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STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
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May, 1988

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Mary Van Nimwegen

House Judiciary:

2/12/87

3/20/87

STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB52
 Title : "An Act relating to motor vehicle forfeiture."
 Sponsor : Rep. Koronen
 Requestor : House Judiciary
 Date of Request : Feb. 11, 1987

FISCAL DETAIL

Agency Affected : Dept. of Administration
 BRU : Public Defender Agency
 Components : Third Judicial District

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 86 | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | 110.7 | 115.1 | 119.7 | 124.5 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | 5.0 | 5.2 | 5.4 | 5.6 |
| SUPPLIES | | | 1.0 | 1.0 | 1.1 | 1.2 |
| EQUIPMENT | | | 3.0 | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | 119.7 | 121.3 | 126.1 | 131.3 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

| | | | | | | |
|---------------|--|-----|-------|-------|-------|-------|
| GENERAL FUND | | -0- | 119.7 | 121.3 | 126.1 | 131.3 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | -0- | 119.7 | 121.3 | 126.1 | 131.3 |

POSITIONS :

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | -0- | 2.0 | 2.0 | 2.0 | 2.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

See attached analysis

Prepared by: John Salemi, Dep. Public Defender
 Division : Public Defender Agency

Phone : 279-7541
 Date : Feb. 12, 1987

Approved by Commissioner : William A. Dewey
 Agency : Department of Administration

Date : 2/20/87

Distribution (by Agency preparing fiscal note) :

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB52

This bill would amend AS 28.35.036(a) to require the state to move the court to order forfeiture of a motor vehicle involved in the commission of the offense of Driving While Intoxicated or Refusal to Submit to a Chemical Test in every case where the convicted person has been previously convicted more than once of the same or substantially similar offenses. The Public Defender Agency believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming and generally fruitless exercise for the criminal justice system as a whole.

The vast majority of defendants who would be subject to the provisions of this law do not own the vehicles that they were driving at the time they were apprehended. According to the Division of Motor Vehicles, more than 70% of third time Driving While Intoxicated defendants do not own the vehicle. Forfeiture of a vehicle not belonging to a defendant would therefore not serve to penalize a defendant in any way, but would devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency.

The effect of the mandatory forfeiture procedure, then, would be to embroil the state and the legal owners of the vehicles in an unnecessary and burdensome legal battle refereed at additional time and expense by our court system. In addition, these forfeiture proceedings would typically involve vehicles whose value would not warrant the exercise.

It is anticipated that this proposed amendment would require the services of an additional Attorney III and a Paralegal Assistant II to compensate for the increase workload. This would require an initial budget of 119.7.

BUDGET ANALYSIS

| | | |
|----------------------------------|----------------------|------------|
| 100 Personal Services: Anchorage | | |
| | Attorney III | 65.9 |
| | Paralegal II | 44.8 |
| | | 110.7 |
| 300 Contractual: | | |
| | Space, experts, etc. | 5.0 |
| 400 Supplies: | | 1.0 |
| 500 Equipment (One Time) | | <u>3.0</u> |
| | Total | 119.7 |

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB 52
Publish Date:

REQUEST: _____

Revision Date: 2-20-87
Title: An Act Relating to Motor Vehicle Forfeiture
Sponsor: Koponen
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts

Components:

| EXPENDITURES/REVENUES: | | (Thousands of Dollars) | | | | |
|------------------------|---------|------------------------|---------|---------|---------|---------|
| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
| OPERATING | | | | | | |
| Personal Services | | 74.7 | 74.7 | 74.7 | 74.7 | 74.7 |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | 14.4 | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| TOTAL OPERATING | 0.0 | 89.1 | 74.7 | 74.7 | 74.7 | 74.7 |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

| FUNDING: | | (Thousands of Dollars) | | | | |
|---------------|---------|------------------------|---------|---------|---------|---------|
| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
| General Funds | 0.0 | 89.1 | 74.7 | 74.7 | 74.7 | 74.7 |
| Federal Funds | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 89.1 | 74.7 | 74.7 | 74.7 | 74.7 |

| POSITIONS: | | (Thousands of Dollars) | | | | |
|------------|---------|------------------------|---------|---------|---------|---------|
| | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
| Full-time | | | | | | |
| Part-time | | 4.0 | 4.0 | 4.0 | 4.0 | 4.0 |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System

