

H B

354

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/12/88

FURTHER REFERRALS: Judiciary

DATE: April 13, 1988

The Health, Education and Social Services Committee has considered HB 354

"An Act relating to driving while intoxicated; and providing for an effective date."

RECOMMENDS:

- replace with CHB 354 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] No Rec.

[Signature] - No Rec.

[Signature]

[Signature]
Co-Chairman's signature

[Signature]

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907.465.3800

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H HESS	4-13-88	8:30a.m.
H HESS	4-12-88	8:30a.m.

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

27 (2) the person has the right to administrative review of
28 the revocation or determination not to issue an original license;

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

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

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

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

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license,
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of (1) not less than 72 hours
23 if the person has not been previously convicted in this or another
24 jurisdiction under this or another law or ordinance with substantially
25 similar elements; (2) not less than 10 consecutive days if, within the
26 preceding 10 years, the person has been previously convicted once in
27 this or another jurisdiction under this or another law or ordinance
28 with substantially similar elements; and (3) not less than 20 consecu-
29 tive days if, within the preceding 10 years, the person has been

1 previously convicted more than once in this or another jurisdiction
2 under this or another law or ordinance with substantially similar
3 elements [10 DAYS]. The execution of sentence may not be suspended
4 nor may probation or parole be granted until the minimum imprisonment
5 provided in this section has been served; nor may imposition of sen-
6 tence be suspended. In addition, the person's license, [OR] privilege
7 to drive, or privilege to obtain a license shall be revoked, and the
8 person may not be issued a new license nor may the privilege to drive
9 be restored for an additional period of not less than 90 days [ONE
10 YEAR] after the date that the person would have been entitled to
11 restoration of driving privileges.

12 * Sec. 7. AS 28.15.291(c) is amended to read:

13 (c) The court shall impose a sentence of imprisonment of not
14 less than 20 [30] days and a fine of not less than \$500 upon con-
15 viction of a violation of this section if the person's driver's li-
16 cense, privilege to drive, or privilege to obtain a license was re-
17 voked under circumstances described in AS 28.15.181(c)(1). The court
18 shall impose a sentence of imprisonment of not less than 30 [90] days
19 and a fine of not less than \$1,000 upon conviction of a violation of
20 this section if the person's driver's license, privilege to drive, or
21 privilege to obtain a license was revoked under circumstances de-
22 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
23 not be suspended nor may probation or parole be granted until the
24 minimum imprisonment provided in this subsection has been served.
25 Imposition of sentence may not be suspended. In addition, the per-
26 son's privilege to drive shall be revoked for an additional period of
27 not less than 90 days [ONE YEAR] after the date that the person would
28 have been entitled to restoration of driving privileges if the person
29 had not been convicted under this section.

1 * Sec. 8. AS 28.35.030(b) is amended to read:

2 (b) Except as provided in (h) of this section, driving [DRIVING]
3 while intoxicated is a class A misdemeanor.

4 * Sec. 9. AS 28.35.030(c) is amended to read:

5 (c) Upon conviction under this section the court shall impose a
6 minimum sentence of imprisonment of not less than 72 consecutive hours
7 and a fine of not less than \$250 if the person has not been previously
8 convicted in this or another jurisdiction of driving while intoxicated
9 under this or another law or ordinance with substantially similar
10 elements or refusal to submit to a chemical test under AS 28.35.032 or
11 another law or ordinance with substantially similar elements. Upon
12 conviction under this section the court shall impose a minimum sen-
13 tence of imprisonment of not less than 20 consecutive days and a fine
14 of not less than \$500 if, within the preceding 10 years, the person
15 has been previously convicted once in this or another jurisdiction of
16 driving while intoxicated under this or another law or ordinance with
17 substantially similar elements or refusal to submit to a chemical test
18 under AS 28.35.032 or another law or ordinance with substantially
19 similar elements. Upon conviction under this section the court shall
20 impose a minimum sentence of imprisonment of not less than 90 [30]
21 consecutive days and a fine of not less than \$1,000 if, within the
22 preceding 10 years, the person has been previously convicted in this
23 or another jurisdiction of more than one of the following offenses or
24 has more than once been previously convicted of one of the following
25 offenses: (1) driving while intoxicated under this or another law or
26 ordinance with substantially similar elements; (2) refusal to submit
27 to a chemical test under AS 28.35.032 or another law or ordinance with
28 substantially similar elements. The execution of sentence may not be
29 suspended nor may probation be granted except on condition that the

1 minimum imprisonment provided in this section is served. Imposition of
2 sentence may not be suspended. In addition, if the offense involved
3 driving a motor vehicle for which a driver's license is required, the
4 person's driver's license shall be revoked in accordance with AS 28.-
5 15.181 and the vehicle used in commission of the offense may be for-
6 feited under AS 28.35.036. In addition, the court shall order, and a
7 person convicted under this section shall undertake, for a term spec-
8 ified by the court, that program of alcohol education or rehabilita-
9 tion that the court, after consideration of any information compiled
10 under (d) of this section, finds appropriate.

11 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person who, within the preceding 10 years, has been previ-
13 ously convicted three or more times in this or another jurisdiction of
14 the offense of driving while intoxicated or an offense under another
15 law or ordinance with substantially similar elements is guilty of a
16 class C felony. Upon conviction under this section the court shall
17 impose a minimum sentence of imprisonment of not less than six months.

18 * Sec. 11. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction of a person under this section, the court
20 shall impose a minimum sentence of imprisonment of not less than 72
21 consecutive hours and a fine of not less than \$250 if the person has
22 not been previously convicted in this or another jurisdiction of
23 driving while intoxicated under AS 28.35.030 or another law or ordi-
24 nance with substantially similar elements or refusal to submit to a
25 chemical test under this section or another law or ordinance with
26 substantially similar elements. Upon conviction under this section the
27 court shall impose a minimum sentence of imprisonment of not less than
28 20 consecutive days and a fine of not less than \$500 if, within the
29 preceding 10 years, the person has been previously convicted once in

1 this or another jurisdiction of driving while intoxicated under
2 AS 28.35.030 or another law or ordinance with substantially similar
3 elements or refusal to submit to a chemical test under this section or
4 another law or ordinance with substantially similar elements. Upon
5 conviction under this section the court shall impose a minimum sen-
6 tence of imprisonment of not less than 90 [30] consecutive days and a
7 fine of not less than \$1,000 if, within the previous 10 years, the
8 person has been previously convicted in this or another jurisdiction
9 of more than one of the following offenses or has more than once been
10 previously convicted of one of the following offenses: (1) driving
11 while intoxicated under AS 28.35.030 or another law or ordinance with
12 substantially similar elements; (2) refusal to submit to a chemical
13 test under this section or another law or ordinance with substantially
14 similar elements. The execution of sentence may not be suspended nor
15 may probation be granted except on condition that the minimum impris-
16 onment provided in this section is served. Imposition of sentence may
17 not be suspended. If the offense involved driving a motor vehicle for
18 which a driver's license is required, the person's driver's license
19 shall be revoked under AS 28.15.181. In addition, the court shall
20 order, and a person convicted under this section shall undertake, for
21 a term specified by the court, that program of alcohol education or
22 rehabilitation that the court, after consideration of any information
23 compiled under (h) of this section, finds appropriate. The sentence
24 imposed by the court under this subsection shall run consecutively
25 with any other sentence of imprisonment imposed on the committed
26 person.

27 * Sec. 12. This Act takes effect January 1, 1989.
28
29

MEMORANDUM

State of Alaska

TO: Susan Humphrey-Barnett
Commissioner

DATE: April 13, 1988

FILE NO:

TELEPHONE NO: 465-3460

THRU:

SUBJECT: CSHB 354

FROM: Larry A. McKinstry *LAM*
Assistant Attorney General

You have asked whether the terms of CSHB 354 alters or restricts the ability of the Department to place persons convicted and sentenced under its provisions into alternative custodial settings (i.e., community restitution centers, halfway houses, etc) available under existing law.

It is our opinion that, except for the specific limitation upon placement of felons into private contract facilities contained in AS 33.30.031(b), the provisions of CSHB 354 would not alter the ability of the Commissioner to designate appropriate placements of persons committed to her custody.

Existing law requires that persons committed to the Commissioner's custody may be placed in any facility deemed appropriate by the Commissioner (AS 33.30.061). Such persons are further eligible for furlough or alternative custodial placement at the discretion of the Commissioner in accordance with criteria established by Regulation - Sec, AS 33.30.091 - .131 and AS 33.30.151.

However, imposition of a minimum period of imprisonment implies that the Commissioner would not be allowed to release a person from custody. In determining whether a person is in custody, the courts utilize the factors set out in the attached opinion of Nygren v. State 658 P.2d 141, 146 (Alaska App. 1983).

If you have further questions concerning this request, please let me know.

LAM:cc
Attachment

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box 1
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

April 11, 1988

TO: Representative Niilo Koponen, Co-Chair
Representative Johnny Ellis, Co-Chair
House Health, Education and Social Services Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 354, "An Act relating to the privilege to drive and obtain a license; to penalties for driving while that license or privilege is suspended, cancelled, or revoked, or driving in violation of a limitation; and increasing the penalties for certain persons convicted of driving while intoxicated or refusing to submit to a chemical test; and providing for an effective date"

The draft CS for HB 354 corrects several problems with Alaska's present driving laws. Specifically, HB 354:

- Makes the fourth DWI a felony and increases jail sentences for the worst drunk drivers.
- Allows all those convicted of DWI to earn back a limited license through their good conduct after their release from prison.
- Makes the penalties for someone who never gets a driver's license and then commits crimes the same as the penalties for someone who has a driver's license and commits crimes--this eliminates the incentive created by current law to never get a driver's license.
- Brings the penalties for the major driving crimes into balance by treating driving while intoxicated more seriously than driving while license suspended, which, I believe, is a proper allocation of our scarce jail space.

