

HB

354

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



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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.

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

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.

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]		

<u>Crime</u>	<u>Conv. Date</u>	<u>Case #</u>	<u>Jail Time</u>	<u>Notes</u>
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 85-375 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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DISTRICT ATTORNEY, STATE OF ALASKA
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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.

DISTRICT ATTORNEY, STATE OF ALASKA
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1
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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ALASKA LAW REVIEW



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June 1986 • Volume III • Number 1
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 aforesought 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 § 11-9C2(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. § 28.15.1S1(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. § 55-10-403(a)(1) (Supp. 1984).

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

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 : implied malice
 : 2d at 643-46.

Supp. 1984-85);

ANN. § 56-5-2940
 ANN. § 32-23-4

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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).

STATE OF ALASKA THE LEGISLATURE

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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. JUD.

4-18-88

1:30p.m.

DATE: April 21, 1988

The Judiciary Committee has considered HB 354

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

RECOMMENDS:

- replace with CS HB 354 (Jud) 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:

[Handwritten signatures]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature]

Chairman's signature

5-1464P
Chenoweth
4/22/88

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (Judiciary)

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;
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; making amendments relating
13 to references to convictions for similar offenses
14 under the Alaska Uniform Vehicle Code; and providing
15 for an effective date."

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

17 * Section 1. AS 28.15.046(e) is amended to read:

18 (e) For purposes of determining whether an applicant has been
19 convicted of an offense listed under (c) or (d) of this section, a
20 conviction under r state law or in another jurisdiction of an
21 offense having elements [SUBSTANTIALLY] similar to those of the of-
22 fenses listed in (c) or (d) of this section is considered a convic-
23 tion.

24 * Sec. 2. AS 28.15.165(a) is amended to read:

25 (a) If a chemical test administered under AS 28.35.031(a) to a
26 person driving a motor vehicle for which a driver's license is re-
27 quired produces a result described in AS 28.35.030(a)(2) or if a
28 person under arrest for driving a motor vehicle for which a driver's
29 license is required refuses to submit to a chemical test under

1 AS 28.35.031(a), a law enforcement officer shall read a notice and
2 deliver a copy to the person. The notice must [SHALL] advise that

3 (1) the department intends to revoke the person's driver's
4 license, privilege to drive, privilege to obtain a license, or nonres-
5 ident privilege to drive, or refuse to issue an original license to
6 the person;

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

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

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

16 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

17 (c) The department shall revoke the person's license, privilege
18 to drive, privilege to obtain a license, or nonresident privilege to
19 drive a motor vehicle in the state, or refuse to issue an original
20 license effective upon expiration of the temporary driver's license
21 issued under (a) c this section upon receipt of a sworn report of a
22 law enforcement officer that states

23 (1) that a chemical test under AS 28.35.031(a) produced a
24 result described in AS 28.35.030(a)(2) or that a person refused to
25 submit to a chemical test under AS 28.35.031(a);

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

28 (3) the circumstances surrounding the arrest and the
29 grounds for the officer's belief that the person was driving, while

1 intoxicated, a motor vehicle for which a driver's license is required.

2 * Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

3 (1) A hearing officer revoking a driver's license because a
4 chemical test administered to the person produced a result described
5 in AS 28.35.030(a)(2) or because the person refused to submit to a
6 chemical test may grant limited license privileges under this sub-
7 section. The hearing officer may grant the limited license privileges
8 if the hearing officer determines that the person's ability to earn a
9 livelihood would be severely impaired and a limitation under AS 28.-
10 15.201 can be placed on the license that will enable the person to
11 earn a livelihood without excessive danger to the public. The limited
12 license privileges may be restored to the person

13 (1) for the final 60 days during which the license was
14 revoked if the person, during the preceding 10 years, has not been
15 previously convicted more than once of an offense described in AS 28.-
16 15.181(a)(5) or (8) or under another law or ordinance with similar
17 elements;

18 (2) for the final five years during which the license was
19 revoked if

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

24 (B) the hearing officer or the commissioner determines
25 that the person has successfully completed an alcoholism educa-
26 tion and rehabilitation treatment program; in determining whether
27 compliance with this subparagraph warrants restoration of limited
28 license privileges, the hearing officer or the commissioner may
29 also consider whether the person

1 (i) is enrolled in an alcoholism treatment pro-
2 gram in which the person receives antabuse or a similar
3 chemical substance intended to produce an aversion to alco-
4 hol in the treatment of alcoholism; or

5 (ii) operates a motor vehicle with an ignition
6 interlock device or similar equipment designed to prevent a
7 motor vehicle from being operated by a person who has con-
8 sumed an alcoholic beverage.

9 * Sec. 5. AS 28.15.181(a) is amended to read:

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

13 (1) manslaughter or negligent homicide resulting from
14 driving a motor vehicle;

15 (2) a felony in the commission of which a motor vehicle is
16 used;

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

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

22 (5) driving a motor vehicle while intoxicated;

23 (6) reckless driving;

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

26 (8) refusal to submit to a chemical test under AS 28.35.-
27 032;

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

1 * Sec. 6. AS 28.15.181(c) is amended to read:

2 (c) A court convicting a person of an offense described in
3 (a)(5) or (8) of this section arising out of the operation of a motor
4 vehicle for which a driver's license is required shall revoke that
5 person's driver's license. The revocation may be concurrent with or
6 consecutive to an administrative revocation under AS 28.15.165. The
7 court may not, except as provided in (e) of this section, grant limit-
8 ed license privileges for the following periods:

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

11 (A) described in (a)(5) or (8) of this section; or

12 (B) under a law or ordinance in another jurisdiction
13 with elements [SUBSTANTIALLY] similar to an offense described in
14 (a)(5) or (8) of this section;

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

17 (A) described in (a)(5) or (8) of this section; or

18 (B) under a law or ordinance in another jurisdiction
19 with elements [SUBSTANTIALLY] similar to an offense described in
20 (a)(5) or (8) of this section;

21 (3) not less than 10 years if, within the preceding 10
22 years, the person has been previously convicted of more than one of
23 the following offenses or has more than once been previously convicted
24 of one of the following offenses:

25 (A) an offense described in (a)(5) or (8) of this
26 section; or

27 (B) an offense under another law or ordinance in
28 another jurisdiction with elements [SUBSTANTIALLY] similar to an
29 offense described in (a)(5) or (8) of this section.

1 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

2 (e) A court revoking a driver's license under (c) of this sec-
3 tion, or sustaining the action of the department under AS 28.15.-
4 165(c), may grant limited license privileges

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

10 (2) for the final five years during which the license was
11 revoked if

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

16 (B) the court determines that the person has success-
17 fully completed an alcoholism education and rehabilitation treat-
18 ment program; in determining whether compliance with this sub-
19 paragraph warrants a grant of limited license privileges, the
20 court may also consider whether the person

21 (i) is enrolled in an alcoholism treatment pro-
22 gram in which the person receives antabuse or a similar
23 clinical substance intended to produce an aversion to alco-
24 hol in the treatment of the alcoholism; or

25 (ii) operates a motor vehicle with an ignition
26 interlock device or similar equipment designed to prevent a
27 motor vehicle from being operated by a person who has con-
28 sumed an alcoholic beverage.

29 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

10 * Sec. 9. AS 28.15.291(a) is amended to read:

11 (a) A person may not drive a motor vehicle on a highway or
12 vehicular way or area at a time when that person's driver's license,
13 [OR] privilege to drive, or privilege to obtain a license has been
14 canceled, suspended, or revoked in this or another jurisdiction, or
15 when driving in violation of a limitation placed upon that person's
16 license, [OR] privilege to drive, or privilege to obtain a license in
17 this or another jurisdiction. Except as provided in (c) of this
18 section, upon conviction of a violation of this section, the court
19 shall impose a sentence of imprisonment of (1) not less than 72 hours
20 if, within the previous 10 years, the person has not been previously
21 convicted in this or another jurisdiction under this or another law or
22 ordinance with similar elements; (2) not less than 10 consecutive days
23 if, within the preceding 10 years, the person has been previously
24 convicted once in this or another jurisdiction under this or another
25 law or ordinance with similar elements; and (3) not less than 20
26 consecutive days if, within the preceding 10 years, the person has
27 been previously convicted more than once in this or another jurisdic-
28 tion under this or another law or ordinance with similar elements [10
29 DAYS]. The execution of sentence may not be suspended nor may

1 probation or parole be granted until the minimum imprisonment provided
2 in this section has been served; nor may imposition of sentence be
3 suspended. In addition, the person's license, [OR] privilege to
4 drive, or privilege to obtain a license shall be revoked, and the
5 person may not be issued a new license nor may the privilege to drive
6 be restored for an additional period of not less than 90 days [ONE
7 YEAR] after the date that the person would have been entitled to
8 restoration of driving privileges.

9 * Sec. 10. AS 28.15.291(c) is amended to read:

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

27 * Sec. 11. AS 28.35.030(b) is amended to read:

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

1 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

2 (c) Upon conviction under this section,

3 (1) the court shall enter judgment as follows:

4 (A) if, within the preceding 10 years, the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under this or another law with similar
7 elements or of refusal to submit to a chemical test under AS 28.-
8 35.032 or another law or ordinance with similar elements, the
9 court shall impose

10 (i) a minimum sentence of imprisonment of not less
11 than 72 hours; and

12 (ii) a fine of not less than \$250;

13 (B) if, within the preceding 10 years, the person has
14 been previously convicted once in this or another jurisdiction of
15 driving while intoxicated under this or another law or ordinance
16 with similar elements or of refusal to submit to a chemical test
17 under AS 28.35.032 or another law or ordinance with similar
18 elements, the court shall impose

19 (i) a minimum sentence of imprisonment of not less
20 than 20 consecutive days; and

21 (ii) a fine of not less than \$1000;

22 (C) if, within the preceding 10 years, the person has
23 been previously convicted twice in this or another jurisdiction
24 of driving while intoxicated under this or another law or ordi-
25 nance with similar elements or of refusal to submit to a chemical
26 test under AS 28.35.032 or another law or ordinance with similar
27 elements, or has been previously convicted twice of a combination
28 of these offenses, the court shall impose

29 (i) a minimum sentence of imprisonment of not less

1 than 100 consecutive days; and

2 (ii) a fine of not less than \$1000;

3 (D) if, within the preceding 10 years, the person has
4 been previously convicted three times in this or another juris-
5 diction of driving while intoxicated under this or another law or
6 ordinance with similar elements or of refusal to submit to a
7 chemical test under AS 28.35.032 or another law or ordinance with
8 similar elements, or has been previously convicted three times of
9 a combination of these offenses, the court shall impose

10 (i) a minimum sentence of imprisonment of not
11 less than 120 days; and

12 (ii) a fine of not less than \$1000;

13 (E) if, within the preceding 10 years, the person has
14 been previously convicted four times in this or another jurisdic-
15 tion of driving while intoxicated under this or another law or
16 ordinance with similar elements or of refusal to submit to a
17 chemical test under AS 28.35.032 or another law or ordinance with
18 similar elements, or has been previously convicted four times of
19 a combination of these offenses, the court shall impose

20 (i) a minimum sentence of imprisonment of not
21 less than 180 days; and

22 (ii) a minimum fine of not less than \$1000;

23 (2) the court may not

24 (A) suspend execution of sentence;

25 (B) grant probation except on condition that the
26 person serve the minimum imprisonment provided in (1) of this
27 subsection;

28 (C) suspend imposition of sentence;

29 (3) if the offense involved driving a motor vehicle for

1 which a driver's license is required,

2 (A) the court shall direct that the person's driver's
3 license be revoked in accordance with AS 28.15.181; and

4 (B) the court may order the vehicle used in commission
5 of the offense to be forfeited under AS 28.35.036;

6 (4) the court shall order, and the person convicted under
7 this section shall undertake, for a term specified by the court, that
8 program of alcohol education or rehabilitation that the court, after
9 consideration of any information compiled under (d) of this section,
10 finds appropriate.