Phone: 264-8228
Date: 2-20-87

Approved by: *Stephanie J. Cole*
Stephanie J. Cole, Deputy Director
Agency: Alaska Court System

Date: 2-20-87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM

HB 52 - An Act Relating to Motor Vehicle Forfeiture

FISCAL NOTE ANALYSIS (Revised)

| Personal Services: | Salary | Benefits | Total |
|--|----------|----------|----------|
| Law Clerk, Range 13A, Anchorage, PPT - 6 months | \$13,302 | \$4,564 | \$17,866 |
| Pro Tem District Court Judge, Anchorage, PPT - 6 months | 8,352 | 8,875 | 17,227 |
| Law Clerk, Range 13A, Fairbanks, PPT - 6 months | 15,186 | 4,983 | 20,169 |
| Pro Tem District Court Judge, Fairbanks, PPT - 3 months | 9,521 | 9,893 | 19,414 |
| | | | ----- |
| Total Personal Services | | | \$74,676 |
| | | | |
| Equipment: (one time items) | | | |
| Desk, chair, filing cabinet, and typewriter | | | 14,376 |
| | | | ----- |
| Total Cost | | | \$89,052 |
| | | | ===== |

ALASKA COURT SYSTEM

HB 52 - ANALYSIS
(Revised 2-20-87)

This measure would require prosecutors to file and courts to hear a motion in every case specified under AS 28.35.036(a). Under current law, the state has discretion to file a forfeiture motion, and the court can act only if a motion is filed.

The Department of Law indicates that such a motion would be made in approximately 400 cases annually, primarily in Anchorage and Fairbanks. It is assumed that spouses or lienholders will assert an interest in approximately 90% of the cases. Approximately one-half of these cases are expected to be highly contested. It is assumed, based on information provided by the Department of Law, that in-court time for these motions will average two hours. The legislation will also impact case processing. A legally-trained person must review paperwork and prepare the file for appropriate and expeditious disposition by the judge. This function is performed by law clerks. Given the volume of anticipated cases, it is assumed that one additional permanent part-time law clerk and one part-time pro tem judge for the district court in both Anchorage and Fairbanks would be required. Additional clerical time could be absorbed.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 52
Publish Date:

Revision Date:
Title: An Act Relating to Motor Vehicle Forfeiture
Sponsor: Koponen
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

| EXPENDITURES/REVENUES: | | (Thousands of Dollars) | | | | |
|------------------------|---------|------------------------|---------|---------|---------|---------|
| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
| Personal Services | | 38.0 | 38.0 | 38.0 | 38.0 | 38.0 |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | 7.2 | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| TOTAL OPERATING | 0.0 | 45.2 | 38.0 | 38.0 | 38.0 | 38.0 |
| <hr/> | | | | | | |
| CAPITAL | | | | | | |
| <hr/> | | | | | | |
| REVENUE | | | | | | |

| FUNDING: | | (Thousands of Dollars) | | | | |
|---------------|---------|------------------------|---------|---------|---------|---------|
| General Funds | 0.0 | 45.2 | 38.0 | 38.0 | 38.0 | 38.0 |
| Federal Funds | | | | | | |
| Other | | | | | | |
| TOTAL | 0.0 | 45.2 | 38.0 | 38.0 | 38.0 | 38.0 |

| POSITIONS: | | (Thousands of Dollars) | | | | |
|------------|---------|------------------------|---------|---------|---------|---------|
| Full-time | | | | | | |
| Part-time | | 2.0 | 2.0 | 2.0 | 2.0 | 2.0 |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Approved by: *Stephanie Cole*
Agency: Alaska Court System

Phone: 264-8228
Date: 2-10-87
Date: 2-10-87

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

ALASKA COURT SYSTEM

HB 52

ANALYSIS

This measure would require prosecutors to file and courts to hear a motion in every case specified under AS 28.35.036(a). Under current law, the state has discretion to file a forfeiture motion, and the court can act only if a motion is filed.