The major thrust of this proposed legislation is to target the worst drunk drivers. The draft CS for HB 354 increases the

penalties for third or subsequent DWI convictions within a 10-year period. Under current law, the mandatory minimum jail terms are three days for a first DWI and 20 days for a second DWI. The mandatory minimum penalty for a third or eleventh DWI is only 30 days. No matter how many DWI convictions a person stacks up, the crime is still a misdemeanor. This means that a judge cannot sentence anyone to more than one year in jail for DWI no matter how many convictions a drunk driver may have.

HB 354 increases penalties for repeat DWI offenses to reflect the seriousness of the crime. The proposal raises the mandatory minimum jail sentence for third DWI from 30 to 90 days. A fourth DWI within 10 years would be a Class C felony and carry a minimum jail term of 180 days. A fifth DWI would carry a two-year presumptive jail term and a sixth conviction within 10 years would carry a three-year presumptive jail term.

The treatment of repeat DWI offenders is presently far too lenient. Alaska law is inconsistent with the trend in other states, inconsistent with our own more severe treatment of less serious crimes and less dangerous offenders, and inconsistent with public protection from dangerous people. Several states have made repeat DWI convictions felonies. Texas and Oklahoma make the second DWI conviction a felony, while Nevada, South Dakota, West Virginia and South Carolina make the third conviction a felony. South Carolina has a three-year minimum sentence for the third offense and a five-year minimum for the fifth offense.

Alaska law already makes felonies out of conduct which is less dangerous than a fourth-time DWI.

- Unlicensed guiding is a felony which carries a one-year minimum jail sentence (AS 08.54.210)
- Joyriding in which the car is damaged to \$500 or more is a felony (AS 11.46.482)
- Possession of brass knuckles, a switchblade, or a gravity knife in plain sight is a felony (AS 11.61.200)
- Running a big-time gambling operation is a felony (AS 11.66.210)
- Soliciting a patron for a prostitute is a felony (AS 11.66.120)

A fourth-time drunk driver is a hard-core alcoholic who cannot stop driving and cannot be deterred by another misdemeanor conviction. Someone who has been convicted a fourth time for DWI has not been deterred by misdemeanor jail sentences or reformed by outpatient alcohol treatment. That person has instead continued to endanger the public over and over again. Such a

dangerous repeat offender needs the stiffer jail sentences, long-term in-patient treatment, and more intense probation available for felons.

This bill also raises the penalties for a third or subsequent refusal to take a breathalyzer to track DWI penalties. This follows the practice of current law and is necessary to eliminate any incentive for someone arrested for DWI to refuse the required breath test.

This proposal also affords to all those convicted of DWI the opportunity to earn back a limited driver's license that current law gives to first offenders. The person would have to "earn back" a limited license by maintaining good conduct. A person convicted of a second DWI could apply to the judge for a limited license for the last 60 days of a one-year revocation. A person convicted of a third or subsequent DWI could apply after five years of the mandatory minimum 10-year revocation.

Driving while license revoked/driving while license suspended (DWLR/DWLS).

Under current law, someone who never gets a driver's license can never have his or her license suspended or revoked. This person thus escapes the relatively heavy mandatory minimum penalties for DWLS (driving while license suspended) or DWLR (driving while license revoked). HB 354 corrects this anomaly and applies the penalties for DWLS and DWLR to those who never get driver's licenses. This eliminates the incentive to never get a driver's license.

Finally, this bill proposes to bring into proper perspective the penalties for DWI and DWLR/DWLS. Under current law there are three mandatory minimum penalties for DWLR/DWLS, depending on the basis for revocation or suspension when someone is caught driving.

1) If someone is caught driving after his or her license has been suspended for being caught driving without insurance, the mandatory minimum jail sentence is 10 days and the mandatory minimum license revocation is one year. HB 354 changes these mandatory minimum penalties to three days in jail and a 90-day license revocation (which would be the same as DWI penalty for first time offense).

2) If someone is caught driving while his or her license is suspended by a court for a first DWI conviction, the mandatory minimum is 30 days in jail and a one-year loss of license. HB 354 changes these mandatory minimum penalties to 10 days in jail and a 90-day loss of license.

3) If a person is caught driving while his or her license is suspended by a court for a second or subsequent DWI

conviction, the mandatory minimum penalty is 90 days in jail and a one-year loss of license. HB 354 proposes to change this to 30 days in jail and a 90-day loss of license.

Current law makes it more than three times as serious to drive after having your license suspended for lack of insurance than it does to drive while intoxicated. DWI is obviously a much more dangerous crime than DWLS--particularly insurance-based DWLS. Current law understates the severity of DWI and overstates the severity of DWLS; it needs to be changed to reflect the relative seriousness of the two offenses.

The proposed CS for HB 354 seeks to insure that Alaska's driving laws impose the most serious penalties on the most dangerous drivers. We need to get the less serious DWLS offenders out of jail and get the most dangerous drunk drivers off the road and into treatment in jail.

WHY A FOURTH DWI CONVICTION
SHOULD BE A FELONY

Under Alaska law, a person convicted of driving while intoxicated is guilty of a misdemeanor regardless of how many times he/she is convicted. A fourth-time offender faces a minimum sentence of only 30 days in jail, and no judge may impose a sentence of more than a year.

This treatment of repeat DWI offenders is far too lenient. Alaska law is inconsistent with the trend in other states, inconsistent with our own more severe treatment of less serious crimes and less dangerous offenders, and inconsistent with reality.

Several states have made repeat DWI convictions felonies. Texas and Oklahoma make the second DWI conviction a felony, while Nevada, South Dakota, West Virginia, and South Carolina make the third conviction a felony. (South Carolina has a three-year minimum sentence for the third offense and a five-year minimum for the fifth offense.)

Alaska law already makes felonies out of conduct which is less dangerous than a fourth-time DWI. Some examples of first-time conduct which is a felony include:

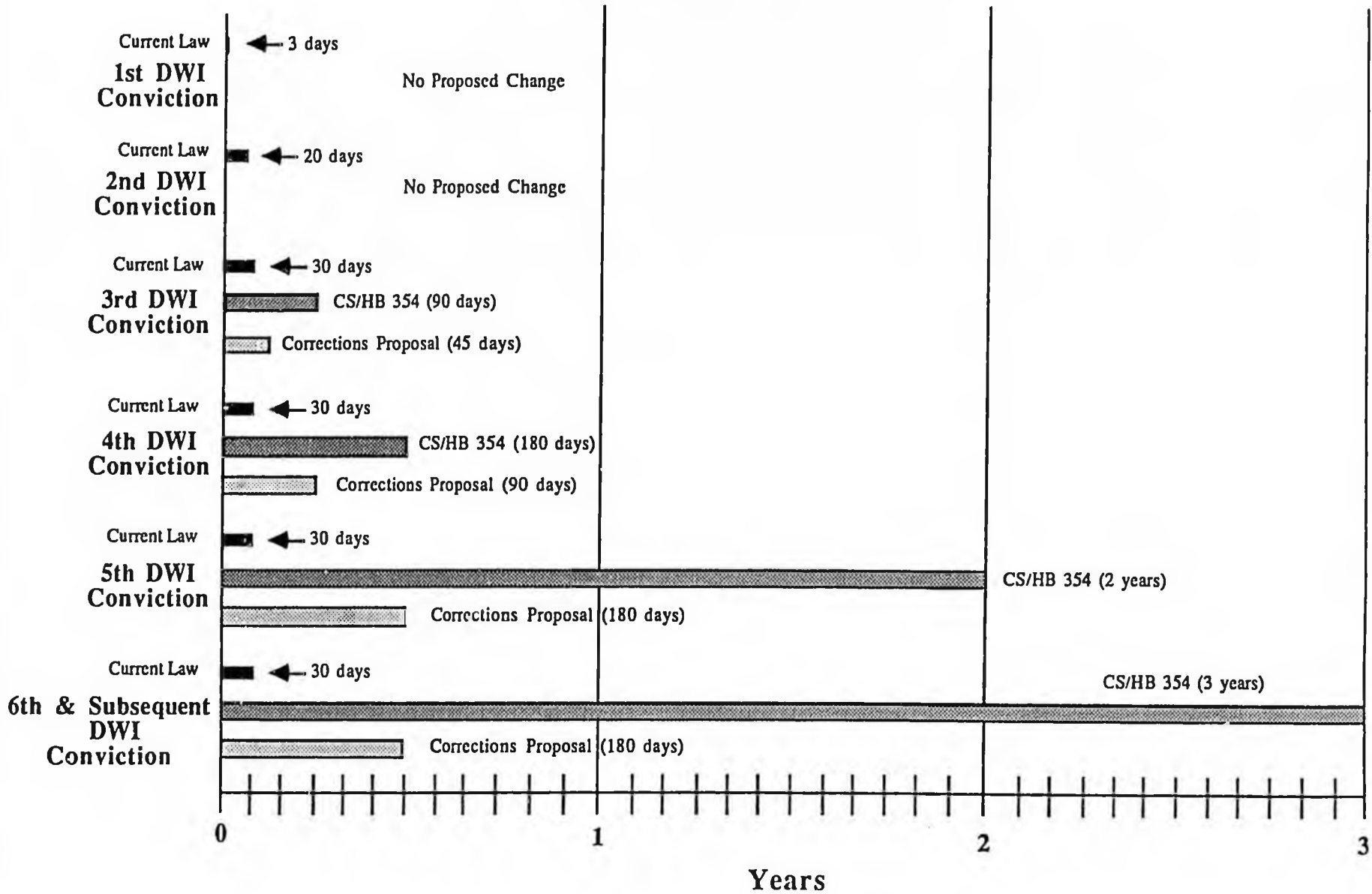
- Unlicensed guiding, which carries a one-year minimum jail sentence is a felony (AS 08.54.210)
- Joyriding in which the car is damaged to \$500 or more is a felony (AS 11.46.482)
- Possession of brass knuckles, a switchblade, or a gravity knife in plain sight is a felony (AS 11.61.200)
- Running a big-time gambling operation is a felony (AS 11.66.210)
- Soliciting a patron for a prostitute is a felony (AS 11.66.120)

A fourth-time drunk driver is a hard-core alcoholic who cannot stop driving and cannot be deterred by another misdemeanor conviction. Someone who has been convicted a fourth time for DWI has not been deterred by misdemeanor jail sentences or reformed by outpatient alcohol treatment. That person has instead continued to endanger the public over and over again. Such a dangerous repeat offender needs the stiffer jail sentences, long-term inpatient treatment, and more intense probation available for felons.