11 * Sec. 13. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person is guilty of a class C felony if, within the pre-
13 ceding 10 years, the person has been previously convicted five or more
14 times in this or another jurisdiction of

15 (1) the offense of driving while intoxicated under this or
16 another law or ordinance with similar elements;

17 (2) refusal to submit to a chemical test under AS 28.35.032
18 or another law or ordinance with similar elements; or

19 (3) a combination of the offenses set out in (1) and (2) of
20 this subsection.

21 * Sec. 14. AS 28.35.032(f) is amended to read:

22 (f) Except as provided in (k) of this section, refusal [REFUSAL]
23 to submit to the chemical test of breath authorized by AS 28.35.031(a)
24 is a class A misdemeanor.

25 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

26 (g) Upon conviction under this section,

27 (1) the court shall enter judgment as directed in AS 28.-
28 35.030(c)(1);

29 (2) the court may not

1 (A) suspend execution of sentence;

2 (B) grant probation except on condition that the
3 person serve the minimum imprisonment required under (1) of this
4 subsection;

5 (C) suspend imposition of sentence;

6 (3) if the offense involved driving a motor vehicle for
7 which a driver's license is required,

8 (A) the court shall direct that the person's driver's
9 license be revoked in accordance with AS 28.15.181; and

10 (B) the court may order the vehicle used in commission
11 of the offense to be forfeited under AS 28.35.036;

12 (4) the court shall order, and the person convicted under
13 this section shall undertake, for a term specified by the court, that
14 program of alcohol education or rehabilitation that the court, after
15 consideration of any information compiled under (h) of this section,
16 finds appropriate; and

17 (5) the sentence imposed by the court under this subsection
18 shall run consecutively with any other sentence of imprisonment im-
19 posed on the person.

20 * Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

21 (k) A person is guilty of a class C felony if, within the pre-
22 ceding 10 years, the person has been previously convicted five or more
23 times in this or another jurisdiction of

24 (1) the offense of refusal to submit to a chemical test
25 under this section or another law or ordinance with similar elements;

26 (2) driving while intoxicated under AS 28.35.030 or another
27 law or ordinance with similar elements; or

28 (3) a combination of the offenses set out in (1) and (2) of
29 this subsection.

1 (1) The sentence imposed by the court under (k) of this section
2 shall run consecutively with any other sentence of imprisonment im-
3 posed on the person.

4 * Sec. 17. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
6 35.032 involving a motor vehicle of a type for which a driver's li-
7 cense is required, the state may move the court to order the forfei-
8 ture of the motor vehicle involved in the commission of the offense if
9 the convicted person has been previously convicted in this or another
10 jurisdiction of more than one of the following offenses or has more
11 than once been previously convicted of one of the following offenses:

12 (1) driving while intoxicated under AS 28.35.030 or another
13 law or ordinance with [SUBSTANTIALLY] similar elements; or

14 (2) refusal to submit to a chemical test under AS 28.35.032
15 or another law or ordinance with [SUBSTANTIALLY] similar elements.

16 * Sec. 18. AS 28.35.038 is amended to read:

17 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
18 standing other provisions in this title, a municipality may adopt an
19 ordinance providing for the impoundment or forfeiture of a motor
20 vehicle involved in the commission of an offense under AS 28.35.030,
21 28.35.032, or an ordinance with elements [SUBSTANTIALLY] similar to
22 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
23 is not required to be consistent with this title or regulations adopt-
24 ed under this title.

25 * Sec. 19. AS 28.37.140(c) is amended to read:

26 (c) If the laws of a party state do not provide for offenses or
27 violations denominated or described in precisely the words employed in
28 (a) of this section, the party state shall construe the denominations
29 and descriptions appearing in (a) of this section as being applicable

1 to and identifying the offenses or violations of a [SUBSTANTIALLY]
2 similar nature, and the laws of the party state shall contain the
3 provisions necessary to ensure that full force and effect is given to
4 this section.

5 * Sec. 20. AS 28.40.100(a)(5) is repealed and reenacted to read:

6 (5) "driver's license", or "license" when used in relation
7 to driver licensing, means a license or permit to drive a motor
8 vehicle, or the privilege to drive or to obtain a license to drive a
9 motor vehicle, under the laws of this state, whether or not a person
10 holds a valid license issued in this or another jurisdiction;

11 * Sec. 21. This Act takes effect January 1, 1989.
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Original sponsors: Ulmer, Koponen,
Pearce, et al.

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 354 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the privilege to drive and to obtain a license; to penalties for driving while that license or privilege is suspended, canceled, or revoked, or driving in violation of a limitation; increasing the penalties for certain persons convicted of driving while intoxicated or refusing to submit to a chemical test; making amendments relating to references to convictions for similar offenses under the Alaska Uniform Vehicle Code; and providing for an effective date."

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

* Section 1. AS 28.15.046(e) is amended to read:

(e) For purposes of determining whether an applicant has been convicted of an offense listed under (c) or (d) of this section, a conviction under prior state law or in another jurisdiction of an offense having elements [SUBSTANTIALLY] similar to those of the offenses listed in (c) or (d) of this section is considered a conviction.

* Sec. 2. AS 28.15.165(a) is amended to read:

(a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under

1 AS 28.35.031(a), a law enforcement officer shall read a notice and
2 deliver a copy to the person. The notice must [SHALL] advise that

3 (1) the department intends to revoke the person's driver's
4 license, privilege to drive, privilege to obtain a license, or nonres-
5 ident privilege to drive, or refuse to issue an original license to
6 the person;

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

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

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

16 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

17 (c) The department shall revoke the person's license, privilege
18 to drive, privilege to obtain a license, or nonresident privilege to
19 drive a motor vehicle in the state, or refuse to issue an original
20 license effective upon expiration of the temporary driver's license
21 issued under (a) of this section upon receipt of a sworn report of a
22 law enforcement officer that states

23 (1) that a chemical test under AS 28.35.031(a) produced a
24 result described in AS 28.35.030(a)(2) or that a person refused to
25 submit to a chemical test under AS 28.35.031(a);

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

28 (3) the circumstances surrounding the arrest and the
29 grounds for the officer's belief that the person was driving, while

1 intoxicated, a motor vehicle for which a driver's license is required.

2 * Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

3 (1) A hearing officer revoking a driver's license because a
4 chemical test administered to the person produced a result described
5 in AS 28.35.030(a)(2) or because the person refused to submit to a
6 chemical test may grant limited license privileges under this sub-
7 section. The hearing officer may grant the limited license privileges
8 if the hearing officer determines that the person's ability to earn a
9 livelihood would be severely impaired and a limitation under AS 28.-
10 15.201 can be placed on the license that will enable the person to
11 earn a livelihood without excessive danger to the public. The limited
12 license privileges may be restored to the person

13 (1) for the final 60 days during which the license was
14 revoked if the person, during the preceding 10 years, has not been
15 previously convicted more than once of an offense described in AS 28.-
16 15.181(a)(5) or (8) or under another law or ordinance with similar
17 elements;

18 (2) for the final five years during which the license was
19 revoked if

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

24 (B) the hearing officer or the commissioner determines
25 that the person

26 (i) has successfully completed an alcoholism
27 education and rehabilitation treatment program;

28 (ii) is enrolled in an alcoholism treatment
29 program in which the person receives antabuse or a similar

1 chemical substance intended to produce an aversion to alco-
2 hol in the treatment of alcoholism; or

3 (iii) operates a motor vehicle with an ignition
4 interlock device or similar equipment designed to prevent a
5 motor vehicle from being operated by a person who has
6 consumed an alcoholic beverage.

7 * Sec. 5. AS 28.15.181(a) is amended to read:

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

11 (1) manslaughter or negligent homicide resulting from
12 driving a motor vehicle;

13 (2) a felony in the commission of which a motor vehicle is
14 used;

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

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

20 (5) driving a motor vehicle while intoxicated;

21 (6) reckless driving;

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

24 (8) refusal to submit to a chemical test under AS 28.35.-
25 032;

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

28 * Sec. 6. AS 28.15.181(c) is amended to read:

29 (c) A court convicting a person of an offense described in

1 (a) (5) or (8) of this section arising out of the operation of a motor
2 vehicle for which a driver's license is required shall revoke that
3 person's driver's license. The revocation may be concurrent with or
4 consecutive to an administrative revocation under AS 28.15.165. The
5 court may not, except as provided in (e) of this section, grant limited
6 license privileges for the following periods:

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

9 (A) described in (a) (5) or (8) of this section; or

10 (B) under a law or ordinance in another jurisdiction
11 with elements [SUBSTANTIALLY] similar to an offense described in
12 (a) (5) or (8) of this section;

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

15 (A) described in (a) (5) or (8) of this section; or

16 (B) under a law or ordinance in another jurisdiction
17 with elements [SUBSTANTIALLY] similar to an offense described in
18 (a) (5) or (8) of this section;

19 (3) not less than 10 years if, within the preceding 10
20 years, the person has been previously convicted of more than one of
21 the following offenses or has more than once been previously convicted
22 of one of the following offenses:

23 (A) an offense described in (a) (5) or (8) of this
24 section; or

25 (B) an offense under another law or ordinance in
26 another jurisdiction with elements [SUBSTANTIALLY] similar to an
27 offense described in (a) (5) or (8) of this section.

28 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

29 (e) A court revoking a driver's license under (c) of this

1 section, or sustaining the action of the department under AS 28.15.-
2 165(c), may grant limited license privileges

3 (1) for the final 60 days during which the license was
4 revoked if the person, during the preceding 10 years, has not been
5 previously convicted more than once of an offense described in (a)(5)
6 or (8) of this section or under another law or ordinance with similar
7 elements;

8 (2) for the final five years during which the license was
9 revoked if

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

14 (B) the court determines that the person

15 (i) has successfully completed an alcoholism
16 education and rehabilitation treatment program;

17 (ii) is enrolled in an alcoholism treatment
18 program in which the person receives antabuse or a similar
19 clinical substance intended to produce an aversion to
20 alcohol in the treatment of the alcoholism; or

21 (iii) operates a motor vehicle with an ignition
22 interlock device or similar equipment designed to prevent a
23 motor vehicle from being operated by a person who has
24 consumed an alcoholic beverage.

