current law	Recommendations /Explanations
1. Minimum fines for DWI or Breath test refusal	1st conviction \$250min, \$500max. 2nd conviction \$500min, 1000max. 3rd conviction \$1000min, 2500max.	no provision	no provision	no provision	recommended by many as appropriate sanction. was recommended as a deterrent (see attach. #4)
2. Minimum Incarceration for DWI and breath test refusal	1st conviction 72 consec. hrs. 2nd conviction 20 consec. days 3rd or subsequent conviction 30 consec. days min.	no provision	no provision	1st conviction 72 consec. hrs. 2nd conviction w/in 1yr 20dy. w/in 5yr 10dy.	recommended by many as appropriate sanction. --very expensive. success was questioned at at hearings (see attach. #5).
3. Presentence investigation report	no provision	no provision	no provision	no provision	recommended by many as way to increase DWI conviction rate
4. increase penalty for causing death or bodily injury	no provision	no provision	no provision	no provision	recommended in hearings as appropriate retribution
5. make sanctions for driving while license revoked equal to DWI	14 consecutive days, \$500 min.	no provision	no provision	no provision	recommended as a deterrent for drunk driving, and driving in violation of license revocation
6. driver's license suspensions	no provision	no provision	no provision	no provision	recommended as one of the most successful deterrents

ADJUDICATION/ SANCTIONING	SB 61	CSHB17(Jud)am	SB 226	Current Law	Recommendations/ Explanations
7. driver's license revocations	1st conviction Dwl or refusal 90 day minimum 2nd conviction 1 yr license revocation, 3rd or subs. conviction permanent re- vocation	no provision.	no provision	1st conviction Dwl-30 day min, or 60 day limited license /revocation combination 2nd conviction w/in 1 yr license revoc./ no limited lic. 3rd conviction no lim. lic. for 3 years.	recommended as one of the most successful deterrents
8. administrative license revocation	enf. officer shall seize license.(see attach #6).	no provision	no provision	no provision	recommended by Allen Bailly as as one of the most successful deterrents.
9. community service.	no provision	no provision	no provision	no provision	cheaper than incarceration/ similar effect.
10. automobile impoundment	car being used when apprehended shall be impounded for 3rd or subsequent conviction.	no provision	no provision	Anchorage Muni. Judges may impound auto used for no less that 30 days upon 2nd conviction, and no less than 60 days for 3rd convict.	constitutional questions have been raised concerning this sanction.
11. automobile forfeiture	car being used when apprehended may be forfeited	no provision	no provision	no provision	was recommended numerous times during hearings as appropriate sanction

DECREASE ALCOHOL BEVERAGE CONSUMPTION	SB 61	CSHB 17(Jud)am	SB 226	Current Law	Recommendation/Explanation
1. raise the minimum drinking age.	no provision	raises to 21. contains advisory vote provision. Those under 21 may work in estab. serving alcohol.	no provision	no provision	recommended for general deterrence. May decrease alcohol related accidents by 28%.
2. increase the excise tax on liquor	no provision	no provision	no provision	no provision	a 50¢ increase per 5th is said to decrease alcohol consumption by 5%.
3. prohibit open alcohol containers in automobiles	no provision	no provision	no provision	prohibited in Muni. of Anch.	recommended by many as most obvious way to decrease drunk driving
4. decrease bar hours	no provision	no provision	no provision	no provision	would decrease amount of time for persons to consume alcohol
5. distribute alcohol licenses which are similar to driver's licenses.	no provision	no provision	no provision	no provision	allow regulation of problem drinkers and habitual drinkers who drive.
6. increase the price of liquor licenses	no provision	no provision	no provision	no provision	accord. to some, this would decrease the number of alcohol estab.

DECREASE ALCOHOL BEVERAGE CONSUMPTION	SB 61	CSHB 17(Jud)am	SB 226	Current Law	Recommendation/Explanation
7. mandatory food service between certain hours	no provision	no provision	no provision	no provision	this would decrease the rate at which one became intoxicated
ENGINEERING EFFORTS/ DRIVING SAFETY	SB 61	CSHB 17(Jud) am	SB 226	Current Law	Recommendations
1. mandatory seat-belt use	no provision	no provision	no provision	no provision	According to Larry Ross this would drastically reduce the number of auto fatalities
2. child safety restraints	no provision	no provision	no provision	no provision	this measure drastically reduces the number of infant fatalities.
3. lower the speed limit to 50mph	no provision	no provision	no provision	no provision	lowering the speed limit was one of the two most successful highway safety measures in the '70's.
4. mandatory auto insurance	no provision	no provision	no provision	no provision	would make driver's more respons. for their actions. increased ins. rates would be a natural deterrent.
5. require digital add on equip. for car ignitions	no provision	no provision	no provision	no provision	would make it virtually impossible to start autos when intoxicated
6. curfew licenses for drivers under 18	no provision	no provision	driving prohibited for 16-17 year olds between 12am and 5am(see Attach 7)	no provision	could decrease fatalities for those covered under bill by as much as 63%