Jail Sentences for Drunk Drivers

(Mandatory Minimum)

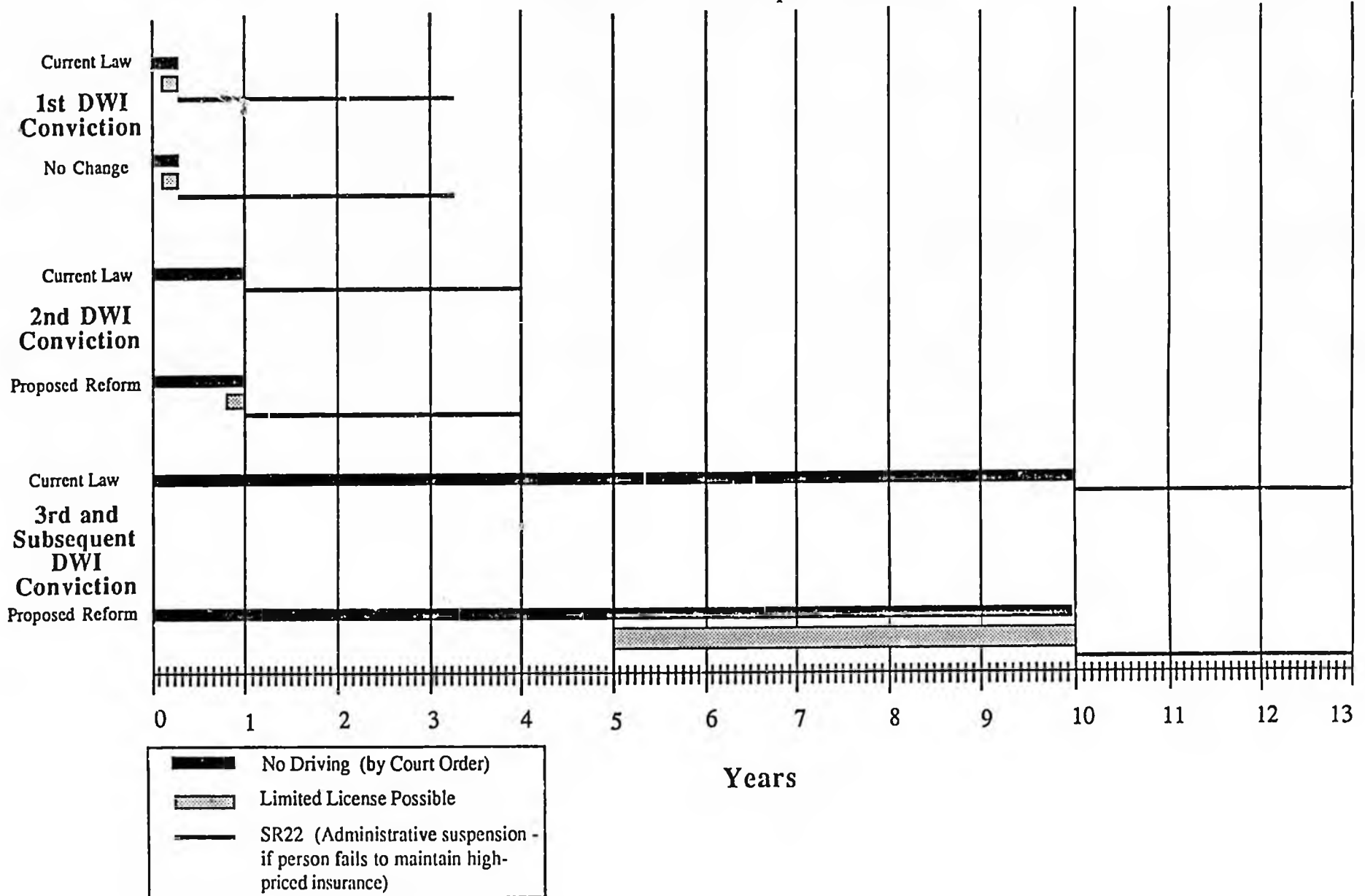
Current Law vs. Proposed Reform



Length of License Suspensions for Drunk Drivers

(Mandatory Minimum)