25 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

6 * Sec. 9. AS 28.15.291(a) is amended to read:

7 (a) A person may not drive a motor vehicle on a highway or
8 vehicular way or area at a time when that person's driver's license,
9 [OR] privilege to drive, or privilege to obtain a license has been
10 canceled, suspended, or revoked in this or another jurisdiction, or
11 when driving in violation of a limitation placed upon that person's
12 license, [OR] privilege to drive, or privilege to obtain a license in
13 this or another jurisdiction. Except as provided in (c) of this
14 section, upon conviction of a violation of this section, the court
15 shall impose a sentence of imprisonment of (1) not less than 72 hours
16 if, within the previous 10 years, the person has not been previously
17 convicted in this or another jurisdiction under this or another law or
18 ordinance with similar elements; (2) not less than 10 consecutive days
19 if, within the preceding 10 years, the person has been previously
20 convicted once in this or another jurisdiction under this or another
21 law or ordinance with similar elements; and (3) not less than 20
22 consecutive days if, within the preceding 10 years, the person has
23 been previously convicted more than once in this or another jurisdic-
24 tion under this or another law or ordinance with similar elements [10
25 DAYS]. The execution of sentence may not be suspended nor may pro-
26 bation or parole be granted until the minimum imprisonment provided in
27 this section has been served; nor may imposition of sentence be sus-
28 pended. In addition, the person's license, [OR] privilege to drive,
29 or privilege to obtain a license shall be revoked, and the person may

1 not be issued a new license nor may the privilege to drive be restored
2 for an additional period of not less than 90 days [ONE YEAR] after the
3 date that the person would have been entitled to restoration of driv-
4 ing privileges.

5 * Sec. 10. AS 28.15.291(c) is amended to read:

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

23 * Sec. 11. AS 28.35.030(b) is amended to read:

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

26 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

27 (c) Upon conviction under this section,

28 (1) the court shall enter judgment as follows:

29 (A) if, within the preceding 10 years, the person has

1 not been previously convicted in this or another jurisdiction of
2 driving while intoxicated under this or another law with similar
3 elements or of refusal to submit to a chemical test under AS 28.-
4 35.032 or another law or ordinance with similar elements, the
5 court shall impose

6 (i) a minimum sentence of imprisonment of not less
7 than 72 hours; and

8 (ii) a fine of not less than \$250;

9 (B) if, within the preceding 10 years, the person has
10 been previously convicted once in this or another jurisdiction of
11 driving while intoxicated under this or another law or ordinance
12 with similar elements or of refusal to submit to a chemical test
13 under AS 28.35.032 or another law or ordinance with similar
14 elements, the court shall impose

15 (i) a minimum sentence of imprisonment of not less
16 than 20 consecutive days; and

17 (ii) a fine of not less than \$1000;

18 (C) if, within the preceding 10 years, the person has
19 been previously convicted twice in this or another jurisdiction
20 of driving while intoxicated under this or another law or ordi-
21 nance with similar elements or of refusal to submit to a chemical
22 test under AS 28.35.032 or another law or ordinance with similar
23 elements, or has been previously convicted twice of a combination
24 of these offenses, the court shall impose

25 (i) a minimum sentence of imprisonment of not less
26 than 100 consecutive days; and

27 (ii) a fine of not less than \$1000;

28 (D) if, within the preceding 10 years, the person has
29 been previously convicted three times in this or another

1 jurisdiction of driving while intoxicated under this or another
2 law or ordinance with similar elements or of refusal to submit to
3 a chemical test under AS 28.35.032 or another law or ordinance
4 with similar elements, or has been previously convicted three
5 times of a combination of these offenses, the court shall impose

6 (i) a minimum sentence of imprisonment of not
7 less than 120 days; and

8 (ii) a fine of not less than \$1000;

9 (E) if, within the preceding 10 years, the person has
10 been previously convicted four times in this or another jurisdic-
11 tion of driving while intoxicated under this or another law or
12 ordinance with similar elements or of refusal to submit to a
13 chemical test under AS 28.35.032 or another law or ordinance with
14 similar elements, or has been previously convicted four times of
15 a combination of these offenses, the court shall impose

16 (i) a minimum sentence of imprisonment of not
17 less than 180 days; and

18 (ii) a minimum fine of not less than \$1000;

19 (2) the court may not

20 (A) suspend execution of sentence;

21 (B) grant probation except on condition that the
22 person serve the minimum imprisonment provided in (1) of this
23 subsection;

24 (C) suspend imposition of sentence;

25 (3) if the offense involved driving a motor vehicle for
26 which a driver's license is required,

27 (A) the court shall direct that the person's driver's
28 license be revoked in accordance with AS 28.15.181; and

29 (B) the court may order the vehicle used in commission

of the offense to be forfeited under AS 28.35.036;

1
2 (4) the court shall order, and the person convicted under
3 this section shall undertake, for a term specified by the court, that
4 program of alcohol education or rehabilitation that the court, after
5 consideration of any information compiled under (d) of this section,
6 finds appropriate.

* Sec. 13. AS 28.35.030 is amended by adding a new subsection to read:

7 (h) A person is guilty of a class C felony if, within the pre-
8 ceding 10 years, the person has been previously convicted five or more
9 times in this or another jurisdiction of

10 (1) the offense of driving while intoxicated under this or
11 another law or ordinance with similar elements;

12 (2) refusal to submit to a chemical test under AS 28.35.032
13 or another law or ordinance with similar elements; or

14 (3) a combination of the offenses set out in (1) and (2) of
15 this subsection.

16 * Sec. 14. AS 28.35.032(f) is amended to read:

17 (f) Except as provided in (k) of this section, refusal [REFOCAL]
18 to submit to the chemical test of breath authorized by AS 28.35.031(a)
19 is a class A misdemeanor.

20 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

21 (g) Upon conviction under this section,

22 (1) the court shall enter judgment as directed in AS 28.-
23 35.030(c)(1);

24 (2) the court may not

25 (A) suspend execution of sentence;

26 (B) grant probation except on condition that the
27 person serve the minimum imprisonment required under (1) of this
28 subsection;

(C) suspend imposition of sentence;

(3) if the offense involved driving a motor vehicle for which a driver's license is required,

(A) the court shall direct that the person's driver's license be revoked in accordance with AS 28.15.181; and

(B) the court may order the vehicle used in commission of the offense to be forfeited under AS 28.35.036;

(4) the court shall order, and the person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

* Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

(k) A person is guilty of a class C felony if, within the preceding 10 years, the person has been previously convicted five or more times in this or another jurisdiction of

(1) the offense of refusal to submit to a chemical test under this section or another law or ordinance with similar elements;

(2) driving while intoxicated under AS 28.35.030 or another law or ordinance with similar elements; or

(3) a combination of the offenses set out in (1) and (2) of this subsection.

(1) The sentence imposed by the court under (k) of this section shall run consecutively with any other sentence of imprisonment imposed on the person.

* Sec. 17. AS 28.35.036(a) is amended to read:

1 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
2 35.032 involving a motor vehicle of a type for which a driver's li-
3 cense is required, the state may move the court to order the forfei-
4 ture of the motor vehicle involved in the commission of the offense if
5 the convicted person has been previously convicted in this or another
6 jurisdiction of more than one of the following offenses or has more
7 than once been previously convicted of one of the following offenses:

8 (1) driving while intoxicated under AS 28.35.030 or another
9 law or ordinance with [SUBSTANTIALLY] similar elements; or

10 (2) refusal to submit to a chemical test under AS 28.35.032
11 or another law or ordinance with [SUBSTANTIALLY] similar elements.

12 * Sec. 18. AS 28.35.038 is amended to read:

13 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
14 standing other provisions in this title, a municipality may adopt an
15 ordinance providing for the impoundment or forfeiture of a motor
16 vehicle involved in the commission of an offense under AS 28.35.030,
17 28.35.032, or an ordinance with elements [SUBSTANTIALLY] similar to
18 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
19 is not required to be consistent with this title or regulations adopt-
20 ed under this title.

21 * Sec. 19. AS 28.37.140(c) is amended to read:

22 (c) If the laws of a party state do not provide for offenses or
23 violations denominated or described in precisely the words employed in
24 (a) of this section, the party state shall construe the denominations
25 and descriptions appearing in (a) of this section as being applicable
26 to and identifying the offenses or violations of a [SUBSTANTIALLY]
27 similar nature, and the laws of the party state shall contain the
28 provisions necessary to ensure that full force and effect is given to
29 this section.

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* Sec. 20. AS 28.40.100(a)(5) is repealed and reenacted to read:

(5) "driver's license", or "license" when used in relation to driver licensing, means a license or permit to drive a motor vehicle, or the privilege to drive or to obtain a license to drive a motor vehicle, under the laws of this state, whether or not a person holds a valid license issued in this or another jurisdiction;

* Sec. 21. This Act takes effect January 1, 1989.

Adopted
w/ Amends
4-21

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (Judiciary)

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;
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; making amendments relating
13 to references to convictions for similar offenses
14 under the Alaska Uniform Vehicle Code; and providing
15 for an effective date."

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

17 * Section 1. AS 28.15.046(e) is amended to read:

18 (e) For purposes of determining whether an applicant has been
19 convicted of an offense listed under (c) or (d) of this section, a
20 conviction under prior state law or in another jurisdiction of an
21 offense having elements [SUBSTANTIALLY] similar to those of the of-
22 fenses listed in (c) or (d) of this section is considered a convic-
23 tion.

24 * Sec. 2. AS 28.15.165(a) is amended to read:

25 (a) If a chemical test administered under AS 28.35.031(a) to a
26 person driving a motor vehicle for which a driver's license is re-
27 quired produces a result described in AS 28.35.030(a)(2) or if a
28 person under arrest for driving a motor vehicle for which a driver's
29 license is required refuses to submit to a chemical test und

1 AS 28.35.031(a), a law enforcement officer shall read a notice and
2 deliver a copy to the person. The notice must [SHALL] advise that

3 (1) the department intends to revoke the person's driver's
4 license, privilege to drive, privilege to obtain a license, or nonres-
5 ident privilege to drive, or refuse to issue an original license to
6 the person;

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

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

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

16 * Sec. 3. AS 26.15.165(c) is repealed and reenacted to read:

17 (c) The department shall revoke the person's license, privilege
18 to drive, privilege to obtain a license, or nonresident privilege to
19 drive a motor vehicle in the state, or ~~refuse~~ to issue an original
20 license effective upon expiration of the temporary driver's license
21 issued under (a) of this section upon receipt of a sworn report of a
22 law enforcement officer that states

23 (1) that a chemical test under AS 28.35.031(a) produced a
24 result described in AS 28.35.030(a)(2) or that a person refused to
25 submit to a chemical test under AS 28.35.031(a);

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

28 (3) the circumstances surrounding the arrest and the
29 grounds for the officer's belief that the person was driving, while

intoxicated, a motor vehicle for which a driver's license is required.

* Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

(1) A hearing officer revoking a driver's license because a chemical test administered to the person produced a result described in AS 28.35.030(a)(2) or because the person refused to submit to a chemical test may grant limited license privileges under this subsection. The hearing officer may grant the limited license privileges if the hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under AS 28.15.201 can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public. The limited license privileges may be restored to the person

(1) for the final 60 days during which the license was revoked if the person, during the preceding 10 years, has not been previously convicted more than once of an offense described in AS 28.15.181(a)(5) or (8) or under another law or ordinance with similar elements;

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

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

(B) the hearing officer or the commissioner determines that the person has successfully completed an alcoholism education and rehabilitation treatment program; or

(3) → * Sec. 5. AS 28.15.181(a) is amended to read:

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

privilege to obtain a license:

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

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

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

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

10 (5) driving a motor vehicle while intoxicated;

11 (6) reckless driving;

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

14 (8) refusal to submit to a chemical test under AS 28.35.-
15 032;

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

18 * Sec. 6. AS 28.15.181(c) is amended to read:

19 (c) A court convicting a person of an offense described in
20 (a)(5) or (8) of this section arising out of the operation of a motor
21 vehicle for which a driver's license is required shall revoke that
22 person's driver's license. The revocation may be concurrent with or
23 consecutive to an administrative revocation under AS 28.15.165. The
24 court may not, except as provided in (e) of this section, grant limit-
25 ed license privileges for the following periods:

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

28 (A) described in (a)(5) or (8) of this section; or
29

1 (B) under a law or ordinance in another jurisdiction
2 with elements [SUBSTANTIALLY] similar to an offense described in
3 (a)(5) or (8) of this section;

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

6 (A) described in (a)(5) or (8) of this section; or

7 (B) under a law or ordinance in another jurisdiction
8 with elements [SUBSTANTIALLY] similar to an offense described in
9 (a)(5) or (8) of this section;

10 (3) not less than 10 years if, within the preceding 10
11 years, the person has been previously convicted of more than one of
12 the following offenses or has more than once been previously convicted
13 of one of the following offenses:

14 (A) an offense described in (a)(5) or (8) of this
15 section; or

16 (B) an offense under another law or ordinance in
17 another jurisdiction with elements [SUBSTANTIALLY] similar to an
18 offense described in (a)(5) or (8) of this section.

19 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

20 (e) A court revoking a driver's license under (c) of this sec-
21 tion, or sustaining the action of the department under AS 28.15.-
22 165(c), may grant limited license privileges

23 (1) for the final 60 days during which the license was
24 revoked if the person, during the preceding 10 years, has not been
25 previously convicted more than once of an offense described in (a)(5)
26 or (8) of this section or under another law or ordinance with similar
27 elements;

28 (2) for the final five years during which the license was
29 revoked if

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

5 (B) the court determines that the person has success-
6 fully completed an alcoholism education and rehabilitation treat-
7 ment program.

8 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

18 * Sec. 9. AS 28.15.291(a) is amended to read:

19 (a) A person may not drive a motor vehicle on a highway or
20 vehicular way or area at a time when that person's driver's license,
21 [OR] privilege to drive, or privilege to obtain a license has been
22 canceled, suspended, or revoked in this or another jurisdiction, or
23 when driving in violation of a limitation placed upon that person's
24 license, [OR] privilege to drive, or privilege to obtain a license in
25 this or another jurisdiction. Except as provided in (c) of this
26 section, upon conviction of a violation of this section, the court
27 shall impose a sentence of imprisonment of (1) not less than 72 hours
28 if, within the previous 10 years, the person has not been previously
29 convicted in this or another jurisdiction under this or another law or

1 ordinance with similar elements; (2) not less than 10 consecutive days
2 if, within the preceding 10 years, the person has been previously
3 convicted once in this or another jurisdiction under this or another
4 law or ordinance with similar elements; and (3) not less than 20
5 consecutive days if, within the preceding 10 years, the person has
6 been previously convicted more than once in this or another jurisdic-
7 tion under this or another law or ordinance with similar elements [10
8 DAYS]. The execution of sentence may not be suspended nor may pro-
9 bation or parole be granted until the minimum imprisonment provided in
10 this section has been served; nor may imposition of sentence be sus-
11 pended. In addition, the person's license, [OR] privilege to drive,
12 or privilege to obtain a license shall be revoked, and the person may
13 not be issued a new license nor may the privilege to drive be restored
14 for an additional period of not less than 90 days [ONE YEAR] after the
15 date that the person would have been entitled to restoration of driv-
16 ing privileges.

17 * Sec. 10. AS 28.15.291(c) is amended to read:

18 (c) The court shall impose a sentence of imprisonment of not
19 less than 20 [30] days and a fine of not less than \$500 upon con-
20 viction of a violation of this section if the person's driver's li-
21 cense, privilege to drive, or privilege to obtain a license was re-
22 voked under circumstances described in AS 28.15.181(c)(1). The court
23 shall impose a sentence of imprisonment of not less than 30 [90] days
24 and a fine of not less than \$1,000 upon conviction of a violation of
25 this section if the person's driver's license, privilege to drive, or
26 privilege to obtain a license was revoked under circumstances de-
27 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
28 not be suspended nor may probation or parole be granted until the
29 minimum imprisonment provided in this subsection has been served.

1 Imposition of sentence may not be suspended. In addition, the per-
2 son's privilege to drive shall be revoked for an additional period of
3 not less than 90 days [ONE YEAR] after the date that the person would
4 have been entitled to restoration of driving privileges if the person
5 had not been convicted under this section.

6 * Sec. 11. AS 28.35.030(b) is amended to read:

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

9 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

10 (c) Upon conviction under this section,

11 (1) the court shall enter judgment as follows:

12 (A) if, within the preceding 10 years, the person has
13 not been previously convicted in this or another jurisdiction of
14 driving while intoxicated under this or another law with similar
15 elements or of refusal to submit to a chemical test under AS 28.-
16 35.032 or another law or ordinance with similar elements, the
17 court shall impose

18 (i) a minimum sentence of imprisonment of not less
19 than 72 hours; and

20 (ii) a fine of not less than \$250;

21 (B) if, within the preceding 10 years, the person has
22 been previously convicted once in this or another jurisdiction of
23 driving while intoxicated under this or another law or ordinance
24 with similar elements or of refusal to submit to a chemical test
25 under AS 28.35.032 or another law or ordinance with similar
26 elements, the court shall impose

27 (i) a minimum sentence of imprisonment of not less
28 than 20 consecutive days; and

29 (ii) a fine of

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(C) if, within the preceding 10 years, the person has been previously convicted twice in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with similar elements or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with similar elements, or has been previously convicted twice of a combination of these offenses, the court shall impose

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(i) a minimum sentence of imprisonment of not less than 100 consecutive days; and

(ii) a fine of not less than \$1000;

(D) if, within the preceding 10 years, the person has been previously convicted three times in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with similar elements or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with similar elements, or has been previously convicted three times of a combination of these offenses, the court shall impose

(i) a minimum sentence of imprisonment of not less than 120 days; and

(ii) a fine of not less than \$1000;

(E) if, within the preceding 10 years, the person has been previously convicted four times in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with similar elements or of refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with similar elements, or has been previously convicted four times of a combination of these offenses, the court shall impose

(i) a minimum sentence of imprisonment of not less than 180 days; and

1 (ii) a minimum fine of not less than \$1000;

2 (2) the court may not

3 (A) suspend execution of sentence;

4 (B) grant probation except on condition that the
5 person serve the minimum imprisonment provided in (1) of this
6 subsection;

7 (C) suspend imposition of sentence;

8 (3) if the offense involved driving a motor vehicle for
9 which a driver's license is required,

10 (A) the court shall direct that the person's driver's
11 license be revoked in accordance with AS 28.15.181; and

12 (B) the court may order the vehicle used in commission
13 of the offense to be forfeited under AS 28.35.036;

14 (4) the court shall order, and the person convicted under
15 this section shall undertake, for a term specified by the court, that
16 program of alcohol education or rehabilitation that the court, after
17 consideration of any information compiled under (d) of this section,
18 finds appropriate.

19 * Sec. 13. AS 28.35.030 is amended by adding new subsections to read:

20 (h) A person is guilty of a class C felony if, within the pre-
21 ceding 10 years, the person has been previously convicted five or more
22 times in this or another jurisdiction of

23 (1) the offense of driving while intoxicated under this or
24 another law or ordinance with similar elements;

25 (2) refusal to submit to a chemical test under AS 28.35.032
26 or another law or ordinance with similar elements; or

27 (3) a combination of the offenses set out in (1) and (2) of
28 this subsection.

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2 * Sec. 14. AS 28.35.032(f) is amended to read:

3 (f) Except as provided in (k) of this section, refusal [REFUSAL]
4 to submit to the chemical test of breath authorized by AS 28.35.031(a)
5 is a class A misdemeanor.

6 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

7 (g) Upon conviction under this section,

8 (1) the court shall enter judgment as directed in AS 28.-
9 35.030(c)(1);

10 (2) the court may not

11 (A) suspend execution of sentence;

12 (B) grant probation except on condition that the
13 person serve the minimum imprisonment required under (1) of this
14 subsection

15 (C) suspend imposition of sentence;

16 (3) if the offense involved driving a motor vehicle for
17 which a driver's license is required,

18 (A) the court shall direct that the person's driver's
19 license be revoked in accordance with AS 28.15.181; and

20 (B) the court may order the vehicle used in commission
21 of the offense to be forfeited under AS 28.35.036;

22 (4) the court shall order, and the person convicted under
23 this section shall undertake, for a term specified by the court, that
24 program of alcohol education or rehabilitation that the court, after
25 consideration of any information compiled under (h) of this section,
26 finds appropriate; and

27 (5) the sentence imposed by the court under this subsection
28 shall run consecutively with any other sentence of imprisonment im-
29 posed on the person.

1 * Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

2 (k) A person is guilty of a class C felony if, within the
3 preceding 10 years, the person has been previously convicted five or
4 more times in this or another jurisdiction of

5 (1) the offense of refusal to submit to a chemical test
6 under this section or another law or ordinance with similar elements;

7 (2) driving while intoxicated under AS 28.35.030 or another
8 law or ordinance with similar elements; or

9 (3) a combination of the offenses set out in (1) and (2) of
10 this subsection.

11 (1)

12
13 The sentence imposed by the court under this subsection shall run con-
14 secutively with any other sentence of imprisonment imposed on the
15 person.

16 * Sec. 17. AS 28.35.036(a) is amended to read:

17 (a) After conviction of an offense under AS 28.35.030 or AS 28.35.
18 032 involving a motor vehicle of a type for which a driver's li-
19 cense is required, the state may move the court to order the forfei-
20 ture of the motor vehicle involved in the commission of the offense if
21 the convicted person has been previously convicted in this or another
22 jurisdiction of more than one of the following offenses or has more
23 than once been previously convicted of one of the following offenses:

24 (1) driving while intoxicated under AS 28.35.030 or another
25 law or ordinance with [SUBSTANTIALLY] similar elements; or

26 (2) refusal to submit to a chemical test under AS 28.35.032
27 or another law or ordinance with [SUBSTANTIALLY] similar elements.

