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BILL FILE LOG

BILL # 74

Original bill + back-up

~~CS~~

CS received in committee

2/1 Position statement - Dept. of Public Safety

3/19 Bill passed out - CSSB74 (Jud)

CS offered by Gayle Honetski

Jim Uaden - Public Safety - supports

Commentary: Proposed CSSB 74 (Jud)

The proposed judiciary committee substitute for SB 74 makes several changes in the present bill. Sections 1, 2, 3, and 4 have been deleted. Pending litigation may resolve the issue addressed in sections 3 and 4, and it is believed advisable to undertake more thorough legal research before redrafting sections 1 and 2.

Sections 1, 3 and 4 of proposed CSSB 74 (Jud) contain new material. These sections transfer administrative and regulatory authority for the state's alcohol breath testing program from the Department of Health and Social Services (DHSS) to the Department of Public Safety (DPS). This transfer would improve the administration of Alaska's breath testing program by eliminating unnecessary confusion, expense, and duplication of effort, and would help to ensure that the state's breath test program is conducted in the most efficient and legally defensible manner.

Transfer of the breath test program to the DPS was one of the secondary recommendations made by the Governor's Task Force on Drunk Driving in January of this year. In the interests of consolidation of resources and administrative efficiency, both DPS Commissioner Robert Sundberg and DHSS Commissioner John Pugh have recommended that the transfer be made. This change is also supported by the Department of Law.

Under existing law, DHSS possesses regulatory authority for the state's breath test program. Much of the responsibility for the actual administration and day-to-day functioning of the program rests with DPS, however. Historically, DPS has purchased and distributed the breath test instruments, repaired the instruments, purchased and distributed necessary supplies, and conducted the training of breath test operators and supervisor-instructors. This defacto division of functions between the two departments has led to some unfortunate difficulties in the administration of the present program. Since there is no one office or agency with clear administrative oversight authority over the breath test program, some uncertainty about areas of responsibility and lines of authority has developed. Occasionally some necessary duties have "fallen between the cracks." As a direct result of this lack of a centralized oversight authority prosecutors have had to dismiss numerous DWI prosecutions and have had to defend scores of DWI cases on appeal.

Alaska's first "implied consent" statute (requiring all persons suspected of drunken driving to consent to a chemical test to determine blood alcohol content) was adopted

in 1969. AS 28.35.033(d) made the Department of Health and Social Services (at that time called the Department of Health and Welfare) responsible for approving "satisfactory techniques, methods, and standards of training" for analysis of the alcohol content of a DWI arrestee's breath sample. This responsibility was given to DHSS at that time because there was no other state agency which had either the facilities or the technical expertise to perform this function.

In 1978 a state forensic crime laboratory was established in the Department of Public Safety to provide essential scientific support services to local law enforcement officers and state troopers throughout the state. Since that time the state crime laboratory has performed a steadily increasing array of scientific functions and analyses. The laboratory now employs four full time chemists who routinely analyze suspected controlled substances and have testified in numerous criminal trials. In recent years laboratory personnel have begun conducting analyses of diverse crime scene evidence, including physical evidence in arson cases, urine and blood testing, foot print comparisons, and some limited fiber, trace, and serological analyses.

In 1983 and 1984 the legislature appropriated 5½ million dollars to DPS to build and equip a sophisticated new crime laboratory facility in Anchorage. Construction of that facility is underway, and is expected to be complete by September of this year. The new laboratory will provide expanded testing capabilities in the areas of forensic chemistry, serology, toxicology, firearms identification, and trace evidence identification.

In light of this expansion of the public safety laboratory, it makes administrative and public policy sense to transfer the responsibility for administration of Alaska's alcohol breath testing program to the DPS laboratory. Transfer of this function to the DPS laboratory would be consistent with the national trend in DWI law enforcement and breath testing. Currently, over half of the states in the country have placed full administrative responsibility for their alcohol breath test programs with their departments of public safety. Several of these states, such as Texas, Minnesota, New York, New Jersey, and Michigan, have sophisticated programs which serve as models for other states. In only about ¼ of the states does administrative oversight authority for the state breath test program remain in the department of public health.

Section 3 of the proposed CS for SB 74 provides that existing breath test regulations will remain in effect until new regulations are adopted by the Department of

Public Safety, and section 4 establishes a special effective date of July 1, 1985. This special effective date has been included because it will be necessary to transfer some resources from DHSS to DPS when the bill takes effect. July 1st is the beginning of the new fiscal year, and a convenient point at which to transfer positions.

Section 2 of the proposed CS addresses a problem which has surfaced as a result of the Court of Appeals decision in Bass v. Municipality of Anchorage, Op. No. 429 (Alaska Ct. App., December 14, 1984). Bass overturned his car in a one-car accident in September of 1983. When the police arrived at the scene of the accident Bass appeared to be extremely intoxicated. Bass had been injured in the accident, and so was immediately taken to a hospital. Because Bass was required to remain at the hospital for several hours, he could not be taken to the police station for a breath test.

After consulting with the municipal prosecutor, the investigating officer asked Bass to provide a sample of his blood for analysis to determine alcohol content. Bass refused, but a blood sample was taken over his objections. The sample was taken under the authority of AS 28.35.035(b), which allows a blood alcohol test to be administered to a DWI suspect who is "unconscious or otherwise in a condition rendering that person incapable" of refusing a breath test.