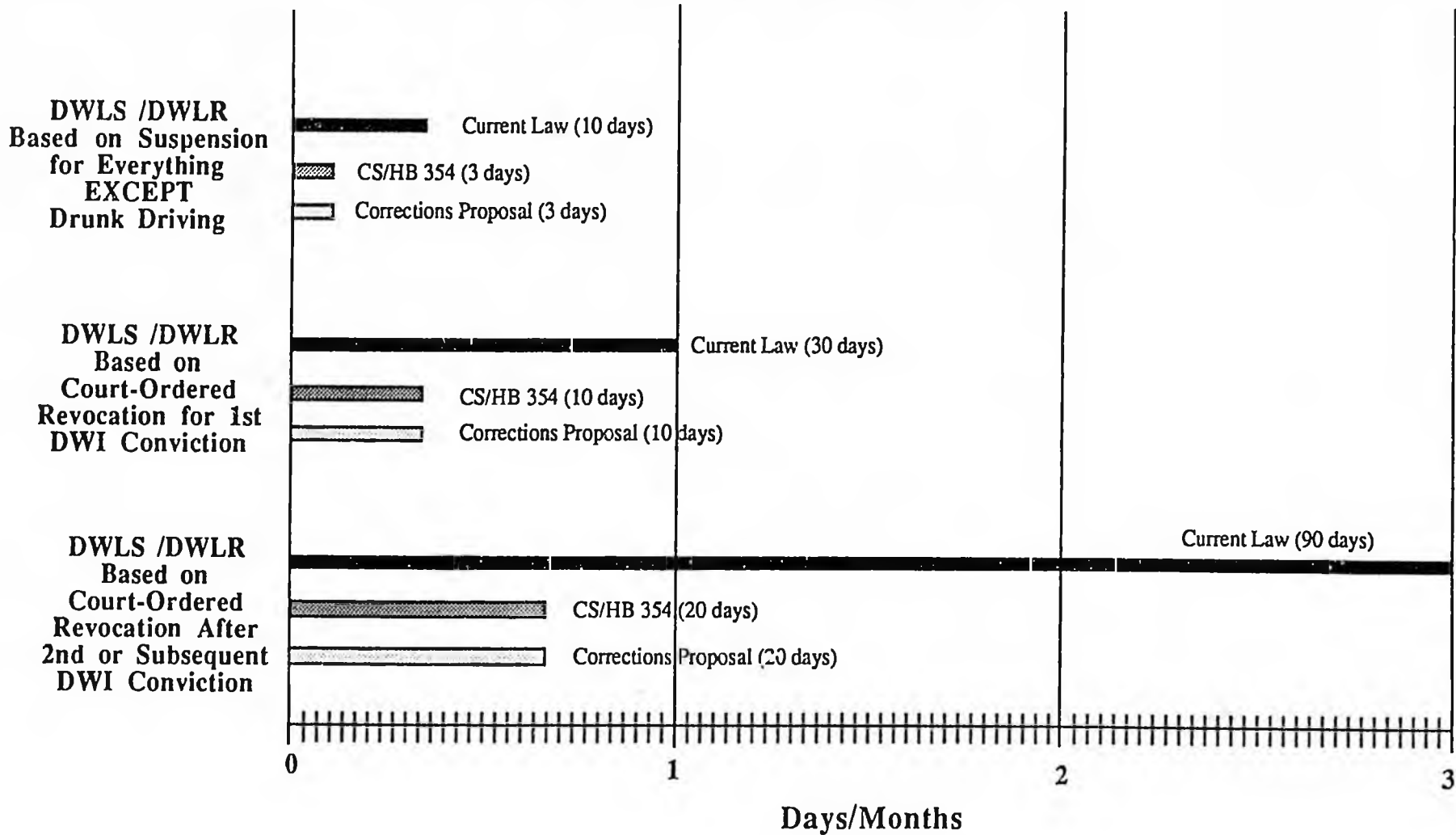
Current Law vs. Proposed Reform



Jail Sentences for People Convicted of Driving with a Suspended License

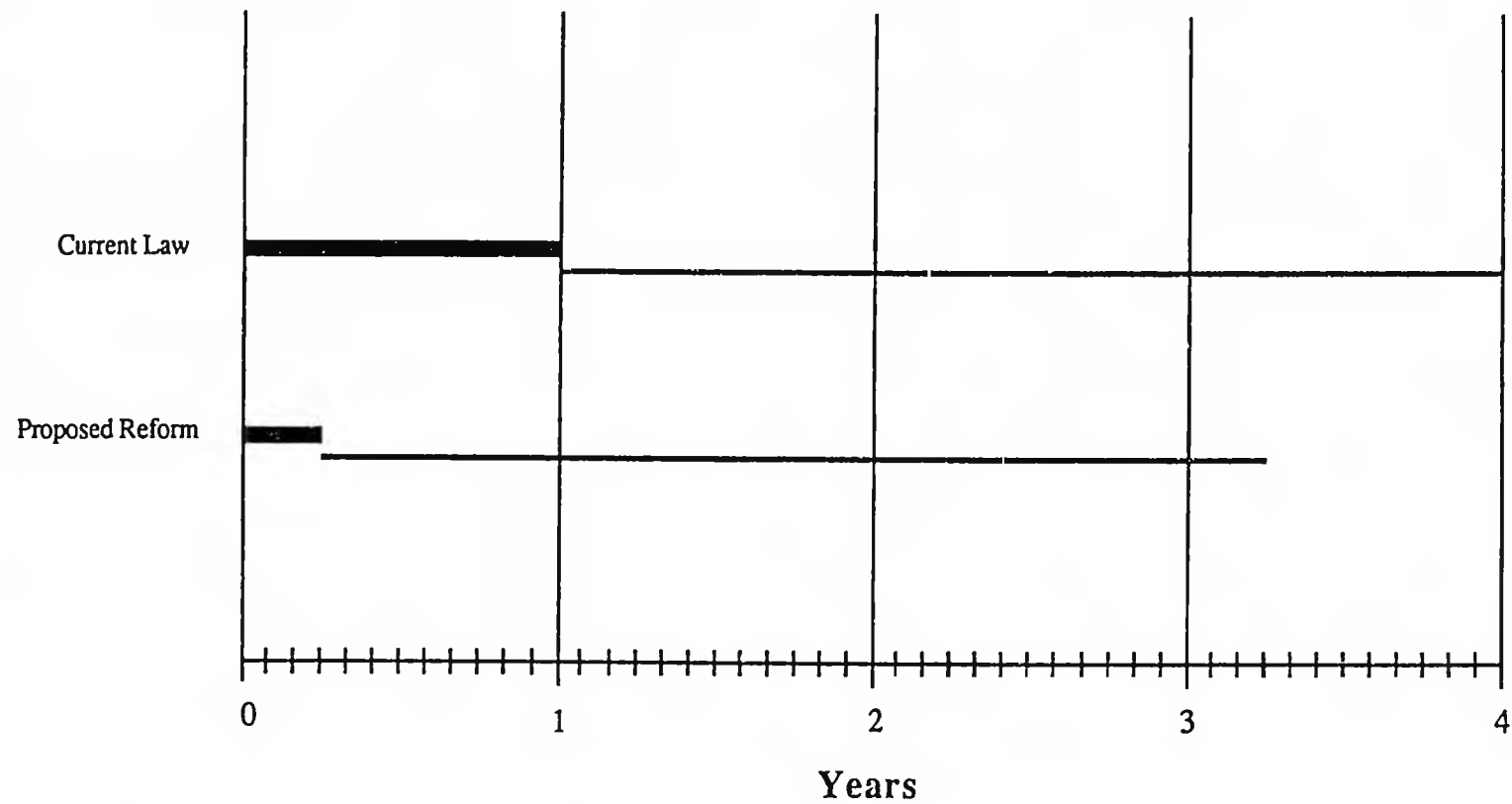
(Mandatory Minimum)

Current Law vs. Proposed Reform



Length of License Suspensions for Anyone Convicted of Driving with a Suspended License

(Mandatory Minimum)



█ No Driving (by Court Order)
— SR22 (Administrative)

**WHY WE NEED CS HB 354
EXAMPLE**

JAMES E. JOHNSON

	CRIME	YEAR	COMMENT
1.	DWI	1977	
2.	DWI	1985	
3.	DWI	1985	NON-INJURY ACCIDENT
4.	DWI	1985	2 ACCIDENTS; 3 PEOPLE INJURED
5.	DWI	1986	NON-INJURY ACCIDENT
6.	DWI	1987	

ADDITIONALLY, MR. JOHNSON REFUSED TO TAKE A BREATH-ALCOHOL TEST AND WAS CONVICTED OF REFUSAL IN 1984 AFTER AN ACCIDENT WHICH CAUSED INJURY.

THIS MAN HAS HAD FIVE ACCIDENTS AND HAS INJURED FOUR PEOPLE. FOR HIS LATEST DWI IN 1987, HE WAS SENTENCED TO SERVE TEN MONTHS FOR DWI. CURRENT LAW PROHIBITS A JUDGE FROM IMPOSING ANY SENTENCE OF MORE THAN 12 MONTHS FOR DWI, NO MATTER HOW MANY CONVICTIONS A PERSON HAS.

JAMES E. JOHNSON'S CONVICTIONS

DOB: 9/12/42; 9/16/41

SSN: 517-46-9517;

517-48-9513;

517-46-9515

(All cases in Anchorage District Court unless otherwise noted)

Crime	Conv. Date	Case #	Jail Time	Notes
DWI	10/19/77	77-7436	10/8	
DWLS	12/10/80	80-3146	90/80	
DWLS	10/05/81	81-3318	90/70	
Resisting Arrest	04/07/83	83-78	30/30	
Refusal	04/29/85	84-9319	90/70	DWI in same case dismissed; accident; \$3000 estimated damage; minor injury to other driver
DWI	7/26/85	85-3329	120/90	Offense: 5/21/85; .255 BA
DWLS	7/26/85	85-3329	180/90	Offense: 5/21/85
	[sentences on 85-3329 concurrent with 85-3592 and 85-3753]			
DWI	7/26/85	85-3592	360/300	Offense: 6/02/85; .250 BA; non-injury accident
DWLS	7/26/85	85-3592	360/300	Offense: 6/02/85
	[sentences on 85-3592 concurrent with sentences on 85-3329 and 85-3753]			
Reckless Driving	7/26/85	85-3753	360/360	Offense: 6/08/85; Leaving Scene of Accident dismissed
DWLS	7/26/85	85-3753	360/270	Offense: 6/08/85
DWI	7/26/85	85-3753	360/270	Offense: 6/08/85; 2 accidents; 4 cars damaged other than defendant's; .369 BA; 3 people injured; over \$10,000 in property damage estimated.
	[sentences on 85-3753 concurrent with sentences on 85-3329 and 85-3592]			

Crime	Conv. Date	Case #	Jail Time	Notes
DWI	1/20/86	85-6357	365/90	Offense: 9/16/85; .238 BA; non-injury accident
DWLS	1/20/86	85-6357	365/270	Offense: 9/16/85
DWI	7/28/87	3SW-S87-205	365/65	Refusal dismissed
DWLR	7/28/87	3SW-S87-206	365/165	

The defendant was sentenced on 85-3329, 85-3592, and 85-3753 on the same day, July 26, 1985. It was a specific condition of probation on all three cases that the defendant complete one year at a residential alcohol treatment program upon his release from custody.

The Department of Corrections released the defendant from custody on August 27, 1985. He bought a car (by his own admission at allocation at a probation revocation hearing on February 5, 1986). The defendant was arrested September 16, 1985 in another DWI accident (85-6357).

The defendant was released on September 11, 1986, and was arrested the same day in another DWI accident.

The defendant has 6 DWI convictions--10/19/77, 7/26/85, 7/26/85, 7/26/85, 1/20/86, 7/28/87; 1 Refusal conviction 4/29/85; 7 DWLS/DWLR convictions--12/10/80, 10/05/81, 7/26/85, 7/26/85, 7/26/85, 1/20/86, 7/28/87; and 1 Reckless Driving conviction--7/26/85. The defendant has been arrested or charged with DWI for nine different incidents: one was pending as of 8/27/87; one (79-89) was reduced to Negligent Driving on 5/16/79; and another was resolved and dismissed through a plea to Refusal (84-9319; 4/29/85 conviction).

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FEB 29 1983

IN THE DISTRICT COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE, ALASKA

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JAMES JOHNSON,)	
DOB: 9/12/42)	
)	
Defendant.)	Court No. 3AN-S85-3592 Cr.
)	3AN-S85-3329 Cr.

STATE'S MEMORANDUM IN AID OF SENTENCING
PROBATION VIOLATIONS

Standing before the court is possibly the worst drunk driver in Alaska. The defendant has six DWI convictions--five in the last two years. The defendant has seven DWLR convictions--five in the last two years. The defendant has been convicted of breath test refusal once and reckless driving once--all in the last two years.

The defendant's alcohol-related convictions have involved five accidents, and his conduct has injured four people.

In the five cases in which the defendant has submitted to a test for his breath for alcohol, his breath and alcohol concentrations have exceeded .20 percent four

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ANCHORAGE, ALASKA 99501
(907) 277-8622

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1
2 times. In three cases, the defendant's breath-alcohol
3 concentration was .25 or above.