28 * Sec. 18. AS 28.35.038 is amended to read:

29 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE

1 Notwithstanding other provisions in this title, a municipality may
2 adopt an ordinance providing for the impoundment or forfeiture of a
3 motor vehicle involved in the commission of an offense under AS 28.-
4 35.030, 28.35.032, or an ordinance with elements [SUBSTANTIALLY]
5 similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under
6 this section is not required to be consistent with this title or
7 regulations adopted under this title.

8 * Sec. 19. AS 28.37.140(c) is amended to read:

9 (c) If the laws of a party state do not provide for offenses or
10 violations denominated or described in precisely the words employed in
11 (a) of this section, the party state shall construe the denominations
12 and descriptions appearing in (a) of this section as being applicable
13 to and identifying the offenses or violations of a [SUBSTANTIALLY]
14 similar nature, and the laws of the party state shall contain the
15 provisions necessary to ensure that full force and effect is given to
16 this section.

17 * Sec. 20. AS 28.40.100(a)(5) is repealed and reenacted to read:

18 (5) "driver's license", or "license" when used in relation
19 to driver licensing, means a license or permit, or the privilege to
20 drive or to obtain a license, to drive a motor vehicle under the laws
21 of this state whether or not a person holds a valid license issued in
22 this or another jurisdiction;

23 * Sec. 21. This Act takes effect January 1, 1989.
24
25
26
27
28
29

Offered: 4/14/88
Referred: Judiciary and
Finance

5-1464X

→ *Revised Neutral*

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

→ *Discretionary w/ judge 10 year*

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

DWS/16

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* 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.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 21, 1988

SUBJECT: Draft CSHB 354 (Judiciary): A [revised]
crib sheet

TO: Representative John Sund, Chair
House Judiciary Committee
ATTN: John Hartle

FROM: Jack Chenoweth
Legislative Counsel

This is addressed to the draft CSHB 354 (Judiciary), trans-
mitted late yesterday. In that document, please note the
following:

<u>Drafting Instruction</u>	<u>Disposition</u>
1. Alter the DWI penalties: 3rd offense = 100 days 4th offense = 120 days 5th offense = 180 days 6th offense = treat as a felony	Changes made in bill section 12: see (c)(1) See bill sections 11 and 13
2. Insert within AS 28.15.- 291(a) the "within the preceding ten years" language	Done: this is now bill section 9
3. AS 28.40.100(a)(5) to be amended to incorporate a reference to "privilege to apply for a license"	Done: see bill section 20
4. Amend AS 28.15.166(1) to incorporate provision of AS 28.15.181(e) rela- ting to restoration of a	AS 28.15.166(1) repealed and re-enacted to add the provision requested: see bill section 4

limited license privilege

5. Eliminate the last sentence of AS 28.15.166(1) Done: see bill section 4
6. Incorporate materials referred from Driver Services Chief Bill Brown These materials appear in bill sections 4, 9, and 20
7. Act on Rep. Gruenberg's directive to delete "substantially" before "similar" in reference to convictions outside AS 28 These changes were made to all material set out in the HESS CS; I also made related changes that appear in bill sections 1, 6, and 17 - 19, sections that did not appear in the previous committee substitute.

In addition to the preceding,

-- the provisions covering refusal to submit to a chemical test of breath have been modified so that they parallel the DWI penalties (see AS 28.35.032(g)(1), reenacted in bill section 15);

-- the felony penalties applicable to conviction for DWI and to conviction for refusal to submit to a chemical test of breath have been directly tied to one another (see bill sections 13 and 16).

JBC:gc
WKG3:022

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.

CSHB 354(HESS), page 4, line 23: Insert "within the preceding 10 years" between the first word "if" and the second word "the".

Without this wording inserted, a defendant convicted 12 years prior to the offense would fall in a category which is not addressed in the bill. The 12 years is an example, because (1) currently indicates 72 hours jail if the person has not previously been convicted of an offense. Sections (2) and (3) only fall in place if the person has prior conviction(s) within the preceding 10 years.

Bill Brown - DMV
465-4335

Section 4 of CSHB 354(HESS), reflects the court may grant limited license privileges if it sustains the action of the department under AS 28.15.165(c). The court will not have the opportunity to sustain the department's action unless the defendant had requested a hearing within 7 days of the date of arrest, and if the revocation is sustained, files an appeal in the Superior Court within 30 days of the decision.

Thus, in instances where the defendant receives an administrative revocation under AS 28.15.165(c), and does not request a hearing, and is not convicted in court of the DWI charge or Refusal charge, the person would not have an opportunity for limited license privileges. This seems unfair.

AS 28.15.166(1) authorizes the hearing officer to issue limited license privileges only if the defendant had no prior DWI convictions within the past 10 years, and did not refuse to take the chemical breath test. This was the same criteria outlined in AS 28.15.181(e). This bill is amending AS 28.15.181(e), however, not amending AS 28.15.166(1) accordingly, which creates a discrepancy.

Bill Brown - DMV
465-4335

Look at 28.15.181(e)

2. Report - 28.15.181(e) - 2018

AS 28.40.100(a)(5) is amended to read:

(5) "driver's license" or "license" when used in relation to driver licensing, means a license, permit or privilege, whether or not a person holds a valid license issued in this or another jurisdiction, to drive a motor vehicle under the laws of this state (;). For suspension and revocation purposes, it also includes privilege to apply for a license;

The reason for this recommended amendment is because the Francis and Roberts court decisions concerning privilege to apply for a license will not be totally corrected by the changes outlined in CSHB 354(HESS). The changes correct only DWI or court ordered license actions, however, do not address suspensions under the mandatory insurance law, financial responsibility law, and point system law. With the above change the problem outlined in the above decisions will be corrected for all of Title 28, and not just specific sections.

Bill Brown - DMV
465-4335

MEMORANDUM

TO: John Sund, Chairman
House Judiciary Committee

Date: April 21, 1988

FROM: Dana Fabe
Public Defender

I have reviewed the proposed CS for HB 354, relating to drunk driving.

I have no problem with the new mandatory minimum penalties for repeat drunk driving misdemeanors, nor do I object to elevating the offense to a felony after many repeated incidents in misdemeanor court.

The only concern which I have with the bill is setting a mandatory minimum for the first offense felony drunk driving. Although I understand the argument that persons convicted of felony drunk driving should certainly receive more jail time than they would have received for previous drunk driving convictions in district court, this issue must be examined not only within the context of other drunk driving convictions, but also of other first felony convictions. To set a mandatory minimum jail term for a first offense drunk driving felony raises concerns when potentially more serious first offense felonies such as assaults with dangerous weapons have no mandatory minimum. In all likelihood, a sentencing judge would give more jail time on a first felony drunk driving than was received for the last misdemeanor drunk driving charge. However, to set a mandatory minimum jail term for any first offense class C or B felony creates an anomaly within the felony sentencing code.

It should also be noted that first conviction of a first felony carries many collateral consequences which are not involved in misdemeanor convictions. A convicted felon cannot carry a firearm, can be placed on supervised probation and required to submit to drug and alcohol tests at will and report to a probation officer on a monthly basis. A convicted felon cannot vote until he or she is off probation and has had civil rights restored. Felony convictions can prohibit bonding, licensing for certain professions, and the ability to obtain employment. Because of these additional collateral consequences, the seriousness of a first felony drunk driving charge is accurately reflected without a statutory requirement of mandatory minimum jail time. Again, it is realistic to expect that a trial judge would give more jail time than for the last drunk driving offense in any event.

Thank you for requesting my input on this bill. As noted above, with the exception of the mandatory jail term for a first felony, I have no other problem with the bill.

Collateral references. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 112 et seq.

60 C.J.S., Motor Vehicles, § 164.1 et seq.

Civil rights and liabilities as affected by failure to comply with regulations as to licensing of automobile operator, 16 ALR 1108, 35 ALR 62, 38 ALR 1038, 43 ALR 1153, 54 ALR 374, 58 ALR 532, 61 ALR 1190, 78 ALR 1028, 87 ALR 1469, 111 ALR 1258, 163 ALR 1375.

Validity of statute relating to granting or revocation of license or permit to operate automobile, 71 ALR 616, 108 ALR 1162, 125 ALR 1459.

Denial, suspension, or cancellation of driver's license because of physical disease or defect, 38 ALR3d 452.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

Validity of statute or regulation authorizing revocation or suspension of driver's license for reason unrelated to use of or ability to operate motor vehicle, 86 ALR3d 1251.

Sec. 28.15.165. Administrative revocations resulting from chemical sobriety tests and refusals to submit to tests. (a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under AS 28.35.031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice shall advise that

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

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

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

(4) revocation of the person's driver's license or nonresident privilege to drive, or a determination not to issue an original license shall take effect upon expiration of the temporary driver's license unless the person within seven days requests an administrative review.

(b) After reading the notice under (a) of this section, the law enforcement officer shall seize the person's driver's license if it is in the person's possession and shall deliver it to the department with a sworn report describing the circumstances under which it was seized.

(c) Upon receipt of a sworn report of a law enforcement officer that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a), that notice under (a) of this section was provided to the person, and that contains a statement of the circumstances surrounding the arrest and the grounds upon which the officer's belief that the person was driving while intoxicated a motor vehicle for which

a driver's license is required was based, the department shall revoke the person's license or nonresident privilege to drive a motor vehicle in the state, or refuse to issue an original license effective upon expiration of the temporary driver's license issued under (a) of this section.

(d) The period of revocation of a driver's license by the department under this section shall be for the appropriate minimum period for court revocations under AS 28.15.181(c). (§ 3 ch 77 SLA 1983)

Sec. 28.15.166. Administrative review of revocation. (a) A person who has received a notice under AS 28.15.165(a) may make a written request for administrative review of the department's action under AS 28.15.165(c). If the person's driver's license has not been previously surrendered to the department, it shall be surrendered to the department at the time the request for review is made.

(b) A request for review shall be made within seven days after receipt of the notice under AS 28.15.165 or the right to review is waived and the action of the department under AS 28.15.165(c) is final. If a written request for a review is made after expiration of the seven-day period, and if it is accompanied by the applicant's verified statement explaining the failure to make a timely request for a review, the department shall receive and consider the request. If the department finds that the person was unable to make a timely request because of lack of actual notice of the revocation or because of factors of physical incapacity such as hospitalization or incarceration, the department shall waive the period of limitation, reopen the matter, and grant the review request.

(c) Upon receipt of a request for review, if it appears that the person holds a valid driver's license and that the driver's license has been surrendered, the department shall issue a temporary driver's permit that is valid until the scheduled date for the review. A person who has requested a review under this section may request, and the department may grant for good cause, a delay in the date of the hearing. If necessary, the department may issue additional temporary permits to stay the effective date of its action under AS 28.15.165(c) until the final order after the review is issued.