The Department of Law indicates that such motions would be made in approximately 400 cases, primarily in Anchorage and Fairbanks. It is assumed that spouses or lienholders will assert an interest in the vehicle in approximately 90% of the cases. Although some additional time in court will result, the primary impact is on case processing. A legally-trained person must review paperwork and prepare the file for appropriate and expeditious disposition by the judge. This function is performed by legal technicians. Given the volume of anticipated cases, it is assumed that one additional permanent part-time legal technician for the district court in both Anchorage and Fairbanks would be required. Additional judicial and clerical time could be absorbed.

ALASKA COURT SYSTEM

HB 52 - An Act Relating to Motor Vehicle Forfeiture

FISCAL NOTE

| Personal Services: | Salary Benefits | | Total |
|---|-----------------|---------|--------------------------|
| Legal Technician, Range 13A, Anchorage, PPT - 6 months | \$13,302 | \$4,564 | \$17,866 |
| Legal Technician, Range 13A, Fairbanks, PPT - 6 months | 15,186 | 4,983 | <u>20,169</u> |
| Total Personal Services | | | \$38,035 |
| Equipment: (one time items) | | | |
| Desk, chair, filing cabinet, and typewriter | | | <u>7,188</u> |
| Total Cost | | | <u>\$45,223</u> ===== |

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 52
Publish Date: _____

Revision Date: _____
Title: "An Act relating to motor vehicle forfeiture."
Sponsor: _____
Requestor: _____

Agency Affected: Department of Law
BRU: Prosecution

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 132.7 | 136.7 | 140.8 | 145.0 | 149.4 |
| TRAVEL | | 3.6 | 3.7 | 3.8 | 3.9 | 4.0 |
| CONTRACTUAL | | 38.8 | 40.0 | 41.2 | 42.4 | 43.7 |
| SUPPLIES | | 12.3 | 8.0 | 8.2 | 8.4 | 8.7 |
| EQUIPMENT | | 11.0 | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: Feb. 9, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: Feb. 9, 1987

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

This bill amends AS 28.35.036(a) by mandating that the state seek forfeiture of the motor vehicle involved if the convicted person has been previously convicted more than once for driving while intoxicated or for refusing to submit to a chemical test. Under current law, the state has the option of seeking forfeiture, but it is not mandated to do so.

Department of Law records, as well as those of the Division of Motor Vehicles, indicate that the department would have to seek forfeiture in 300 to 400 cases annually, where it does not do so now. The forfeiture process can be somewhat complicated whenever parties other than the person convicted hold an ownership or security interest in the vehicle involved. A separate court hearing would have to be held in each individual case. A title search of each vehicle would have to be conducted. All third parties with an ownership interest would have to be notified so that they may assert their ownership interest at the hearings. If a third party proves their ownership or security interest, and proves that they did not know or have reasonable cause to know the vehicle would be used in the commission of an offense, the vehicle and title to vehicle is released to the party holding ownership, or an amount equal to the value in the vehicle held by the party holding a security interest is paid to that party. In any event, a substantial amount of resources will be required to acquire and hold vehicles, and to manage the proceeds from vehicles that have been sold.

Attorneys with the Municipality of Anchorage, which conducts a municipal forfeiture program under AS 28.35.038, have advised us that ownership or security interests are held by persons other than the person convicted of an offense in 90 to 95 per cent of the cases that they have handled. Thus, it appears that very few forfeitures will be straightforward or without need for costly legal proceedings. The Department of Law estimates that at least one attorney III, one paraprofessional, and one clerk typist will be required to prepare and handle forfeiture actions. In addition to normal personnel and support costs, a sum of \$25,000 will be needed to publish legal notices for lien holders, and others with ownership interests who cannot be easily contacted or readily identified. Other departments that will also probably see a fiscal impact if this bill is enacted are the Public Defender and the Court System, who would experience increased caseload. Likewise, the Department of Public Safety, who would be responsible for holding and disposing of vehicles, and for remitting the proceeds of sales to those having security interest in many of the vehicles that are to be sold, will also experience a fiscal impact. The department recognizes the valuable social purpose that this bill serves; however, it must caution against burdening it with new responsibilities in a budget year when many of the department's core prosecution functions are being severely curtailed due to budget constraints.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