4 The court has repeatedly offered the defendant
5 opportunities for rehabilitation through alcohol treatment,
6 but the defendant has consistently and flagrantly rejected
7 them. Three weeks after being released from jail in 1985
8 with strict orders to undergo residential alcohol treatment
9 immediately, the defendant drove drunk and caused an
10 accident. In 1986, the defendant again was released from
11 jail with a court order to begin alcohol treatment; instead,
12 the defendant began drinking and drove the same day.
13

14 Given the defendant's extensive criminal record,
15 his pattern of pathological alcohol abuse, and his propensity
16 to drive without a license, he is clearly a worst offender.
17 See Sandahl v. Anchorage, 670 P.2d 716, 718 (Alaska App.
18 1983). Given the large number of convictions in a short
19 time, the consistently high breath-alcohol concentrations,
20 the repeatedly bad driving leading to accidents, and the
21 repeated flagrant rejections of court ordered alcohol
22 treatment, the defendant is probably the worst offender.
23

24 This defendant has done almost everything a drunk
25 driver can do. He has repeatedly damaged the property of
26 others. He has more than once injured others. It is only
the sheerest fortuity that he has never killed anyone.

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2 The defendant's record of repeated aggravated
3 crimes and consistent flouting of court orders shows that
4 rehabilitation must take a backseat to specific and general
5 deterrence, reaffirmation of societal norms, and isolation.
6

7 The court has repeatedly offered opportunities for
8 rehabilitation to this defendant. He not only rejects
9 treatment, but immediately re-offends upon release from
10 custody.

11 The attached record shows that courts have also
12 consistently sentenced the defendant to mostly suspended
13 time, rather than actual time to serve in jail. The
14 defendant has responded to these relatively lenient sentences
15 by re-offending again, again, and again. It is clear that if
16 any sentence will serve to deter him, that sentence is the
17 maximum.
18

19 The defendant's repeated decisions to endanger the
20 lives of so many Alaskans so seriously so many times requires
21 a heavy emphasis on deterrence of others and the
22 reaffirmation of societal condemnation for driving while
23 intoxicated. See Huckaby v. State, 632 P.2d 975, 977 (Alaska
24 App. 1981). Finally, isolation also takes on a special
25 importance unusual in misdemeanor cases. This defendant is a
26

1
2 manslaughter in the making. Every day the court keeps this
3 defendant off the streets and highways of Alaska makes
4 Alaskans safer.

5 DATED this 2nd day of September, 1987, at
6 Anchorage, Alaska.
7

8
9 GRACE BERG SCHAIBLE
ATTORNEY GENERAL

10 DWAYNE W. McCONNELL
11 DISTRICT ATTORNEY

12
13 By: CJ Groh
14 Clifford John Groh
Assistant District Attorney

15 CJG: lhr

16 (corrected 2-29-88)

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 10, 1988

SUBJECT: Draft CSHB 354, sectional analysis
TO: Representative Fran Ulmer
FROM: Jack Chenoweth
Legislative Counsel

The draft legislation to which this relates was transmitted late Friday.

In summary, this proposed committee substitute affects the following:

- the privilege to drive or to obtain a license (bill sections 1 - 3);
- the restoration of limited driving privileges to certain drivers convicted of DWI or refusal to submit to a chemical test (bill sections 4 and 5);
- the penalties for driving while a license is suspended, revoked, or cancelled, or for driving in violation of a license limitation (bill sections 6 and 7);
- the penalties imposable on certain persons convicted of DWI or refusing to submit to a chemical test (bill sections 7 - 11).

The last page of this memorandum outlines in table form a comparison of the DWI penalties.

Sections 1 - 3 of the bill are adapted from legislation introduced by the governor and are intended to correct a technical problem in the law regarding the state's ability to, under certain circumstances, charge a person with driving while the driver's license is suspended, cancelled, or revoked. These sections add to the body of applicable law the phrases "privilege to drive" and "privilege to obtain a license." The changes are intended to make clear that the privilege to drive or obtain a driver's license can be suspended, cancelled, or revoked if an individual does not have a valid driver's license at the time that person committed

an offense. They are also intended to make clear that, in the absence of a license, if a person does drive while his or her privilege to drive is suspended, cancelled, or revoked, he or she can be charged under AS 28.15.291 (driving while license is cancelled, suspended, revoked, or in violation of limitation).

Bill sections 4 and 5, making changes in AS 28.15.181, amend provisions of law authorizing restoration of limited driving privileges for certain drivers. Current law authorizes restoration of the driving privilege only during the last 60 days of the period of a first driver's license revocation (i.e., no previous conviction in the preceding 10 years).

The specific change requested appears at (e)(2) of bill section 4 (page 3, line 23 through page 4, line 2): this change authorizes restoration of the driving privilege for those facing a ten-year suspension (i.e. for those who have been previously convicted at least once in the preceding ten years). That restoration may be made in the final five years of the ten year suspension specifically conditioned on satisfactory completion of the alcoholism education and rehabilitation program.

A change made at page 3, lines 19 and 20 ("has not been previously convicted more than once . . .") has the effect of allowing restoration of the limited license privilege to persons who have been previously convicted once and who face a second conviction. This change authorizes restoration of the driving privilege for those facing a one year suspension. The restoration may be made in the final 60 days of the one year suspension. [NOTE: This restoration of limited license privilege is not now the law, and what is proposed here is a change from current law. If the committee does not want to make this change, the words "more than once" need to be deleted from line 20.]

Bill sections 6 and 7, amending portions of AS 28.15.291, address the penalties applicable for driving while a license has been suspended, cancelled, or revoked, or while driving in violation of a license limitation. In both sections, note that the "privilege to drive" and "privilege to obtain a license" (explained with respect to bill sections 1 - 3) is carried into these provisions.

Current law distinguishes those who so drive based upon whether or not the suspension, cancellation, revocation, or

limitation arose out of a conviction for DWI or refusal to submit to a chemical test.

The first class of persons, those addressed in bill section 6, are those whose convictions were for reasons other than DWI or refusal to submit to a chemical test. For persons in this class, the "mandatory minimum" imprisonment penalty is reduced from 10 days to 72 hours and the "mandatory minimum" suspension of license or privilege to drive is reduced from one year to 90 days.

The second class of persons, those addressed in bill section 7, are those whose convictions were for reasons relating to DWI or refusal to submit to a chemical test. For an individual who subsequently drives a motor vehicle without a valid license after a first conviction for DWI or refusal to take a chemical test, the "mandatory minimum" imprisonment penalty is reduced from 30 to 20 days. For an individual who subsequently drives a motor vehicle without a valid license after a second or third conviction for DWI or refusal to take a chemical test, the "mandatory minimum" imprisonment penalty is reduced from 90 days to 30 days, and the period extending the "mandatory minimum" suspension of license or privilege to drive is reduced from one year to 90 days.

Bill sections 9 and 11 are parallel provisions addressed to third convictions. The first section amends AS 28.35.030(c), the subsection defining the mandatory minimum sentences for DWI; the second amends AS 28.35.032(g), the subsection defining the mandatory minimum sentences for refusal to submit to a chemical test. Both make like changes: for a third conviction within the preceding ten years, the minimum period of imprisonment is increased from 30 to 90 days.

Under current law, driving while intoxicated is a class A misdemeanor. Bill sections 8 and 10, taken together, make the fourth DWI conviction within a ten year period a class C felony. The general penalties for a class C felony permit imposition of a fine of not more than \$50,000 and a term of imprisonment of not more than five years. Bill section 10 imposes a mandatory six month minimum sentence of imprisonment for conviction.

Bill section 12 makes the changes effective January 1, 1989.

Current law:

# of DWI's within previous 10 years	Minimum sentence	Minimum revocation
First	3 days	90 days*
Second	20 days	1 year
Third	30 days	10 years
Fourth	30 days	10 years

CSHB 354 (HESS):

# of DWI's within previous 10 years	Minimum sentence	Minimum revocation
First	3 days	90 days*
Second	20 days	1 year**
Third	90 days	10 years***
Fourth	6 months	10 years***

* Current law allows a limited license privilege in the last 60 days.

** Under proposed (e)(1) in bill section 4, a limited license privilege would be obtainable for the final 60 days.

*** Under proposed (e)(2) in bill section 4, a limited license privilege would be obtainable for the final five years.

JBC:bb
b4/123

How To Increase Penalties For The Worst Drunk Drivers

<u>Crime</u>	<u>Current Law</u> Jail Time/Driver's License Revocation (Mandatory Minimum or Presumptive)	<u>Draft CS. for HB-354</u> Jail time/Driver's License Revocation (Mandatory Minimum or Presumptive)
1st DWI	3 days in jail/90-day loss of license	3 days in jail/90-day loss of license (possible to earn back limited license for last 60 days)
2nd DWI	20 days in jail/1-year loss of license	20 days in jail/1-year loss of license (possible to earn back limited license for last 60 days)
3rd DWI	30 days in jail/10-year loss of license	90 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
4th DWI	30 days in jail/10-year loss of license	180 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
5th DWI	30 days in jail/10-year loss of license	2 years in jail/10-year loss of license (possible to earn back limited license after 5 years)
6th and subsequent DWI	30 days in jail/10-year loss of license	3 years in jail/10-year loss of license (possible to earn back limited license after 5 years)
DWLR/DWLS based on insurance suspension	10 days in jail/1-year loss of license	3 days in jail/90-day loss of license
DWLR/DWLS based on court ordered revocation for 1st DWI	30 days in jail/1-year loss of license	10 days in jail/90-day loss of license
DWLR/DWLS based on court ordered revocation after 2nd or subsequent DWI	90 days in jail/1-year loss of license	20 days in jail/90-day loss of license

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 354 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

27 (2) the person has the right to administrative review of
28 the revocation or determination not to issue an original license;

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

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

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

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

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license.
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of not less than 72 hours [10
23 DAYS]. The execution of sentence may not be suspended nor may pro-
24 bation or parole be granted until the minimum imprisonment provided in
25 this section has been served; nor may imposition of sentence be sus-
26 pended. In addition, the person's license, [OR] privilege to drive,
27 or privilege to obtain a license shall be revoked, and the person may
28 not be issued a new license nor may the privilege to drive be restored
29 for an additional period of not less than 90 days [ONE YEAR] after the

1 date that the person would have been entitled to restoration of driv-
2 ing privileges.