REHABILITATION TREATMENT/ EDUCATION	SB 61	CSHB 17(Jud)am	SB 226	Current law	RECOMMENDATION
1. provide rehabilitation in incarceration facilities	no provision	no provision	no provision	no provision	recommended by Judge Andrews as necessary for habitual offenders
2. court mediator or, hotline for problem drinkers	no provision	no provision	no provision	no provision	some felt that this was necessary. for those who have no where to turn
3. teenage treatment program or facilities	no provision	no provision	no provision	no provision	treatment for teens should be tailored differently than that for adults.
4. rehabilitation, treatment	offender shall undertake rehabilitation or education specified by the court	no provision	no provision	treatment administered with judicial discretion	
5. education	offender shall undertake rehabilitation or education specified by the court	no provision	will provide education in high schools (see attach 7).	provided as treatment at discretion of courts	

ATTACHMENT 1

April 16, 1983

Selective enforcement roadblocks

Selective enforcement roadblocks have been implemented in a number of countries, and in the United States.

A pilot project was implemented in the state of Maryland to aid in the detection and apprehension of intoxicated drivers. The program is anticipated to be a deterrent for potential drunk drivers.

The safety of citizens as well as Public Safety personnel will be considered in the selection of the sites. The sites will also be selected based on time of day, day of week location, and the number of accidents located in that area. The sites must also have a safe area in which cars can stop.

The Maryland project does not use barricades to block oncoming traffic. All traffic approaching the checkpoint will be pass through the checkpoint where the car will be approached by a police officer who will hand the driver a brochure prepared to explain the selective roadblock. If the officer detects alcohol while the car is stopped, the driver will be detained and required to present their driver's license and vehicle registration. They may also be required to give a preliminary breath test. If sufficient evidence of intoxication is developed, the driver will be arrested.

No action will be taken against a driver for merely turning off the roadway before the checkpoint.

ATTACHMENT 2

April 16, 1983

Mandatory Breathalyzer tests

A number of states give preliminary breath alcohol tests for all persons who are stopped for moving violations or who are involved in car accidents. The probable cause to give the test is simply that alcohol impairment may have caused the accident of the illegal driving pattern.

This was recommended by Dr. Dennis Kelso during the April 9, 1983 hearing as one of the best ways to increase enforcement efforts.

The lack of adequate enforcement was established as one of the largest loopholes in the drunk driving situation.

ATTACHMENT 3

April 16, 1983

Backup crews to assist police officers

Currently, the Alaska state trooper must spend at least one hour with the car of the apprehended person until the car can be impounded.

Using backup crews to come and wait with the car was recommended during the April 9 hearing as one way to decrease their down time which would ultimately increase enforcement.

ATTACHMENT 4

April 16, 1983

Mandatory minimum fines

Many opposing views were expressed on this option during the hearings. For instance, Anchorage Municipal Prosecutor Allen Baily suggested that fines would be an appropriate deterrent for drunk driving. District Court Judge, Elaine Andrews, expressed her concern about the difficulties in trying to collect the fine when the person is unable to pay.

ATTACHMENT 5

April 16, 1983

Mandatory Minimum incarceration

Included with this attachment are copies of the request we made from the Division of Corrections regarding the costs of installing and operating new or used modular minimum security facilities. Also included is a letter recommending the Harborview Disability Center as a minimum security facility.

Clearly, these suggestions have been made because of the strain already existing on the correctional facilities in the state.

Many persons during the hearings testified in favor of mandatory incarceration, and they generally stated it was a successful and warranted deterrent. Dr. Ross, on the other hand, stated that in England during the Road Safety act, there was no mandatory incarceration. The sanction for DWI was suspension of the driver's license. He suggested that the primary deterrent decreasing the fatality rate was the public's perception that they would be caught-- alcohol related accident fatalities rose within months of the implementation of the act with the change in the public perception.