HB 52 Fiscal Analysis

Funding Summary

| | <u>Atty III</u> | <u>P/A II</u> | <u>Clerk Typist III</u> | <u>Total</u> |
|-------|-----------------|---------------|-------------------------|--------------|
| 71000 | 62.5 | 42.6 | 27.6 | 132.7 |
| 72000 | 1.8 | 1.8 | -0- | 3.6 |
| 73000 | 29.8 | 4.8 | 4.2 | 38.8 |
| 74000 | 4.5 | 4.5 | 3.3 | 12.3 |
| 75000 | 1.5 | 1.5 | 8.0 | 11.0 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| Total | 55.2 | 100.1 | 43.1 | 198.4 |

Costs beyond FY 88 include a 3 per cent annual inflation factor.

| | | | | | |
|---|--------------------|---------|-----------------------------|-------------------|------------------------|
| Position Title Attorney III | | | No. of Positions 1 | Range/Step 22A | Barg. Unit PX |
| Time Status PFT | Staff Months 12 | | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | | |
| This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by HB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended. | | | | | |
| Type of Expenditure: | | | Amount | | |
| 1 | 2 | 3 | | | |
| Salary | 49,140 | | | | |
| Benefits | 13,311 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | | 62,451 | | | |
| Travel | | 1,800 | | | |
| Contractual | | 29,800 | | | |
| Commodities | | 4,500 | | | |
| Equipment | | 1,500 | | | |
| Other | | | | | |
| Total Cost | | 100,051 | | | |
| Funding Source for Total Cost | | | | | |
| Federal Receipts | | 1002 | | | |
| G. F. Match | | 1003 | | | |
| General Fund | | 1004 | 100,051 | | |
| I-A Receipts | | 1006 | | | |
| CIP Receipts | | 1061 | | | |
| Other | | | | | |

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 1 of 3
 Revised Date

FY 88

| | | | | |
|--|--------------------|-----------------------------|-------------------|------------------------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range/Step 16A | Barg. Unit GGU |
| Time Status PFT | Staff Months 12 | Location EPA - Anchorage | | Election District 8 |
| Type of Expenditure | | Amount | | |
| 1 | 2 | 3 | | |
| Salary | 32,424 | | | |
| Benefits | 10,127 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 42,551 | | |
| Travel | | 1,800 | | |
| Contractual | | 4,800 | | |
| Commodities | | 4,500 | | |
| Equipment | | 1,500 | | |
| Other | | | | |
| Total Cost | | 55,151 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts | 1002 | | | |
| G. F. Match | 1003 | | | |
| General Fund | 1004 | 55,151 | | |
| I-A Receipts | 1006 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |
| Justification | | | | |
| This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by HB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class. | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 2 of 3
 Revised Date

FY 88

| | | | | | |
|---|--------------------|--------|-----------------------------|------------------|------------------------|
| Position Title Clerk Typist III | | | No. of Positions 1 | Range/Step 8B | Barg. Unit GGU |
| Time Status PFT | Staff Months 12 | | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | | |
| This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by HB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended. | | | | | |
| Type of Expenditure | | | Amount | | |
| 1 | 2 | 3 | | | |
| Salary | 20,136 | | | | |
| Benefits | 7,507 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | | 27,643 | | | |
| Travel | | -0- | | | |
| Contractual | | 4,200 | | | |
| Commodities | | 3,300 | | | |
| Equipment | | 8,000 | | | |
| Other | | | | | |
| Total Cost | | 43,143 | | | |
| Funding Source for Total Cost | | | | | |
| Federal Receipts | 1002 | | | | |
| G. F. Match | 1003 | | | | |
| General Fund | 1004 | 43,143 | | | |
| I-A Receipts | 1006 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 3
 Revised Date

FY 88

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version : CSHB 52

Publish Date : _____

Revision Date: March 24, 1987

Agency Affected: Department of Law

Title: "An Act relating to motor vehicle forfeiture."