3 * Sec. 7. AS 28.15.291(c) is amended to read:

4 (c) The court shall impose a sentence of imprisonment of not
5 less than 20 [30] days and a fine of not less than \$500 upon con-
6 viction of a violation of this section if the person's driver's li-
7 cense, privilege to drive, or privilege to obtain a license was re-
8 voked under circumstances described in AS 28.15.181(c)(1). The court
9 shall impose a sentence of imprisonment c. not less than 30 [90] days
10 and a fine of not less than \$1,000 upon conviction of a violation of
11 this section if the person's driver's license, privilege to drive, or
12 privilege to obtain a license was revoked under circumstances de-
13 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
14 not be suspended nor may probation or parole be granted until the
15 minimum imprisonment provided in this subsection has been served.
16 Imposition of sentence may not be suspended. In addition, the per-
17 son's privilege to drive shall be revoked for an additional period of
18 not less than 90 days [ONE YEAR] after the date that the person would
19 have been entitled to restoration of driving privileges if the person
20 had not been convicted under this section.

21 * Sec. 8. AS 28.35.030(b) is amended to read:

22 (b) Except as provided in (h) of this section, driving [DRIVING]
23 while intoxicated is a class A misdemeanor.

24 * Sec. 9. AS 28.35.030(c) is amended to read:

25 (c) Upon conviction under this section the court shall impose a
26 minimum sentence of imprisonment of not less than 72 consecutive hours
27 and a fine of not less than \$250 if the person has not been previously
28 convicted in this or another jurisdiction of driving while intoxicated
29 under this or another law or ordinance with substantially similar

1 elements or refusal to submit to a chemical test under AS 28.35.032 or
2 another law or ordinance with substantially similar elements. Upon
3 conviction under this section the court shall impose a minimum sen-
4 tence of imprisonment of not less than 20 consecutive days and a fine
5 of not less than \$500 if, within the preceding 10 years, the person
6 has been previously convicted once in this or another jurisdiction of
7 driving while intoxicated under this or another law or ordinance with
8 substantially similar elements or refusal to submit to a chemical test
9 under AS 28.35.032 or another law or ordinance with substantially
10 similar elements. Upon conviction under this section the court shall
11 impose a minimum sentence of imprisonment of not less than 90 [30]
12 consecutive days and a fine of not less than \$1,000 if, within the
13 preceding 10 years, the person has been previously convicted in this
14 or another jurisdiction of more than one of the following offenses or
15 has more than once been previously convicted of one of the following
16 offenses: (1) driving while intoxicated under this or another law or
17 ordinance with substantially similar elements; (2) refusal to submit
18 to a chemical test under AS 28.35.032 or another law or ordinance with
19 substantially similar elements. The execution of sentence may not be
20 suspended nor may probation be granted except on condition that the
21 minimum imprisonment provided in this section is served. Imposition of
22 sentence may not be suspended. In addition, if the offense involved
23 driving a motor vehicle for which a driver's license is required, the
24 person's driver's license shall be revoked in accordance with AS 28.-
25 15.181 and the vehicle used in commission of the offense may be for-
26 feited under AS 28.35.036. In addition, the court shall order, and a
27 person convicted under this section shall undertake, for a term spec-
28 ified by the court, that program of alcohol education or rehabilita-
29 tion that the court, after consideration of any information compiled

1 under (d) of this section, finds appropriate.

2 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

3 (h) A person who, within the preceding 10 years, has been previ-
4 ously convicted three or more times in this or another jurisdiction of
5 the offense of driving while intoxicated or an offense under another
6 law or ordinance with substantially similar elements is guilty of a
7 class C felony. Upon conviction under this section the court shall
8 impose a minimum sentence of imprisonment of not less than six months.

9 * Sec. 11. AS 28.35.032(g) is amended to read:

10 (g) Upon conviction of a person under this section, the court
11 shall impose a minimum sentence of imprisonment of not less than 72
12 consecutive hours and a fine of not less than \$250 if the person has
13 not been previously convicted in this or another jurisdiction of
14 driving while intoxicated under AS 28.35.030 or another law or ordi-
15 nance with substantially similar elements or refusal to submit to a
16 chemical test under this section or another law or ordinance with
17 substantially similar elements. Upon conviction under this section the
18 court shall impose a minimum sentence of imprisonment of not less than
19 20 consecutive days and a fine of not less than \$500 if, within the
20 preceding 10 years, the person has been previously convicted once in
21 this or another jurisdiction of driving while intoxicated under
22 AS 28.35.030 or another law or ordinance with substantially similar
23 elements or refusal to submit to a chemical test under this section or
24 another law or ordinance with substantially similar elements. Upon
25 conviction under this section the court shall impose a minimum sen-
26 tence of imprisonment of not less than 90 [30] consecutive days and a
27 fine of not less than \$1,000 if, within the previous 10 years, the
28 person has been previously convicted in this or another jurisdiction
29 of more than one of the following offenses or has more than once been

1 previously convicted of one of the following offenses: (1) driving
2 while intoxicated under AS 28.35.030 or another law or ordinance with
3 substantially similar elements; (2) refusal to submit to a chemical
4 test under this section or another law or ordinance with substantially
5 similar elements. The execution of sentence may not be suspended nor
6 may probation be granted except on condition that the minimum impris-
7 onment provided in this section is served. Imposition of sentence may
8 not be suspended. If the offense involved driving a motor vehicle for
9 which a driver's license is required, the person's driver's license
10 shall be revoked under AS 28.15.181. In addition, the court shall
11 order, and a person convicted under this section shall undertake, for
12 a term specified by the court, that program of alcohol education or
13 rehabilitation that the court, after consideration of any information
14 compiled under (h) of this section, finds appropriate. The sentence
15 imposed by the court under this subsection shall run consecutively
16 with any other sentence of imprisonment imposed on the committed
17 person.

18 * Sec. 12. This Act takes effect January 1, 1989.
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ALASKA LAW REVIEW



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June 1986 • Volume III • Number I
Duke University School of Law

PEARS V. STATE: AN IMPROPER APPLICATION OF ALASKA'S CURRENT LAW TO INTOXICATED DRIVERS

I. INTRODUCTION

On the night of October 5, 1981, nineteen-year old Richard Pears, while under the influence of alcohol, drove his truck through a red light, striking an automobile, killing two people, and injuring a third. A jury convicted Pears of second degree murder, the trial judge sentenced him to twenty years in prison, and Alaska's Third Circuit Court of Appeals unanimously affirmed the verdict.¹ The Alaska Supreme Court, reviewing only the length of Pears's sentence, found the twenty-year sentence excessive and remanded for resentencing.² After a hearing, the trial court sentenced Pears to twenty years in prison with ten years suspended.³ As the first Alaska appellate court decision involving a murder conviction for an intoxicated driver,⁴ *Pears v. State* represents a significant development in Alaska criminal law.

In 1978, the Alaska legislature revised the state's Criminal Code. The new Code took effect on January 1, 1980. Under the new Criminal Code a court theoretically could return a murder conviction against an intoxicated driver under one of three provisions:⁵ (1) first degree murder, if the defendant intentionally causes death;⁶ (2) second degree murder, if the defendant causes death "knowing that [his] con-

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1. *Pears v. State*, 672 P.2d 903, 905 (Alaska Ct. App. 1983).

2. *Pears v. State*, 698 P.2d 1198 (Alaska 1985). The supreme court's opinion dealt only with the sentencing issue and did not address the propriety of applying Alaska's second degree murder statute to Pears. Accordingly, this note will analyze the rationale of the court of appeals' *Pears* decision.

3. *Pears v. State*, No. 4FA-S81-2429 (Alaska Super. Ct. Aug. 26, 1985).

4. *Id.* at 911.

5. There are actually five murder provisions in the new Alaska Criminal Code. Two of these provisions, however, cannot apply to an intoxicated driver. See ALASKA STAT. §§ 11.41.100(a)(2) - 11.41.110(a)(3) (1983) (these provisions concern inducing suicide, and causing death during the commission of one of six felonies, none of which involve intoxicated driving).