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.

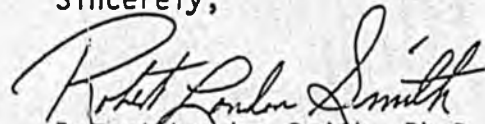
Programmatic issues for a specialized facility of this type have not been fully addressed. Many believe that those serving short sentences of three or ten days for drunk driving are not necessarily candidates for alcohol treatment programs. Some argue that the punitive impact of incarceration is most 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



PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

David Maliman-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,



Jeffrey L. Jesse
Staff Attorney

JLJ:bk

ATTACHMENT 6

April 16, 1983

Administrative license revocation:

SB 61 states that if a person under arrest refuses to take the breathalyzer test, or if their BAC is above the legal limit, the enforcement officer shall seize that persons driver's license. The officer shall read and deliver to the person arrested a notice advising him or her that: 1) the state intends to revoke their driver's license; 2) the person has a right to obtain a court review of the revocation; 3) the notice is a temporary driver's license expiring seven days from date of notification; 4) the revocation of the person's driver's license shall take effect upon the expiration of the temporary driver's license unless that person within seven days initiates court proceedings to rescind the revocation.

ATTACHMENT 7

April 16, 1983

Curfew license provisions in SB 226

This bill creates three different stages of driver's licenses, and decreases the hours in which a person having a permit only can drive according to the outline below.

SB 226:

1) prohibits those automobile drivers with learning permits (as opposed to licenses) from driving between the hours of 9pm and midnight on Friday and Saturday, and prohibit them from driving between midnight and 5am every morning.

2) provides in the state driver's manual a more substantial section on the dangers of combining driving and alcohol-- including a portion on how to recognize an intoxicated driver, and create a corresponding section in the written examination.

3)creates a Stage 1 license--

-- this license would apply to 16 year old persons, and to those who are 17 years old who have not had driver's education.

-- persons with this license would be prohibited from driving between the hours of midnight and 5am unless accompanied by a parent or a spouse 18 years of age or older, or unless traveling to or from work or in the course of employment with a signed affidavit in hand from the employer.

-- two moving violations, 1 DWI, or driving in violation of the curfew would result in the revocation of this license, but would allow them to apply for a learner's permit.

4)creates a Stage 2 license--

--this license would apply to 17 year olds who have passed driver's education.

--to qualify for this license a 17 year old must have 6 consecutive months prior to application with no moving violations, and no DWIs or curfew violations.

--a moving violation, a DWI, or a curfew violation results in the revocation of the Stage 2 license. The person would, however, be able to apply for a stage 1 license.

--this Stage 2 license would not have any driving curfew.

5) creates a Stage 3 license equal to the current Alaska State driver's license in every way except that you must be 18 to be eligible for that license--

--any Alaska State resident currently eligible for a driver's license, and who is 18 years of age would be eligible for a Stage 3 license.

--traffic violations obtained with a permit, stage 1 license, or a stage 2 license shall be applied to the stage 3 license in compliance with current Alaska law when that license is obtained on or after their 18th birthday.

6) provides an effective date of January 1, 1984

--those who receive their driver's licenses before January 1, 1984 would have a three month period in which to obtain the appropriate license after the effective date of the bill before their license automatically expires.

7) in accordance with this bill, driver's education courses must be available to all persons under 18 through the high school curriculum.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99311

(907) 465-4954



MEMORANDUM

TO: Senate State Affairs Committee

FROM: Senate State Affairs Staff *ST*

RE: Digital add-on equipment for cars

DATE: May 4, 1983

Dennis Kelso mentioned digital add-on equipment during the April 9th hearing in Anchorage on drunk driving. With the digital add-on device on a car, a person would have to push a sequence of numbered buttons in a certain amount of time for the car to start. The intent for this device was to make it impossible for persons impaired with alcohol to start their automobile.

The device referred to by Dr. Kelso is called the General Motors Phys Test. It was in an experimental stage twelve years ago, and was shelved because it didn't really measure impairment. Certain people never failed the test no matter what their BAC level.

Systems Technologies of San Diego is currently working with that city on a pilot project called the Critical Tracking Test. The pilot project uses convicted DWI offenders whose licenses are restricted to the use of the cars with the add-on equipment.