BRU: Prosecution

Sponsor: Repr. Koponen

Components: Third Judicial District

Requestor: House Judiciary Committee

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 132.7 | 136.7 | 140.8 | 145.0 | 149.4 |
| TRAVEL | | 3.6 | 3.7 | 3.8 | 3.9 | 4.0 |
| CONTRACTUAL | | 38.8 | 40.0 | 41.2 | 42.4 | 43.7 |
| SUPPLIES | | 12.3 | 8.0 | 8.2 | 8.4 | 8.7 |
| EQUIPMENT | | 11.0 | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director

Phone: 465-3672

Division: Administrative Services Division

Date: March 24, 1987

Approved by Commissioner: Richard I. Pegues / RA /
Grace Berg Schaible, Atty. Gen.

Date: March 24, 1987

Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 52 (Jud.)

The committee substitute for HB 52 accomplishes the same purpose as the original bill by making forfeiture of a vehicle mandatory if a person is convicted of DWI or refusal to submit to a chemical test, if the person has more than once been previously convicted of the same offense. This version of the bill, now makes it mandatory on the court to order forfeiture upon conviction, rather than requiring a motion by the state, and a separate, later court hearing, before forfeiture could take place. However, because of the requirement to protect third-party interests in forfeited vehicles, it will still be necessary for the state to determine if there are third-parties with ascertainable ownership or security interests, and it will still be necessary to notify them of their right to seek remission. It will then be necessary to represent the state at court hearings to determine if remission should occur. We still anticipate that a large number of the cases will involve forfeiture of vehicles having third-party interests, and the revised bill will still require a substantial effort on our part to handle and prepare for remission hearings. Consequently, the fiscal impact contained in our fiscal note of February 9, 1987, requesting funds for one Attorney III, one Paralegal Assistant II and a Clerk Typist III, is still valid.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 52

CSHB 52 Fiscal Analysis

Funding Summary

| | <u>Atty III</u> | <u>P/A II</u> | <u>Clerk Typist III</u> | <u>Total</u> |
|-------|-----------------|---------------|-------------------------|--------------|
| 000 | 62.5 | 42.6 | 27.6 | 132.7 |
| 000 | 1.8 | 1.8 | -0- | 3.6 |
| 000 | 29.8 | 4.8 | 4.2 | 38.8 |
| 000 | 4.5 | 4.5 | 3.3 | 12.3 |
| 000 | 1.5 | 1.5 | 8.0 | 11.0 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| Total | 100.1 | 55.2 | 43.1 | 198.4 |

sts beyond FY 88 include a 3 per cent annual inflation factor.

| | | | | |
|---|---------------------------|------------------------------------|--------------------------|-------------------------------|
| Position Title Attorney III | | No. of Positions 1 | Range/Step 22A | Range Unit PX |
| Time Status PFT | Staff Months 12 | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | |
| This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by CSHB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended. | | | | |
| Type of Expenditure: | | Amount | | |
| 1 | 2 | 3 | | |
| Salary | 49,140 | | | |
| Benefits | 13,311 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 62,451 | | |
| Travel | | 1,800 | | |
| Contractual | | 29,800 | | |
| Commodities | | 4,500 | | |
| Equipment | | 1,500 | | |
| Other | | | | |
| Total Cost | | 100,051 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts | 1002 | | | |
| G. F. Match | 1003 | | | |
| General Fund | 1004 | 100,051 | | |
| I-A Receipts | 1006 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 3
 Revised Date