6. *Id.* § 11.41.100. The Alaska Criminal Code defines the term "intentionally" in the following manner:

A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result;

Alaska has, however, expressly rejected the common law definition of murder.⁹²

A comparison of Alaska's DWI statute with those of other states offers another indication that the Alaska legislature did not intend for Intoxicated Motorists to receive murder convictions. In several other states, either the second⁹³ or third⁹⁴ DWI conviction is a felony. In Alaska, to the contrary, DWI remains a misdemeanor regardless of the number of prior convictions.⁹⁵ Furthermore, among the states that will convict an intoxicated driver of murder, Alaska has the shortest period of incarceration for repeat DWI offenders.⁹⁶ The Alaska DWI statute provides for a minimum sentence of only twenty days in jail for someone with one prior DWI conviction, and a minimum punishment of thirty days in prison for someone with two or more prior DWI convictions.⁹⁷ In comparison, Tennessee has a 45-day minimum sentence for the second offense and a 120-day minimum for the third offense,⁹⁸ and South Carolina has a 3-year minimum for the third offense and a five-year minimum for the fifth offense.⁹⁹ In light of the Alaska legislature's lenient treatment of DWI offenders,

Taylor, 461 Pa. 557, 337 A.2d 545 (1975), the defendant was convicted of murder, but he had been speeding in an area where children generally play, had killed a boy who was riding on a bicycle, and then had failed to stop after the accident. *Foster v. State*, 239 Ga. 302, 236 S.E.2d 644 (1977), involved a person who was under the influence of liquor and drugs and was driving at 90 miles per hour across the center line when he collided with another car, killing the other driver. The court held that an intoxicated driver could conceivably be convicted of murder but that the reckless disregard for the safety of others that this defendant showed should not serve as the implied malice aforethought necessary for a murder conviction. *Id.* at 302, 236 S.E.2d at 645-46.

92. ALASKA CRIM. CODE REV. § 11.41.110 (Tent. Draft 1977).

93. See, e.g., OKLA. STAT. ANN. tit. 47 § 11-902(c) (1962 & Cum. Supp. 1984-85); TEX. TRAF. REG. CODE ANN. § 6701e-1 (Vernon Cum. Supp. 1983).

94. See NEV. REV. STAT. § 484.3792(1)(c) (1983); S.C. CODE ANN. § 56-5-2940 (Law. Co-op. 1977 & Cum. Supp. 1984); S.D. CODIFIED LAWS ANN. § 32-23-4 (1984); W. VA. CODE § 17C-5-2 (Cum. Supp. 1984).

95. ALASKA STAT. § 28.35.030(b) (1984).

96. Until 1980, California's penalties for repeat offenders were more lenient than Alaska's penalties, see CAL. VEH. CODE § 23102(a) (West 1971) (repealed 1980), but now the California minimum sentence for repeat DWI offenders is much longer than that of Alaska. Compare CAL. VEH. CODE § 23165 (West Cum. Supp. 1985) (90-day minimum for second offense) with ALASKA STAT. § 28.35.030(b) (1984). Four years after the Criminal Code revision, the Alaska legislature added some harsh penalties not involving incarceration for repeat DWI offenders. These involve revoking defendants' licenses for long periods of time. See ALASKA STAT. § 28.15.181(c) (1984). Nevertheless, a legislature's willingness to impose harsh non-jail penalties on DWI offenders does not prove that it is willing to impose severe jail sentences on Intoxicated Motorists.

97. ALASKA STAT. § 28.35.030(c) (1984).

98. TENN. CODE ANN. § 55-1-3(a)(1) (Supp. 1984).

99. S.C. CODE ANN. § 56-5-2940(3), (5) (Law. Co-op. Cum. Supp. 1984).

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therefore, it is unlikely that the legislature wanted Alaska to join the minority of states that convict Intoxicated Motorists of murder.

E. Summary .

The foregoing comparison of the relevant homicide statutes and case law in other states with those of Alaska provides strong evidence that the *Pears* court misinterpreted the legislature's intent in enacting the new Criminal Code when the court upheld Pears's murder conviction. Most states have never sustained a murder conviction for an Intoxicated Motorist. Those few states that have convicted an intoxicated driver of murder either have murder statutes that expressly provide such a penalty for an Intoxicated Motorist or they have homicide statutes that not only differ from the Alaska murder statutes, but contain language similar to language the Alaska legislature considered and then rejected.¹⁰⁰ Of those states with murder statutes that strongly resemble the Alaska murder statutes, only Oklahoma has ever convicted an Intoxicated Motorist of murder, and the last murder conviction under the relevant Oklahoma statutory provision occurred more than forty years ago. There is no trend toward greater use of second degree murder statutes to punish intoxicated drivers. In fact, there may be the beginnings of a trend in the opposite direction.

According to the Alaska legislature, the culpability underlying DWI offenses does not warrant a felony conviction — not even in the case of persistent offenders. Unlike the legislatures of several other states, the Alaska legislature gave no indication that deaths caused by Intoxicated Motorists would constitute murder. Furthermore, Alaska's murder statutes, as illuminated by their legislative history, do not support such a reading. In light of all these factors, the Alaska Court of Appeals should have concluded that the legislature did not intend a second degree murder conviction for Pears or any other Intoxicated Motorist.

IV. THE PEARS CASE

A. The Facts

On October 5, 1981, an intoxicated driver, Richard Pears, ran a red light and crashed into a car that was in the intersection, killing the driver and one passenger of the other car and severely injuring another passenger.¹⁰¹ Pears's own passenger, whom he dropped off before the accident, had told him that his driving scared her. As Pears walked to his truck, two policemen had warned him that he should not drive.

100. See *supra* notes 51, 52, 90, 92, and accompanying text.

101. *Pears v. State*, 672 P.2d 903, 909-10 (Alaska Ct. App. 1983).

Stiff DWI laws do save lives

I personally think that the stronger the penalty for drunk driving, the better for our community. I speak from experience when I say a lesser penalty only hurts the drunk driver.

I have been arrested for driving while intoxicated three times. The first two times the court system slapped my hand, ordered me to pay a fine and sent me on my way. I continued to drink abusively and thought nothing of driving my car when I was drunk.

On Oct. 22, 1983, I was arrested for my third DWI. The penalties were much stronger at this point. I was immediately sent to jail. When sobering up enough after several hours to realize where I was and why I was there, I was horrified! I had reached the lowest of low spots in my life. Today I have been sober for over four years.

The officer who arrested me was off duty and on his way home with two other off-duty officers in his car. Because those three off-duty Anchorage police officers were willing to take their own time to get a drunk driver off the streets and send her to jail Anchorage streets are a little safer today.

I can't stress enough how important the stiffer drunk driving laws have been to my life and our community. The statistics prove that harsher laws save lives.

— Veoletta Hayward

2/16/88 News

My Friend

Brett is intensely curious about the rapidly enlarging world about him. His probing curiosity about life stimulates the adults around him to inquire more actively about their own lives. He is like most other 3-year-olds, I think: full of delightful mischief, granting smiles without hesitation and rapidly retreating to tears at those times when life is just too much bigger than he is. And, like many children, he cannot conceal a certain charming, if smug, satisfaction as he masters each new developmental task. Those tasks often come hard for Brett.

Brett has many other friends. Some, such as I, are new friends. Others, such as Grandma, Grandpa, and Daddy, go way back to before the accident that he now pretends not to remember. The accident? Brett's mother and baby brother, Matthew, were killed by a drunk driver in a violent accident on a softly beautiful starlit evening last summer. I did not know the driver, but I know he had spent the day enjoying a party with friends and relatives. It was a day of happiness and sharing, of warmth and comradeship. It was also a day of drinking.

I grew up in a home in which the consumption of alcohol was uncommon, but not condemned. Nevertheless, the importance of responsibility and the possible adverse consequences of drinking and driving were emphasized. I can still easily recite a litany of facts about alcohol consumption and driving: a quarter of a million Americans have died in alcohol-related accidents in the last decade; one American life is lost every 20 minutes in an alcohol-related accident; half of all Americans will be involved in an alcohol-related accident during their lifetimes; alcohol-related crashes are the leading cause of death among Americans between the ages of 16 and 24 years; 2000 persons are injured each day in alcohol-related accidents; 2 million drunk-driving collisions occur each year; 80% of Americans drive after drinking; drunk drivers cost US taxpayers in excess of \$20 billion annually; only about one in 1000 drunk drivers on the road is arrested. I knew all this, but I really did not know anything about the human cost of drunk driving until I met my new friend Brett.

At least one person told the drunk driver he ought not drive, but the warning was waved off. No one stopped him and no one tried to save his life by preventing him from driving while he was so obviously drunk. He also died in the fiery crash, burned alive in the first few minutes after he wove repeatedly across the center line and crashed at 60 mph into the car carrying Brett.

Some might say that Brett is lucky: he suffered no brain damage. Intellectually he is quite alive—I believe he will go to college one day. But Brett is paralyzed below the level of his second cervical vertebra. His arms and legs will never move. He cannot breathe at all on his own, nor will he—ever.

As a specialist in pediatric intensive care medicine, I see and care for many very severely ill and injured children. The jarring horror of my first moments with Brett ripped a still-unrepaired hole in the wall of objectivity that usually protects me from the pain of seeing a seriously injured child.

"He's not breathing," shouted the flight nurse over the scream of the engine as we unloaded the child from the helicopter and rushed into the emergency department. The neurosurgeon and I examined the form below us. The cherub was motionless, save for a grimace when we ventilated him by

mask. "Can you open your eyes?" urged my colleague. When he did promptly open his eyes we both gasped, staring almost incomprehensibly at one another, then back to the figure on the table. The frightened young eyes reached out so powerfully in their panic that we felt ourselves pulled to the child. The reality of the nearly unimaginable injury was upon us.

"Oh, God, it's his C-spine—this kid's a quad." The words were whispered. They would have been wholly unbearable if spoken any louder. Even gently whispered, those words conveyed a sentence of harsh finality known to all in the room, save one. A few slow, deep breaths and physicians and nurses resumed control and function: "We're sorry, Brett. You've been in a car accident. This is the hospital. We're doctors and nurses—we're going to help you, honey. Don't you have the most handsome blonde hair we've seen today? This is Tickle, our stuffed bear. Can he snuggle close by you? He loves little boys." Later, Brett and his father would cry together, as one generation struggled to be brave for the next, unable to soften the story that had to be shared.