(d) A person who has requested a hearing under this section and who fails to appear at the hearing, for reasons other than lack of actual notice of the hearing or physical incapacity such as hospitalization or incarceration, waives the right to a hearing. The determination of the department that is based upon the enforcement officer's report becomes final.

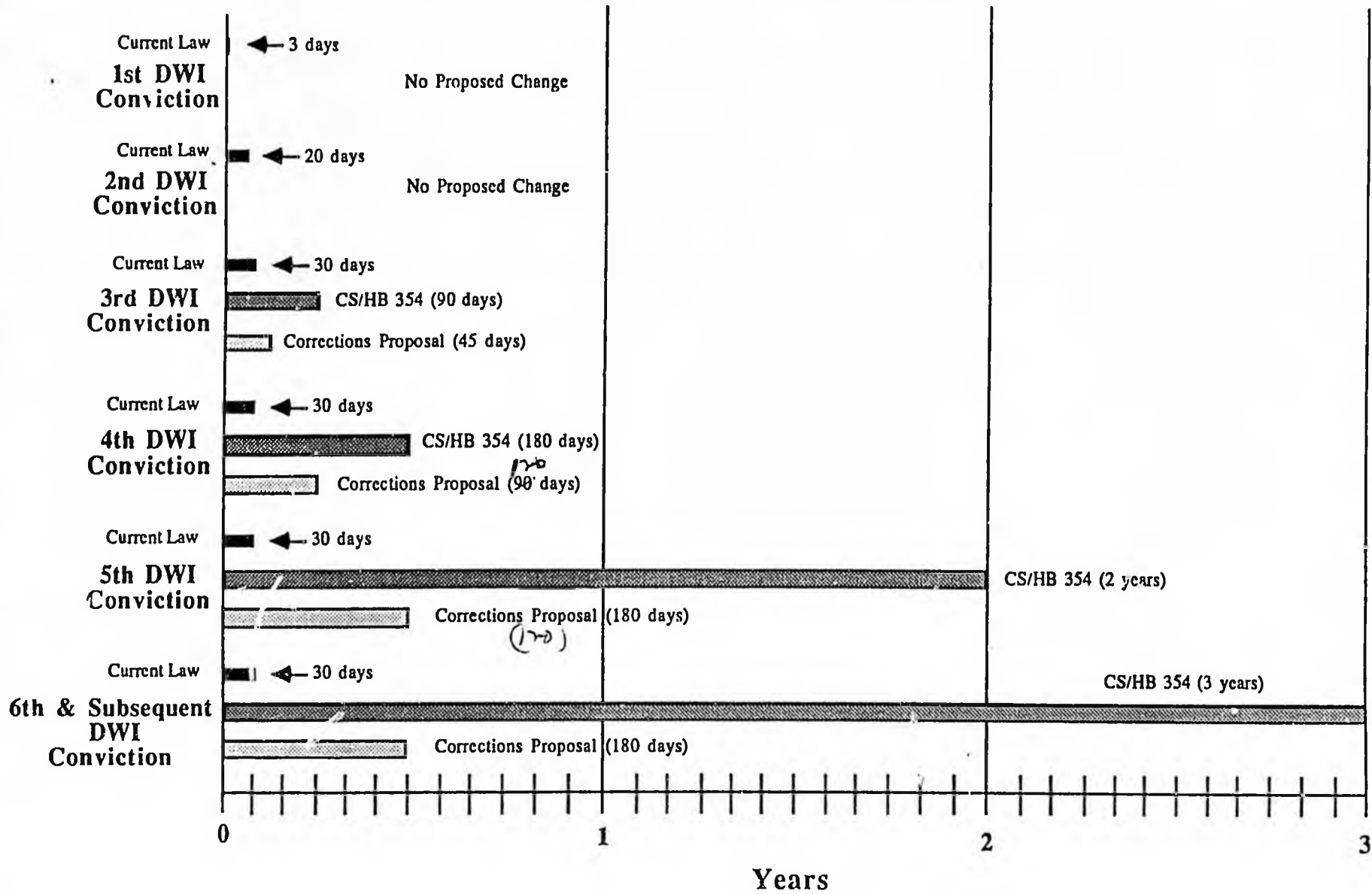
(e) Notwithstanding AS 28.05.141(b), the hearing under this section shall be held at the office of the department nearest to the residence of the person requesting the hearing unless

(1) a district court judge or a magistrate has been designated as a hearing officer in the matter by the commissioner; or

Jail Sentences for Drunk Drivers

(Mandatory Minimum)

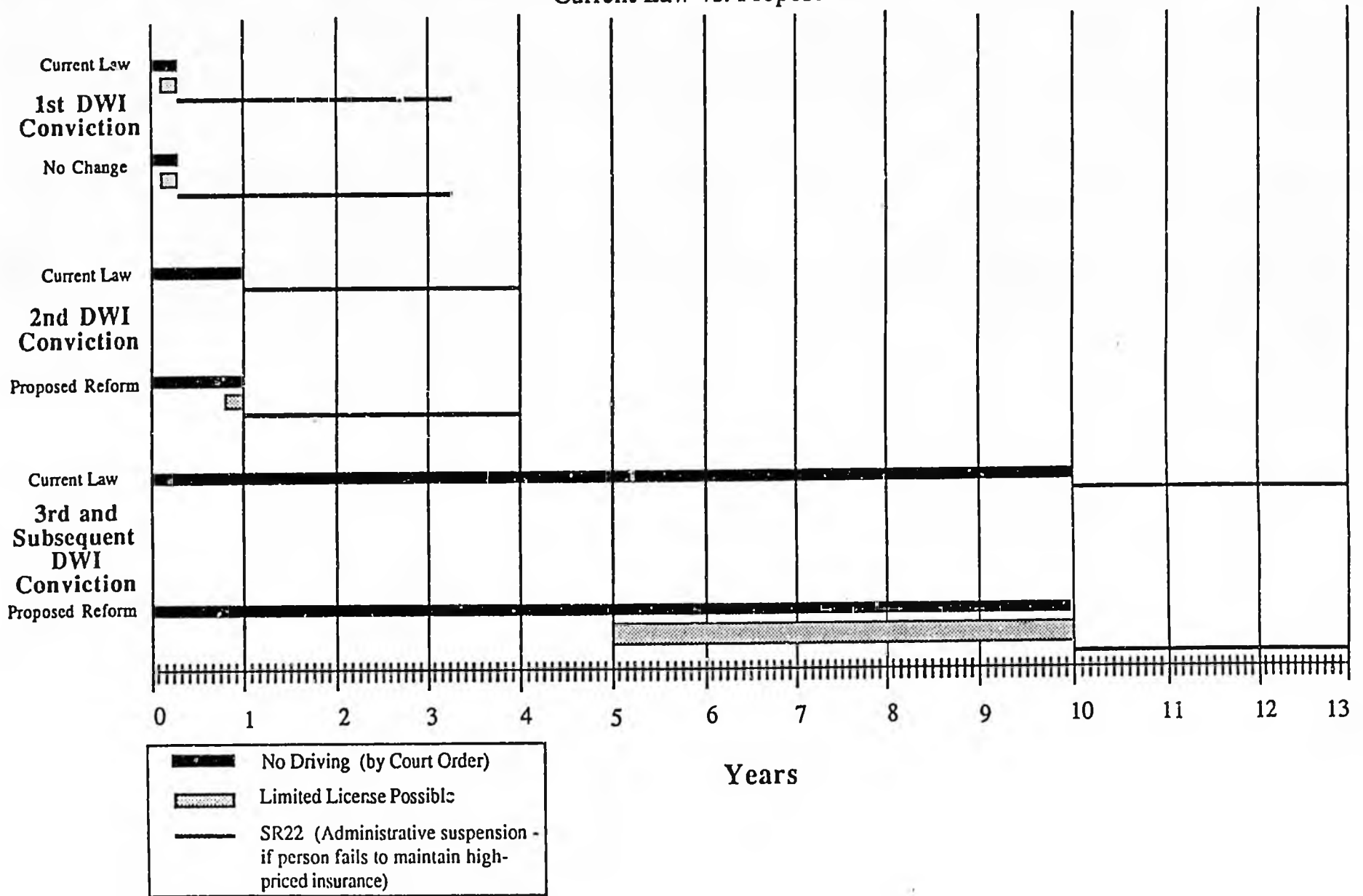
Current Law vs. Proposed Reform



Length of License Suspensions for Drunk Drivers

(Mandatory Minimum)