FY 88

| | | | | |
|--|--------------------|-----------------------------|-------------------|------------------------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range/Step 16A | Barg. Unit GGU |
| Time Status PFI | Staff Months 12 | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | |
| This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by CSHB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class. | | | | |
| Type of Expenditure | | | Amount | |
| 1 | 2 | 3 | | |
| Salary | 32,424 | | | |
| Benefits | 10,127 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 42,551 | | |
| Travel | | 1,800 | | |
| Contractual | | 4,800 | | |
| Commodities | | 4,500 | | |
| Equipment | | 1,500 | | |
| Other | | | | |
| Total Cost | | 55,151 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts | 1002 | | | |
| G. F. Match | 1003 | | | |
| General Fund | 1004 | 55,151 | | |
| I-A Receipts | 1006 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 2 of 3
 Revised Date

FY 88

| | | | | |
|---|--------------------|-----------------------------|------------------|------------------------|
| Position Title Clerk Typist III | | No. of Positions 1 | Range/Step 8B | Barg. Unit GGU |
| Time Status PFT | Staff Months 12 | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | |
| This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by CSHB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended. | | | | |
| Type of Expenditure | | Amount | | |
| 1 | 2 | 3 | | |
| Salary | 20,136 | | | |
| Benefits | 7,507 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 27,643 | | |
| Travel | | -0- | | |
| Contractual | | 4,200 | | |
| Commodities | | 3,300 | | |
| Equipment | | 8,000 | | |
| Other | | | | |
| Total Cost | | 43,143 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts | 1002 | | | |
| G. F. Match | 1003 | | | |
| General Fund | 1004 | 43,143 | | |
| I-A Receipts | 1006 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

Request For
New Position

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 3
 Revised Date _____

FY 88

Adopted

Proposed Amendments to CSHB 52(Jud)

Amendment 1:

Page 4, line 9 after ".037." add a new sentence to read:

Remission of forfeiture under AS 28.35.037 does not apply to a person convicted of the offense resulting in forfeiture.

This language is offered to make it absolutely clear that the person convicted of the DWI may not move for remission of the forfeiture under AS 28.35.037.

Amendment 2:

Page 4, after line 12 add a new subsection (d) to read:

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 arrest, are considered one previous conviction.

This language is currently in AS 28.35.036(b), AS 28.35.030(f), and AS 28.35.032(j). It was recommended by Pat Conheady that we put it in the new committee substitute version of .036 just to make it clear that it is still the intent of the legislature that this provision apply to .036.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 20, 1987

SUBJECT: Motor Vehicle Forfeiture - CSHB 52 (Jud)
TO: Representative John Sund
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The version of CSHB 52(Jud) approved by the Judiciary committee contains an amendment to section 3, adding a new subsection (d) to AS 28.35.036. This subsection was, I believe, intended to ensure that convictions for driving while drunk and for refusing the breath test would be considered a single conviction, if both occurred during the same incident. Similar language occurs in AS 28.35.030(f) and AS 28.35.032(j). The manner in which AS 28.35.036 has been repealed and reenacted makes the addition of subsection (d) meaningless. There is no longer any required consideration of multiple convictions in that section. As every statute is presumed to have a meaning, I would recommend that the subsection be deleted in order to avoid raising an implication that the court may reexamine the issue of multiple convictions at the hearing on remission of forfeiture.

MFF:mkr
m10/031

Introduced: 1/19/87
 Referred: State Affairs and
 Judiciary

1 IN THE HOUSE

BY KOPONFN

2

HOUSE BILL NO. 52

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

8 * Section 1. AS 28.35.036(a) is amended to read:

9 (a) After conviction of an offense under AS 28.35.030 or
 10 [AS] 28.35.032 involving a motor vehicle of a type for which a
 11 driver's license is required, the state shall [MAY] move the court to
 12 order the forfeiture of the motor vehicle involved in the commission
 13 of the offense if the convicted person has been previously convicted
 14 in this or another jurisdiction of more than one of the following
 15 offenses or has more than once been previously convicted of one of the
 16 following offenses:

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

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

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

February 10, 1987

John Hartle
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HOUSE BILL NO. 52

Dear Mr. Hartle:

I am writing this letter in response to your request for comment by the Public Defender Agency to House Bill No. 52, which would amend A.S. 28.35.036(a) to require the state to move the court to order forfeiture of a motor vehicle involved in the commission of the offense of Driving While Intoxicated under A.S. 28.35.030 or Refusal to Submit to a Chemical Test under A.S. 28.35.032 in every case where the convicted person has been previously convicted more than once of the same or substantially similar offenses.