The appellate court held that Bass, who was injured and hospitalized but not unconscious, did not fall under the "narrow language" of AS 28.35.035 and therefore suppressed the result of the defendant's blood alcohol test (0.243). The amendment to AS 28.35.035(b) contained in section 2 of this bill would plug this "loophole" and allow collection of essential evidence of the blood alcohol level of a DWI suspect who cannot be transported to the police station for a breath test.

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1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 74 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to driving while intoxicated; and
7 providing for an effective date."

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

9 * Section 1. AS 28.35.033(d) is amended to read:

10 (d) To be considered valid under the provisions of this section
11 the chemical analysis of the person's breath or blood shall have been
12 performed according to methods approved by the Department of Public
13 Safety [HEALTH AND SOCIAL SERVICES]. The Department of Public Safety
14 [HEALTH AND SOCIAL SERVICES] is authorized to approve satisfactory
15 techniques, methods, and standards of training necessary to ascertain
16 the qualifications of individuals to conduct the analysis. If it is
17 established at trial that a chemical analysis of breath or blood was
18 performed according to approved methods by a person trained according
19 to techniques, methods and standards of training approved by the
20 Department of Public Safety [HEALTH AND SOCIAL SERVICES], there is a
21 presumption that the test results are valid and further foundation for
22 introduction of the evidence is unnecessary.

23 * Sec. 2. AS 28.35.035(b) is amended to read:

24 (b) A person who is unconscious, injured, or otherwise in a
25 condition rendering that person incapable of providing a breath sample
26 [REFUSAL] is considered not to have withdrawn the consent provided
27 under AS 28.35.031(a) and a chemical test may be administered to
28 determine the amount of alcohol in that person's breath or blood. A
29 person who is unconscious, injured, or otherwise incapable of

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1 providing a breath sample [REFUSAL] need not be placed under arrest
2 before a chemical test may be administered.

3 * Sec. 3. Transition. Regulations adopted by the Department of Health
4 and Social Services under authority of AS 28.35.033(d) remain in effect
5 until revoked or amended by the Department of Public Safety.

6 * Sec. 4. This Act takes effect on July 1, 1985.
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Original sponsor: Abood

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27 under AS 28.35.031(a) and a chemical test may be administered to
28 determine the amount of alcohol in that person's breath or blood. A
29 person who is unconscious, injured, or otherwise incapable of

1 providing a breath sample [REFUSAL] need not be placed under arrest
2 before a chemical test may be administered.

3 * Sec. 3. TRANSITION. Regulations adopted by the Department of Health
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6 * Sec. 4. This Act takes effect July 1, 1985.
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SENATE BILL 74

"An Act relating to driving while intoxicated"

Section 1

Would solve the problem created by defendants who drive under the influence of alcohol and drugs, or drugs alone, where the drug is one which affects the ability to drive, but which is not listed in the statutes set forth in AS 28.35.030(a)(1). In attempting to prohibit such conduct, the Legislature stated in AS 28.35.030(a)(3) that it was unlawful to drive under the influence of "alcohol and another substance." The Alaska Supreme Court found that subsection unconstitutionally vague in Williford v. State, 675 P.2d 1329 (Alaska 1983). The amendment, which is patterned after comparable subsections of the Uniform Vehicle Code, would solve this legal problem.

Section 2

Adds a new paragraph to specify the meaning of "drug".

Section 3 and 4

Would make clear the Legislature's intent that all persons convicted of DWI or breath test refusal should serve time in jail, not just those who could not afford some type of residential alcohol treatment program. Under the court cases of Nygren v. State, 658 P.2d 141 (Alaska 1983), and Lock v. State, 609 P.2d 539 (Alaska App. 1980), if a defendant is required to spend time in a residential alcohol program prior to sentencing, as a condition of bail, then he or she must receive credit for that time spent in the program against the total jail time to be served. At least one district judge in Anchorage has held that, under a variation of this concept, the defendant may enter the treatment program after sentencing and still receive credit against the jail sentence. These new subsections will clarify that the time spent in a residential alcohol treatment or rehabilitation program cannot be credited towards part or all of a mandatory sentence.

Section 5

Would cure a defect in the wording of AS 28.35.035 which, in some cases, permits uncooperative DWI defendants to avoid conviction for either DWI or refusal. An example is a DWI defendant who is injured, but who did not injure any other person, in an accident; if he is held at the hospital emergency room for treatment and will not take a blood alcohol test, the police are often unable to obtain any evidence of blood alcohol concentration. Adding the words or at a location would make it clear that, if a person is at a medical facility and, for that reason alone, cannot be offered a breath test (the court-approved instruments are not portable), the person may be subjected to an involuntary blood test because he is "at a location rendering that person incapable of providing a breath sample." There is not constitutional impediment to this procedure. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

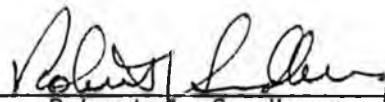
DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSB 74(SA)

Support

February 14, 1985

CSSB 74(SA) - "An Act relating to driving while intoxicated."

The intent of this legislation is to clarify the language in 28.35.030 to close loopholes through which suspects have been able to avoid prosecution.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 74
 Title: An Act relating to driving while intoxicated...
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Alaska State Troopers

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338

Date: 2-6-85

Approved by Commissioner: [Signature]
 Agency: Public Safety

Date: 2-6-85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84