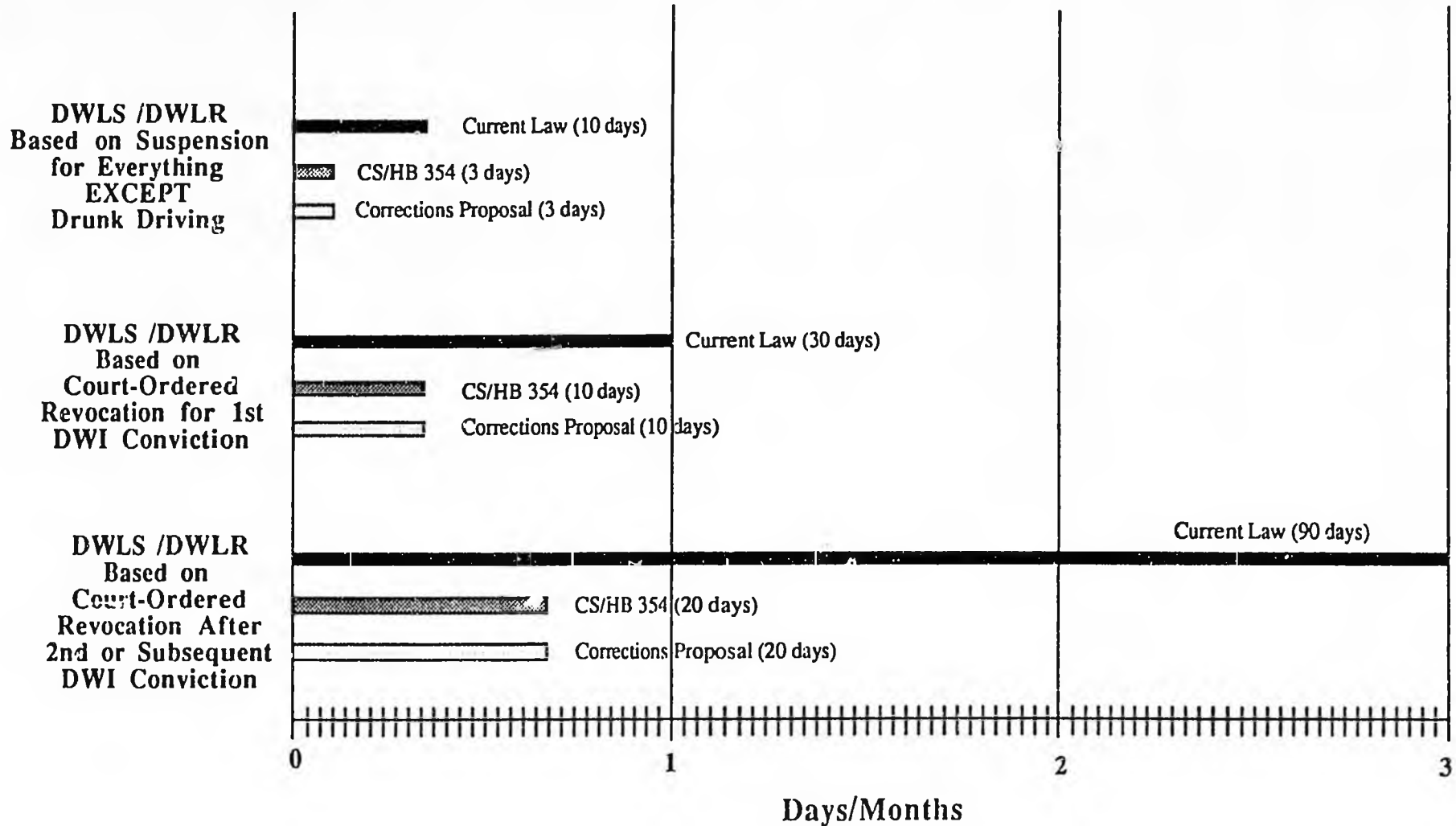
Current Law vs. Proposed Reform



Jail Sentences for People Convicted of Driving with a Suspended License

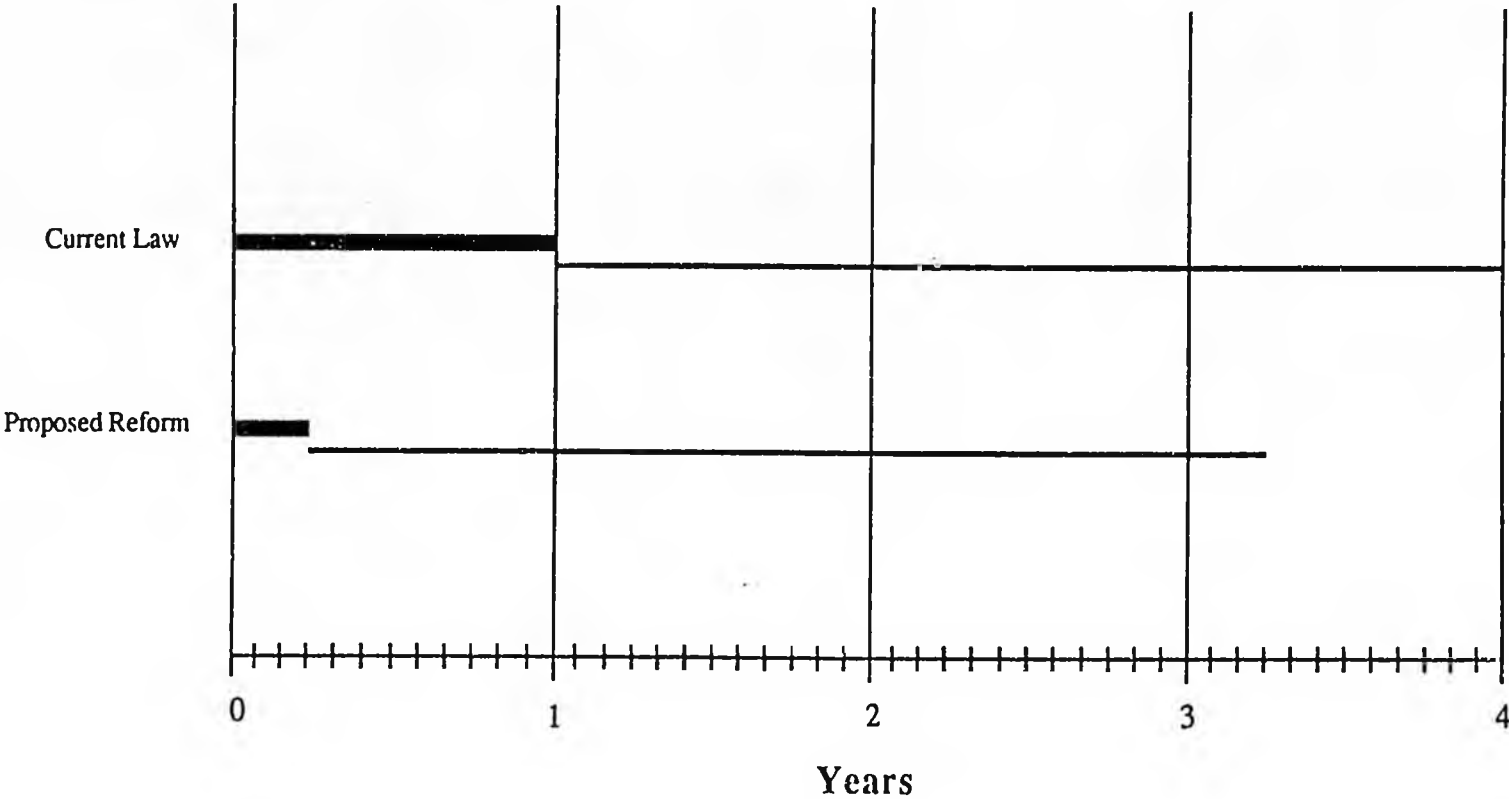
(Mandatory Minimum)

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)

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to driving while intoxicated."
Sponsor: Rep. Illmer, Kopenen, Pearce,
Requestor: Collins and Rieger

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached.

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 4/21/88
Approved by Commissioner: Susan Humphrey-Barnett Date: 4/21/88
Agency: Department of Corrections

Distribution (by preparer):

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

CONTINUATION
CSHB 354 (JUD)

ANALYSIS

This fiscal note reflects the increased cost of housing persons convicted of their 3rd, 4th, 5th, 6th and subsequent DWI offense. The note reflects placing the 3rd and 4th time offenders in community residential centers and the 5th, 6th and subsequent offenders in institutions.

The 3rd and 4th time offenders would serve an additional 3,720 mandays. The 5th, 6th and subsequent offenders would serve an additional 1,230 mandays.

The DWLS/DWLR offenders would serve 8,682 less mandays.

3rd and 4th DWI	3,720 mandays X \$30.00 =	\$111,600
5th and 6th DWI	+1,230 mandays X \$87.50 =	\$107,625
DWLS/DWLR	-8,682 mandays X \$30.00 =	-\$260,460
		<u>-\$ 41,235</u>

Current Law

	Estimated # persons	Current Proposal	Less GT	Days Served	Total Man Days
1st DWI	280*6= 1680	3 days	0	3 days	5040
2nd DWI	124*6= 744	20 days	-7	13 days	9672
3rd DWI	24*6= 144	45 days	-15	30 days	4320
4th DWI	5*6= 30	149 days	-49	100 days	3000
5th DWI	2*6= 12	120 days	-40	80 days	960
6th & ...	1*6= 6	180 days	-60	120 days	720

					23712
DWLS A	354	10 days	-3	7 days	2478
DWLS B	78	30 days	-10	20 days	1560
DWLS C	168	90 days	-30	60 days	10080

					14118
					=====
					37830

CSHB 354 (Judiciary)

	Estimated # persons	DOC Proposal	Less GT	Days Served	Total Man Days
1st DWI	1680	3 days	0	3 days	5040
2nd DWI	744	20 days	-7	13 days	9672
3rd DWI	144	90 days	-30	60 days	8640
4th DWI	30	120 days	-40	80 days	2400
5th DWI	12	180 days	-60	120 days	1440
6th & ...	6	365 days	-120	245 days	1470

					28662
DWLS A	354	3 days	0	3 days	1062
DWLS B	78	20 days	-7	13 days	1014
DWLS C	168	30 days	-10	20 days	3360

					5436
					=====
					34098

Summary

Man Days to Serve

Offense	Current	CS HB 354
1st DWI	5040	5040
2nd DWI	9672	9672
3rd DWI	4320	8640
4th DWI	3000	2400
5th DWI	960	1440
6th & ..	720	1470
	-----	-----
	23712	28662
DWLS A	2478	1062
DWLS B	1560	1014
DWLS C	10080	3360
	-----	-----
	14118	5436
	-----	-----
Total	37830	34098
	=====	=====

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

Sec. 28.35.030. Operating a vehicle, aircraft or watercraft while intoxicated. (a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

(1) while under the influence of intoxicating liquor, or any controlled substance listed in AS 11.71.140 — 11.71.190;

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

(3) while the person is under the combined influence of intoxicating liquor and another substance.

(b) Driving while intoxicated is a class A misdemeanor.

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than \$1,000 if, within the preceding 10 years, the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181 and the vehicle used in commission of the offense may be forfeited under AS 28.35.036. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of

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alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (c) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (c) of this section, or by an officer of the court in preparing a presentence report for the use of the court in sentencing a person convicted under (c) of this section.

(e) A person who is sentenced to imprisonment for 72 consecutive hours upon a first conviction under (c) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(f) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(g) In this section,

(1) "operate an aircraft" means to use, navigate, pilot, or taxi an aircraft in the airspace over this state, or upon the land or water inside this state;

(2) "operate a watercraft" means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial limits or under the jurisdiction of the state. (§ 50-5-3 ACLA 1949; am § 1 ch 107 SLA 1955; am § 1 ch 121 SLA 1967; am § 45 ch 32 SLA 1971; am § 4 ch 74 SLA 1974; am §§ 2, 3 ch 152 SLA 1978; am § 28 ch 94 SLA 1980; am § 10 ch 129 SLA 1980; am § 21 ch 45 SLA 1982; am §§ 13 — 15 ch 117 SLA 1982; am §§ 13 — 15 ch 77 SLA 1983)

Revisor's notes. — In 1984, former subsection (f) was redesignated as present subsection (g) and former subsection (g) was redesignated as present subsection (f).

Cross references. — For sentences for class A misdemeanors, see AS 12.55.035(b)(3) and 12.55.135(a).

Effect of amendments. — The first 1980 amendment, in subsection (a) as it existed prior to the second 1980 amendment, deleted "under AS 11.05.150" from

the end of the third sentence and substituted "AS 28.15.181" for "AS 28.15.210(c)" in the fourth sentence.

The second 1980 amendment rewrote the section.

The first 1982 amendment substituted "or any controlled substance listed in AS 11.71.140 — 11.71.190" for "depressant, hallucinogenic, stimulant or narcotic drug as defined in AS 17.10.230(13) and AS 17.12.150(3)" in subsection (a)(1).

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

(h) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under (g) of this section shall supply the Alaska court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under (g) of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under (g) of this section.

(i) A person who is sentenced to imprisonment for 72 consecutive hours under (g) of this section and who is not released from imprisonment after 72 hours may not bring an action against the state or a municipality or its agents, officers, or employees for damages resulting from the additional period of confinement if

(1) the employee or employees who released the person exercised due care and, in releasing the person, followed the standard release procedures of the prison facility; and

(2) the additional period of confinement did not exceed 12 hours.