Although the Public Defender Agency sees no problem with enforcement of the forfeiture provision of the present law in appropriate circumstances, we believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming, and generally fruitless exercise for the criminal justice system as a whole.

In our experience, the vast majority of defendants who would be subject to the provisions of this law do not own the vehicles that they were driving at the time they were apprehended. Forfeiture of a vehicle not belonging to a defendant would therefore not serve to penalize a defendant in any way, but it could very well devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency.

The effect of the mandatory forfeiture procedure, then, would be to embroil the state and the legal owners of the vehicles in an unnecessary and burdensome legal battle refereed at additional time and expense by our court system, while the defendant would no longer be involved or affected in any way. In addition, these forfeiture proceedings would typically involve vehicles whose

John Hartle
February 10, 1987
Page 2

value would not warrant the exercise.

Although it is always difficult to estimate exactly the amount of additional work that would be created by the proposed amendment, the Public Defender Agency anticipates that at a minimum it would be necessary to add an additional attorney and an additional paralegal in order to compensate for the increased workload. An expenditure for this increased staffing, in addition to the even greater expenditure to the prosecution and to the court system which would be made necessary by the mandatory forfeiture proceeding would be particularly unfortunate in light of the fact that the highly successful D.W.I. Adjudication Project had to be terminated due to lack of funds. It would seem difficult, if not impossible, to justify an expenditure for the institution of a potentially fruitless mandatory forfeiture provision at a time when funding could not be obtained to continue the D.W.I. Adjudication Project, which was very effective in expediting the adjudication process for DWI cases.

The Public Defender Agency believes that the discretionary forfeiture provision of the present law provides the state with a certain flexibility that would not be available under the proposed amendment. In certain instances, the District Attorney and the defense attorney have been able to arrange the sale of a defendant's vehicle, which in turn has enabled the defendant to pay not only the mandatory minimum fine of \$1,000, but additionally has enabled the defendant to make restitution and obtain funding for longterm residential alcohol treatment. The flexibility to make such a disposition could well be destroyed by a mandatory forfeiture provision.

In summary, the Public Defender Agency strongly urges that the proposed amendment not be made, and that the motor vehicle forfeiture provision remain discretionary with the District Attorney's office.

Sincerely,



Michael L. Wolverton
Assistant Public Defender

MLW:sh

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 10, 1987

VE COWPER, GOVERNOR

REPLY TO:

- CRIMINAL DIVISION CENTRAL OFFICE
POUCH KC
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

The Honorable John Sund
Chairman, Judiciary Committee
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Re: HB 52

Dear Chairman Sund:

This letter is in response to a request from the Judiciary Committee for the department's position on HB 52, an act relating to motor vehicle forfeiture. HB 52 requires the state to move for forfeiture of a motor vehicle upon a third conviction for DWI or refusal to take a breath test. The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (a departmental fiscal note has been prepared showing the costs) and because the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests.

The department believes that, while the primary effect of HB 52 will be to shift the discretion in forfeiture cases from prosecutors to judges, it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. It must be recognized that a forfeiture order is not mandatory, and that the grounds for forfeiture in AS 28.35.036(c) are very similar to the grounds for imposition of a sentence in AS 12.55.005. Under the class A misdemeanor penalties permitted for DWI, a court can impose a jail term of up to one year and fine of up to \$5,000, therefore many judges may feel that the statutory criteria in AS 28.35.036(c) will have already been satisfied by the criminal sentence and no additional purpose will be served by the forfeiture, especially where loss of the car would work a financial hardship.