This test measures impairment by forcing a person to keep a needle in the middle of a meter for 30 seconds using the steering wheel. If the person fails the test, that person can still start the car but the "alarm" goes off. When the car is driven below 10mph, "the alarm" is constituted by automatic flashing of the emergency lights. If the impaired driver attempts to drive over 10mph, the horn begins to rhythmically honk.

The pilot project is nearly finished. System Technologies is next going to build a marketable device which they expect to be about the same size and price as a car stereo.

TO: Senator Vic Fischer, Chairman
Senate State Affairs Committee
Alaska State Legislature

DATE: May 4, 1983

FILE NO:

TELEPHONE NO: 465-4371

FROM: Charles A. Smith, Director *CAS*
Highway Safety Planning Agency
Department of Public Safety

SUBJECT: Incentive Grant
Criteria

In reviewing the Federal legislation concerning the subject matter, I have determined the following:

1. Bills pending before the Legislature, if passed, would qualify the State for up to \$262,000 in incentive funds;
2. Two items that are required, as a minimum, are prompt suspension or revocation of the driver's license for drunk driving, and a minimum of 90 days suspension/revocation for the first offense.

In order to qualify for continued incentive funds in succeeding years, other parts of the bills would have to be passed.

I hope that the foregoing provides the information you require and I would be happy to provide further or more detailed information.

CAS/vo

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



April 9, 1983
9:00am

Municipal Assembly Chambers,
Anchorage

Members Present

Senator Vic Fischer, Chair
Senator Arliss Sturgulewski
Senator Pat Rodey

SB 61, An act relating to drunk driving
SB 226, Relating to the licensing and training of drivers
CSHB 17 (Jud) am, Raising the drinking age to 21

Dr. Dennis Kelso, invited expert, gave an overview of the issues. He suggested that the four functions of criminal law were retribution, incapacitation, rehabilitation, and deterrence. He said that the deterrence model has been the main focus of criminal law as it relates to drunk driving. The three elements that make up this model are certainty, severity and swiftness. Other major points of his testimony were that Alaska has the strongest laws in the country based on the deterrence model, and that this model hasn't been very effective in criminal law in general. He also expressed the need to redefine the problem of drunk driving.

Kathy Weltzin of the Alaska Council on the Prevention of Alcohol and Drug Abuse described the educational program "Here's looking at You," which has been implemented in the schools throughout the state. This program is a preventative measure designed to educate persons from grades K-12 about the problems associated with the consumption of alcohol.

Testimony was heard from many Anchorage residents who had specific recommendations. Some of these recommendations were to: lower the legal definition of intoxication, improve road safety, increase penalties, raise the drinking age, implement vehicle forfeiture and impoundment, establish curfews, and set up roadblocks.

Allen Baily, invited to speak from the Anchorage Municipal Prosecutor's office, commented on the deterrence model for dealing with drunk drivers. He spoke in favor of presumptive sentencing and administrative revocation and suspension of licenses. He said that the suspension of licenses was more effective than incarceration-- though he is still in favor of incarceration.

District Court Judge, Elaine Andrews, said that the state needs more judges to handle the extra load imposed on the courts by the legislation before the committee. She also suggested some other problems with the current (and proposed) methods of handling drunk drivers. One of her concerns was that the state can't collect mandatory fines if the person is unable to pay them. Another concern to Judge Andrews was that judges can order mandatory treatment, but they have no authority to see that it gets carried out.

Testimony was heard from concerned citizens about drunk driving. Testimony was heard on both sides of raising the drinking age. Most people spoke in favor of CSHB 17 (Jud) am, Raising the drinking age. Many people spoke in favor of more rehabilitation programs. There was general agreement that the record system for the state of Alaska desperately needed to be improved.

The hearing adjourned at 5:10pm.

by,
Suzanne Dwyer
Deputy

SENATE STATE AFFAIRS
STANDING COMMITTEE
April 7, 1983
3:15 p.m.

Members Present: Senator Vic Fischer, Chair
Senator Tim Kelly
Senator Bill Ray
Senator Pat Rodey

Members Absent: Senator Arliss Sturgulewski

COMMITTEE CALENDAR

SB 61 Amended Title: An Act relating to driving a motor vehicle.

SB 226 Amended Title: An Act relating to the training and licensing of drivers; and providing for an effective date.

HB 17 Amended Title: An Act authorizing an advisory vote on the drinking age; raising the drinking age to 21; allowing employment of certain minors in licensed premises; amending other provisions of law relating to the drinking age.