A portable ventilator now breathes for Brett. The annual cost of providing his necessary medical and nursing care exceeds \$180 000. The man who caused the accident was uninsured. The cost in anguish and emotional pain for Brett's family and for the family of the drunk driver cannot be guessed. The lives of all involved will never be the same.

Although the police report assigned the responsibility for the accident to only one man, we are all to blame. Why do we share this burden? Because we have driven after drinking. Because we have welcomed friends into our homes, entertained them with alcohol, then waved them warmly into the night. Because we have laughed at and accepted public intoxication. Because we have tolerated weak and inconsistent enforcement of drunk driving laws. Because we have accepted lenient sentences for drunk drivers. Because we have conveniently ignored signs of alcoholism in our patients.

Perhaps we can only truly know that which we have experienced. My friendship with Brett has added much to my understanding of the realities of drunk driving and of life. Few intend to hurt or kill others, yet it happens, and the consequences fill our forevers.

I grieve with Brett for the mommy who can no longer kiss and hug away the hurts of childhood, and for the little brother who will not play with him. I share with him the emptiness of a football lying unthrown by the fireplace, of the unopened bag of marbles on the table beside his bed, of the laughing horseshoe and the flirtations of young manhood that may never come.

Yet life goes on. I will not demean the resilience of man or child by ascribing to Brett extraordinary bravery or superhuman determination. He is, after all, a little boy. He still laughs and he still cries. He manipulates people and he likes french fries with lots of ketchup. He uses a computer masterfully with a mouth control that also enables him to drive his own wheelchair. Such is our nature, about which Brett has taught me so much: given the slightest toehold, we dig in and we grow and survive. That is our nature. Yet with the joy remains the sadness and a certain loss of innocence—even for the physicians who thought they already had the big picture. We survive, but the shocking ease with which beautiful things can be broken haunts us. Twenty-five thousand Americans die each year in auto accidents involving alcohol. Two of them are missed a great deal by my little friend Brett, etc.

Thomas J. Poulton, MD
Omaha

Drunken driving arrests up 220 percent since 1970: Arrests for driving under the influence of alcohol rose more than 220 percent from 1970 to 1986, while the number of licensed drivers increased by just 42 percent in that period, a government report says.

In 1986, some 1.8 million people were arrested for driving under the influence, compared to 556,000 in 1970, said a report issued Sunday by the Bureau of Justice Statistics. In 1983, the peak year, there were 1.9 million such arrests, one for every 80 drivers.

The study also found that rates for driving under the influence were highest among 21-year-olds, reaching a peak in 1983 with a rate of one arrest for every 39 licensed drivers of that age.

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

27 (2) the person has the right to administrative review of
28 the revocation or determination not to issue an original license;

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

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

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

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

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license,
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of (1) not less than 72 hours
23 if the person has not been previously convicted in this or another
24 jurisdiction under this or another law or ordinance with substantially
25 similar elements; (2) not less than 10 consecutive days if, within the
26 preceding 10 years, the person has been previously convicted once in
27 this or another jurisdiction under this or another law or ordinance
28 with substantially similar elements; and (3) not less than 20 consecu-
29 tive days if, within the preceding 10 years, the person has been

1 previously convicted more than once in this or another jurisdiction
2 under this or another law or ordinance with substantially similar
3 elements [10 DAYS]. The execution of sentence may not be suspended
4 nor may probation or parole be granted until the minimum imprisonment
5 provided in this section has been served; nor may imposition of sen-
6 tence be suspended. In addition, the person's license, [OR] privilege
7 to drive, or privilege to obtain a license shall be revoked, and the
8 person may not be issued a new license nor may the privilege to drive
9 be restored for an additional period of not less than 90 days [ONE
10 YEAR] after the date that the person would have been entitled to
11 restoration of driving privileges.

12 * Sec. 7. AS 28.15.291(c) is amended to read:

13 (c) The court shall impose a sentence of imprisonment of not
14 less than 20 [30] days and a fine of not less than \$500 upon con-
15 viction of a violation of this section if the person's driver's li-
16 cense, privilege to drive, or privilege to obtain a license was re-
17 voked under circumstances described in AS 28.15.181(c)(1). The court
18 shall impose a sentence of imprisonment of not less than 30 [90] days
19 and a fine of not less than \$1,000 upon conviction of a violation of
20 this section if the person's driver's license, privilege to drive, or
21 privilege to obtain a license was revoked under circumstances de-
22 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
23 not be suspended nor may probation or parole be granted until the
24 minimum imprisonment provided in this subsection has been served.
25 Imposition of sentence may not be suspended. In addition, the per-
26 son's privilege to drive shall be revoked for an additional period of
27 not less than 90 days [ONE YEAR] after the date that the person would
28 have been entitled to restoration of driving privileges if the person
29 had not been convicted under this section.

1 * Sec. 8. AS 28.35.030(b) is amended to read:

2 (b) Except as provided in (h) of this section, driving [DRIVING]
3 while intoxicated is a class A misdemeanor.

4 * Sec. 9. AS 28.35.030(c) is amended to read:

5 (c) Upon conviction under this section the court shall impose a
6 minimum sentence of imprisonment of not less than 72 consecutive hours
7 and a fine of not less than \$250 if the person has not been previously
8 convicted in this or another jurisdiction of driving while intoxicated
9 under this or another law or ordinance with substantially similar
10 elements or refusal to submit to a chemical test under AS 28.35.032 or
11 another law or ordinance with substantially similar elements. Upon
12 conviction under this section the court shall impose a minimum sen-
13 tence of imprisonment of not less than 20 consecutive days and a fine
14 of not less than \$500 if, within the preceding 10 years, the person
15 has been previously convicted once in this or another jurisdiction of
16 driving while intoxicated under this or another law or ordinance with
17 substantially similar elements or refusal to submit to a chemical test
18 under AS 28.35.032 or another law or ordinance with substantially
19 similar elements. Upon conviction under this section the court shall
20 impose a minimum sentence of imprisonment of not less than 90 [30]
21 consecutive days and a fine of not less than \$1,000 if, within the
22 preceding 10 years, the person has been previously convicted in this
23 or another jurisdiction of more than one of the following offenses or
24 has more than once been previously convicted of one of the following
25 offenses: (1) driving while intoxicated under this or another law or
26 ordinance with substantially similar elements; (2) refusal to submit
27 to a chemical test under AS 28.35.032 or another law or ordinance with
28 substantially similar elements. The execution of sentence may not be
29 suspended nor may probation be granted except on condition that the

1 minimum imprisonment provided in this section is served. Imposition of
2 sentence may not be suspended. In addition, if the offense involved
3 driving a motor vehicle for which a driver's license is required, the
4 person's driver's license shall be revoked in accordance with AS 28.-
5 15.181 and the vehicle used in commission of the offense may be for-
6 feited under AS 28.35.036. In addition, the court shall order, and a
7 person convicted under this section shall undertake, for a term spec-
8 ified by the court, that program of alcohol education or rehabilita-
9 tion that the court, after consideration of any information compiled
10 under (d) of this section, finds appropriate.

11 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person who, within the preceding 10 years, has been previ-
13 ously convicted three or more times in this or another jurisdiction of
14 the offense of driving while intoxicated or an offense under another
15 law or ordinance with substantially similar elements is guilty of a
16 class C felony. Upon conviction under this section the court shall
17 impose a minimum sentence of imprisonment of not less than six months.

18 * Sec. 11. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction of a person under this section, the court
20 shall impose a minimum sentence of imprisonment of not less than 72
21 consecutive hours and a fine of not less than \$250 if the person has
22 not been previously convicted in this or another jurisdiction of
23 driving while intoxicated under AS 28.35.030 or another law or ordi-
24 nance with substantially similar elements or refusal to submit to a
25 chemical test under this section or another law or ordinance with
26 substantially similar elements. Upon conviction under this section the
27 court shall impose a minimum sentence of imprisonment of not less than
28 20 consecutive days and a fine of not less than \$500 if, within the
29 preceding 10 years, the person has been previously convicted once in

1 this or another jurisdiction of driving while intoxicated under
2 AS 28.35.030 or another law or ordinance with substantially similar
3 elements or refusal to submit to a chemical test under this section or
4 another law or ordinance with substantially similar elements. Upon
5 conviction under this section the court shall impose a minimum sen-
6 tence of imprisonment of not less than 90 [30] consecutive days and a
7 fine of not less than \$1,000 if, within the previous 10 years, the
8 person has been previously convicted in this or another jurisdiction
9 of more than one of the following offenses or has more than once been
10 previously convicted of one of the following offenses: (1) driving
11 while intoxicated under AS 28.35.030 or another law or ordinance with
12 substantially similar elements; (2) refusal to submit to a chemical
13 test under this section or another law or ordinance with substantially
14 similar elements. The execution of sentence may not be suspended nor
15 may probation be granted except on condition that the minimum impris-
16 onment provided in this section is served. Imposition of sentence may
17 not be suspended. If the offense involved driving a motor vehicle for
18 which a driver's license is required, the person's driver's license
19 shall be revoked under AS 28.15.181. In addition, the court shall
20 order, and a person convicted under this section shall undertake, for
21 a term specified by the court, that program of alcohol education or
22 rehabilitation that the court, after consideration of any information
23 compiled under (h) of this section, finds appropriate. The sentence
24 imposed by the court under this subsection shall run consecutively
25 with any other sentence of imprisonment imposed on the committed
26 person.

27 * Sec. 12. This Act takes effect January 1, 1989.
28
29