(j) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction. (§ 1 ch 83 SLA 1969; am § 28 ch 71 SLA 1972; am § 12 ch 129 SLA 1980; am § 17 ch 117 SLA 1982; am §§ 17 — 20, 25 ch 77 SLA 1983; am § 17 ch 60 SLA 1986)

NOTES TO DECISIONS

Quoted in *Anderson v. Municipality of Anchorage*, Ct. App. Op. No. 89 (File No. 5318), 645 P.2d 205 (1982).

Sec. 28.15.270. Surrender of license. [Repealed, § 19 ch 178 SLA 1978.]

Article 4. Fees.

Section
271. Fees

Collateral references. — 7A Am. Jur. 2d, *Automobiles and Highway Traffic*, § 99.
60 C.J.S., *Motor Vehicles*, § 158.

Sec. 28.15.271. Fees. The fees for drivers' licenses and permits, including but not limited to renewals, are as follows:

- (1) all classes of drivers' licenses \$ 5;
 - (2) motor-driven cycles \$ 2;
 - (3) instruction permit \$ 1;
 - (4) duplicate of driver's license or instruction permit \$ 2;
 - (5) temporary license and renewal of permit \$ 1;
 - (6) school bus driver's permit \$ 2.
- (§ 19 ch 178 SLA 1978)

Cross references. — For fee for reinstatement of suspended operator's license, see AS 28.20.585.

Article 5. Driver License Violations.

Section	pendent, revoked or in violation of limitation
281. Unlawful use of license; permitting unauthorized person to drive	
291. Driving while license canceled, sus-	

Sec. 28.15.280. Use of foreign license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.281. Unlawful use of license; permitting unauthorized person to drive. (a) A person may not

19 ch 178 SLA

and permits,

- \$ 5;
- \$ 2;
- \$ 1;
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- \$ 1;
- \$ 2.

or in violation of

9 ch 178 SLA

permitting

(1) display, cause or permit to be displayed, or have in the person's possession a canceled, suspended, revoked, fictitious or unlawfully altered driver's license;

(2) display or represent as the person's own a driver's license not issued to the person;

(3) display or present a driver's license other than an Alaska driver's license to a peace officer or to the department when that person has been licensed under this chapter; or

(4) lend the person's driver's license to another person or knowingly permit the use of the license by another.

(b) A person may not authorize or knowingly permit a motor vehicle owned by the person or under the control of the person to be driven in this state by a person who is not validly licensed. (§ 19 ch 178 SLA 1978)

Collateral references. — Civil or criminal liability of one in charge of an automobile who permits an unlicensed person to operate it, 137 ALR 475.

Construction, application, and effect of legislation making it offense to permit unlicensed person to operate motor vehicle, 69 ALR2d 978.

Sec. 28.15.282. Point system. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.283. Suspension, revocation, limitation, denial. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.284. Personal interview. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.285. Conduct of personal interview; findings; hearing request. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.286. Hearing. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.287. Judicial review under point system. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.288. Stay of department action pending hearing or appeal. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.290. Unlawful use of license. [Repealed, § 19 ch 178 SLA 1978.]

Sec. 28.15.291. Driving while license canceled, suspended, revoked or in violation of limitation. (a) A person may not drive a motor vehicle on a highway or vehicular way or area at a time when that person's driver's license, or privilege to drive has been canceled, suspended or revoked in this or another jurisdiction, or when driving in violation of a limitation placed upon that person's license or privilege to drive in this or another jurisdiction. Except as provided in (c) of this section, upon conviction of a violation of this section, the court shall impose a sentence of imprisonment of not less than 10 days. The

execution of sentence may not be suspended nor may probation or parole be granted until the minimum imprisonment provided in this section has been served; nor may imposition of sentence be suspended. In addition, the person's license or privilege to drive shall be revoked, and the person may not be issued a new license nor may the privilege to drive be restored for an additional period of not less than one year after the date that the person would have been entitled to restoration of driving privileges.

(b) When a person's license is canceled, limited, suspended or revoked, that person shall be informed by the department or the court that takes the action at the time of the action that, upon a conviction of driving on a highway or vehicular way or area in this state at a time when that person's driver's license or privilege to drive in this state has been canceled, suspended or revoked, or upon a conviction of driving in violation of a limitation of the license, that person will be subject to the mandatory minimum sentence of imprisonment under this section.

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

(d) A person convicted of a violation of this section is guilty of a class A misdemeanor. (§ 19 ch 178 SLA 1978; am §§ 10, 11 ch 77 SLA 1983)

Effect of amendments. — The 1983 amendment rewrote subsections (a) and (b) and added subsections (c) and (d).

NOTES TO DECISIONS

Knowledge or intent. — While subsection (a) is silent on its face as to the requirement of knowledge or intent as an element of the offense, an element of mens rea must be read into the statute by implication. *Jeffcoat v. State*, Ct. App. Op. No. 63 (File No. 5274), 639 P.2d 308 (1982).

Failure of the Department of Motor Vehicles to send a midpoint notice pur-

suant to AS 28.15.231(a) cannot be raised as a defense in a prosecution for driving with a suspended license under subsection (a) of this section. *McClain v. State*, Ct. App. Op. N.J. 74 (File No. 5740), 641 P.2d 1265 (1982).

Maximum penalties. — Although a violation of AS 28.15.011(b) carries no mandatory minimum sentence equivalent

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clearly provided for under AS 28.15.291, Fielding v. State, Ct. App. Op. No. 697 (File No. A-1664), P.2d (1987).
and there is no reason to distinguish between revocations under these two stat-

Sec. 28.15.191. Court reports to department. (a) A court which convicts a person of an offense under this title or a regulation adopted under this title, or another law or regulation of this state, or a municipal ordinance which regulates the driving of vehicles, shall forward a record of the conviction to the department. A conviction of a standing or parking offense need not be reported.

(b) A conviction on a plea of nolo contendere accepted by the court or a forfeiture of bail or collateral deposited to secure a defendant's appearance in court which has not been vacated is equivalent to a conviction for purposes of this chapter.

(c) A court which suspends, revokes, or limits a driver's license shall require the surrender of the license, and shall immediately forward it to the department with the record of conviction and notification of the effective date of the suspension, revocation or limitation as determined under AS 28.15.211(b).

(d) A court which limits a driver's license, in addition to the actions required under (c) of this section, shall issue to the licensee a form specifying the court's limitations imposed upon a person's driver's license, and shall immediately forward to the department a copy of the limitations imposed upon the license.

(e) A court shall report to the department every change of name authorized by it, and the name, address, age, description, and driver's license number if available, of every person adjudged to be afflicted with or suffering from a mental disability or disease, or to be an habitual user of alcohol or another drug. The department shall prescribe and furnish the forms for making these reports.

(f) A municipality that accepts a fine payment after a plea of no contest to a charge of a violation of a municipal ordinance for which a scheduled fine has been established shall forward a record of the payment to the department; however, a conviction for a standing or parking offense need not be reported. (§ 19 ch 178 SLA 1978; am § 9 ch 76 SLA 1987)

Effect of amendments. — The 1987 amendment, effective January 1, 1988, added subsection (f).

Article 3. Point System.

Section
221. Point system

Section
231. Assessment of points, driver improvement interview

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.

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.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CS HB 354
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to driving while intoxicated"
Sponsor: Rep. Ulmer, Kopenen, Pearce,
Requestor: Collins and Rieger

Agency Affected: Department of Corrections
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		590.7	590.7	590.7	590.7	590.7
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	590.7	590.7	590.7	590.7	590.7
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		590.7	590.7	590.7	590.7	590.7
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	590.7	590.7	590.7	590.7	590.7

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

See Attached

Susan E. Knighton

Prepared by: Susan Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 04/12/88

Approved by Commissioner: Susan Humphrey-Barnett Date: 04/12/88
Agency: Department of Corrections

Distribution (by preparer):

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

ANALYSIS

This fiscal note reflects the increased cost of housing persons convicted of their 3rd, 4th, 5th, 6th and subsequent DWI offense. The note reflects placing the 3rd and 4th time offenders in community residential centers and the 5th, 6th and subsequent offenders in institutions.

The 3rd and 4th time offenders would serve an additional 4,920 mandays. The 5th, 6th and subsequent offenders would serve an additional 8,604 mandays.

The DWLS/DWLR offenders would serve 10,326 less mandays.

3rd and 4th DWI	4,920 mandays X \$30.00 = \$147,600
5th DWI	+ 8,604 mandays X \$87.50 = \$752,850
DWLS/DWLR	-10,326 mandays X \$30.00 = <u>\$309,780</u>
	\$590,670

Current Law

	Estimated ‡ persons	Current Proposal	Less GT	Days Served	Total Man Days
1st DWI	280*6= 1680	3 days	0	3 days	5040
2nd DWI	124*6= 744	20 days	-7	13 days	9672
3rd DWI	24*6= 144	45 days	-15	30 days	4320
4th DWI	5*6= 30	149 days	-49	100 days	3000
5th DWI	2*6= 12	120 days	-40	80 days	960
6th & ...	1*6= 6	180 days	-60	120 days	720
					----- 23712
DWLS A	354	10 days	-3	7 days	2478
DWLS B	78	30 days	-10	20 days	1560
DWLS C	168	90 days	-30	60 days	10080
					----- 14118 =====
					37830

Reform Proposal

	Estimated ‡ persons	Reform Proposal	Less GT	Days Served	Total Man Days
1st DWI	1680	3 days	0	3 days	5040
2nd DWI	744	20 days	-7	13 days	9672
3rd DWI	144	90 days	-30	60 days	8640
4th DWI	30	180 days	-60	120 days	3600
5th DWI	12	730 days	-240	490 days	5880
6th & ...	6	1095 days	-361	734 days	4404
					----- 37236
DWLS A	354	3 days	0	3 days	1062
DWLS B	78	10 days	-3	7 days	546
DWLS C	168	20 days	-7	13 days	2184
					----- 3792 =====
					41028

Department of Corrections Proposal

	Estimated # persons	DOC Proposal	Less GT	Days Served	Total Man Days
1st DWI	1680	3 days	0	3 days	5040
2nd DWI	744	20 days	-7	13 days	9672
3rd DWI	144	45 days	-15	30 days	4320
4th DWI	30	90 days	-30	60 days	1800
5th DWI	12	120 days	-40	80 days	960
6th & ...	6	180 days	-60	120 days	720
					----- 22512
DWLS A	354	3 days	0	3 days	1062
DWLS B	78	10 days	-3	7 days	546
DWLS C	168	20 days	-7	13 days	2184
					----- 3792 =====
					26304

Summary

Man Days to Serve

Offense	Current	Reform	DOC Proposal
1st DWI	5040	5040	5040
2nd DWI	9672	9672	9672
3rd DWI	4320	8640	4320
4th DWI	3000	3600	1800
5th DWI	960	5880	960
6th & ..	720	4404	720
	----- 23712	----- 37236	----- 22512
DWLS A	2478	1062	1062
DWLS B	1560	546	546
DWLS C	10080	2184	2184
	----- 14118	----- 3792	----- 3792
Total	----- 37830 =====	----- 41028 =====	----- 36304 =====

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]