WITNESS REGISTER

Charlie Smith
Department of Public Safety
Pouch N, Juneau, AK 99811
465-4371
Position Statement: Testimony was given on the subject of drunk driving and related issues.

Gayle Horetski
Department of Law
Pouch KC, Juneau, AK 99811
465-3428
Position Statement: Testimony was given on the subject of drunk driving and related issues.

Jim Vaden
Department of Public Safety
Pouch N, Juneau, AK 99811
465-4322
Position Statement: Testimony was given on the subject of drunk driving and related issues.

Roger Endell

Department of Health and Social Services
Division of Corrections
Juneau, AK 99811
465-3376

Position Statement: Testimony was given on the subject of drunk driving and related issues.

Representative Mitch Abood
Alaska State House of Representatives
Pouch V, Juneau, AK 99811
465-4947

Position Statement: Testimony was given on the subject of drunk driving and related issues.

PREVIOUS ACTION

SB 61 There is no previous action to report on this bill.

SB 226 There is no previous action to report on this bill.

HB 17 Please refer to House Judiciary Committee Minutes from 02/08/83 and 03/14/83. Please refer to House Finance Committee Minutes from 03/11/83. There is no previous action to report on this bill in the Senate State Affairs Committee.

ACTION NARRATIVE

TAPE# 1 for 04/07/83, Side 1
Recording
Number 000

The Senate State Affairs Committee meeting was called to order at 3:15 p.m. by Chairman Vic Fischer with member Senators Kelly, Ray, and Rodey present. Senator Sturgulewski was absent.

Number 110 Charles Smith (Division of Highway Safety). Gave a statistical overview of drunk driving. In 1975 19 Million dollars in costs resulted from drunk driving.

Number 212 Senator Pat Rodey: Question.

Number 250 Senator Bill Ray: Question.

Number 296 Senator Bill Ray: Question.

Number 308 Charlie Smith: In 1979, of 91 fatalities in Alaska, 70.3 percent were alcohol related.

In 1980, of 95 fatalities, 64 were alcohol related. In 1977, out of 15,000 plus accidents, 5,850 were injury accidents. This year there will probably be 20,000 accidents with over 6,000 injury accidents.

- Number 405 Senator Pat Rodey: Question.
- Number 430 Chairman Vic Fischer: Question.
- Number 474 Senator Bill Ray: Is it correct that fatalities occur in one half of one percent of all accidents?
- Number 480 Smith: Yes.
- Number 490 Chairman Vic Fischer: Question.
- Number 510 Senator Tim Kelly: Are small cars more dangerous in accidents?
- Number 523 Smith: Yes. There are efforts on the national level to make small cars safer.
- Number 544 Chairman Vic Fischer: Question.
- Number 600 Chairman Vic Fischer: Question.
- Number 615 Senator Tim Kelly: Too many young people are being killed in alcohol-related accidents.
- Number 620 Chairman Vic Fischer: Question.
- Number 670 Chairman Vic Fischer: Which has had a greater effect: raising the drinking age or instituting a curfew?
- Number 673 Smith: Doesn't know.
- Number 680 Representative Mitch Abood: Comment.
- Number 700 Senator Bill Ray: Comment.
- Number 720 Representative Mitch Abood: Comment.
- Number 737 Senator Tim Kelly: Question.
- Number 782 Senator Bill Ray: Question.
- Number 810 Senator Tim Kelly: Question.
- Number 000 TURN TAPE OVER. BEGIN SIDE 2

Number 001 Gayle Horetski (Department of Law):
Discussed Title 28 as it applies to drunk
driving. Discussed DWI, refusal to take a
breath test, and DWLS (driving while license
is suspended).

Number 089 Chairman Vic Fischer: How does mandatory
treatment fit in?

Number 106 Horetski: Court may order mandatory
treatment--is within the court's discretion.

Number 145 Senator Bill Ray: Are lesser sentences
provided by municipal ordinances?

Number 150 Horetiski: Doesn't know.

Number 180 Chairman Vic Fischer: What problems exist
with Title 28?

Number 186 Horetski: Statutes need to be consolidated.
There are up to 3 or 4 sections addressing
different aspects of each of these crimes.
There are contradictions and lack of
clarity.

Number 296 Representative Mitch Abood: Describes House
State Affairs work on HB 6, a drunk driving
bill.

