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**COMMITTEE REPORT**  
**SENATE**

1/22/85

FURTHER: JUDICIARY  
FINANCE

Date

2/8/85

Mr. President

The Committee on STATE AFFAIRS considered SB 74  
driving while intoxicated.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 74 (SH)
- new title
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
Bill Kay  
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Chairman  
Chairman recommendation

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
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338  
 Division: Administrative Services Date: 2-6-85

Approved by Commissioner: Michael J. Jensen Date: 2-6-85  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

DEPARTMENT OF PUBLIC SAFETY

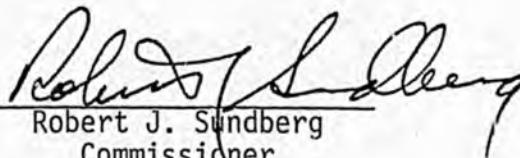
POSITION PAPER - SB 74

Support

February 1, 1985

SB 74 - "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

## 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).