Number 338 Senator Bill Ray: Comment.

Number 342 Representative Mitch Abood: Comment.

Number 361 Senator Tim Kelly: Question.

Number 370 Horetski: Explains DWI provisions relating
to first and second offenses.

Number 410 Representative Mitch Abood: Comment.

Number 452 Representative Mitch Abood: Comment.

Number 463 Senator Bill Ray: Comment.

Number 474 Col. Jim Vaden (State Troopers): Discussed
alcohol-related fatalities.

Number 575 Representative Mitch Abood: Question.

Number 588 Representative Mitch Abood: Question.

Number 621 Senator Bill Ray: Comment.

Number 738 Roger Endell (Director of Adult Corrections): Six percent of inmates are serving time for alcohol-related offenses. They book 3600 persons a year on these charges. 75 percent are first offenses. Prisons are overcrowded. Should use fines in lieu of jail time or confiscation of automobiles or some other method. It costs 20 to 30 thousand dollars a year to house inmates. Should have treatment and restitution programs.

Number 835 Representative Mitch Abood: Could these offenders be kept in minimum security?

Number 840 Endell: Yes.

Number 000 END OF TAPE 1 SIDE 2. BEGIN TAPE 2, SIDE 1

Number 001 Roger Endell: Recommends administrative revocation of drivers' licenses.

Number 021 Chairman Vic Fischer: Why hasn't this been done? Can Endell give specific proposal for minimum security for these offenses.

Endell: Yes.

Number 106 Representative Mitch Abood: HB 6 is not the whole answer. Willing to entertain reasonable proposals.

Number 173 Chairman Vic Fischer: Requests a capital proposal for a minimum security facility.

Number 192 Representative Mitch Abood: Need to look at alcohol rehabilitation programs.

Number 205 Roger Endell: Describes innovative programs in Finland: the "social hospital." Also have short term detention and treatment programs.

Number 265 Senator Tim Kelly: Not all persons arrested need treatment.

Number 277 Representative Mitch Abood: Repeaters need to be treated.

Number 350 Chairman Vic Fischer: Meeting adjourned at 4:55 p.m.

ALASKA STATE LEGISLATURE

SENATE STATE AFFAIRS COMMITTEE

SENATOR VIC FISCHER, CHAIRMAN

POUCH V, JUNEAU 99811

(907) 465-4954



MEMORANDUM

TO: Norm Gorsuch,
Attorney General

FROM: Senator Vic Fischer, Chair
Senate State Affairs

RE: Attorney General's Opinion

DATE: April 28, 1983

In order to expedite the passage of bills relating to drunk driving currently before the Senate State Affairs Committee, I need to have an Attorney General's opinion on the following subjects:

1. impoundment provision in SB 61.
2. forfeiture provision in SB 61.
3. administrative license revocation provision in SB 61.
4. sobriety checkpoints as implemented in Maryland (see attachment 1); and an intoxication control roadblock program currently before the Rhode Island General Assembly (see attachment 2).
5. mandatory preliminary breath tests to all persons who are stopped for moving violations to check for their breath alcohol content.

If you have any need for clarification, please contact Suzanne Tryck (4954). In order to expedite the movement of these bills out of committee, I need to have these opinions by Tuesday, May 3.

NOTE REGARDING THE FOLLOWING FRAME(S) ON MICROFILM:
COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES.
TITLE PAGE ONLY HAS BEEN FILMED.

REVISIONS IN STATE DRUNK DRIVING LAWS TO COMPLY WITH THE BARNES BILL

© 1982 by Edward F. Kearney

Edward F. Kearney served as Director of Research and as Executive Director of the National Committee on Uniform Traffic Laws and Ordinances for 20 years. During that time, he was the Draftsman for the *Uniform Vehicle Code* and the *Model Traffic Ordinance*, wrote dozens of model state laws, and was responsible for *Traffic Laws Annotated*, *Driver Licensing Laws Annotated*, and 89 issues in the *Traffic Laws Commentary* series. Mr. Kearney graduated from Georgetown Law School and is admitted to practice law before the courts in the District of Columbia and the Supreme Court of the United States. In addition to law review and an excellent academic record, Ed served as a bailiff in the D.C. Traffic Court while in law school. Since retiring from his work with the National Committee on June 30, 1982, Mr. Kearney enjoys resolving important transportation and safety problems as a consultant and as an expert witness. He also continues to make the best bicycle lights in the world.