The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety. The department believes that the present statutory scheme is

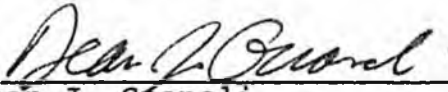
The Honorable John Sund
Chairman, Judiciary Committee

February 10, 1987
Page -2-

adequate and could conceivably be used more frequently by the state without a great deal of additional expense, therefore additional consideration will be given to these cases depending upon subsequent budgetary restraints.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 
Dean J. Gdaneli
Assistant Attorney General

DJG:so-74

cc: Bob Evans
Legislative Liaison
Office of the Governor

Nadine Winters
Director of Cnstituent Relations
Office of the Governor

The Honorable Niilo Koponen
Alaska State House

B.J. Lewis
Legislative Liaison
Department of Law

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

1-2 465-4992
1-2 465-4992

MEMORANDUM

TO: Honorable John Sund
FROM: Representative Niilo Koponen
RE: HB 52 "An Act Relating to Motor Vehicle Forfeiture."
DATE: January 30, 1987

I would appreciate it if you would schedule HB 52 at your earliest convenience.

The purpose of this bill is to strengthen the legislative intent of AS 28.35.036 by stating the "...the state shall [may] move the court to order the forfeiture of the motor vehicle...." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second DWI offense.

After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. Since 1983, only two cars have been confiscated state-wide for second DWI offense. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. This figure increased to 412 accidents for the first 11 months of 1986.

HB 52 has a zero fiscal note. I have enclosed backup material. If you need any further information on this bill, ~~please contact me or my staff.~~

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I GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS :
FISH, GAME AND GUIDING

A. Statutory Authority: Forfeiture in Fish, Game
and Guiding Violations

Several statutes provide authority for forfeiture of equipment and illegally taken fish and game; these include AS 16.05.190, AS 16.05.195, and AS 08.54.210. The statute primarily used as a basis for in rem forfeiture of illegally used equipment is AS 16.05.195, enacted in 1974. That statute provides, in relevant part:

- (a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, be forfeited to the state
 - (1) upon conviction of the offender in a criminal proceeding ...or
 - (2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or regulation promulgated under it.
- (b) Items classified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.
- (c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them...transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

equipment may be forfeited by court order. AS 16.05.190 differs from AS 16.05.195 in that it does not address civil in rem procedures, and it specifies that illegally taken fish and game shall be forfeited by the court upon conviction; it does not, however, address the disposition of vessels, aircraft or other equipment forfeited by a court. In contrast, AS 16.05.195 establishes that forfeited equipment "shall be disposed of at the discretion of the department" [of Fish and Game].

Generally, when bringing an in rem forfeiture action, AS 16.05.195 is the appropriate statutory authority; use AS 16.05.190 for obtaining a search and seizure warrant or for obtaining a court order disposing of illegally taken fish or game in a criminal proceeding.

In addition to the forfeiture authority provided in Title 16 for fish and game violations, AS 08.54.210(b) provides in pertinent part:

[A] person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter [guiding chapter, Title 8, Alaska Statutes] is guilty of a felony punishable, upon conviction, by a fine or not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. [Emphasis added]

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State. Conservation Department v. Brown, 53 N.W.2d 859 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

3. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

obtained under Alaska Rule of Criminal Procedure 37. See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The registered owner and any known claimants should be notified of the action, but need not be made parties. United States v. Pollastrine, 8 Alaska 104 (D. Alaska 1929); United States v. Bleasby, 257 F.2d 278. (3d Cir. 1958); People v. One 1971 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Secondly, the in rem proceeding is a civil action and therefore the rules of evidence, burden of proof, and discovery provisions for civil cases are applicable. Civil rules provide considerably more expansive discovery than criminal rules, and the civil burden of proof by a preponderance of the evidence applies. Case law shows that in rem forfeitures are considered, although civil actions, "quasi criminal in nature". Gravbill v. State, 545 P.2d 629 (Alaska 1976). This holding does not, however, mean that a criminal burden of proof applies. Judge Madsen, who rendered the superior court decision in F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___, 71, L. Ed.2d 284 (1982), stated in his decision granting forfeiture of a fishing vessel:

The court, after having heard and weighing the testimony of the witnesses and the exhibits, finds that the state has met its burden by clearly and convincingly proving by a preponderance of the evidence.

See also, State v. Rice, 626 P.2d 104 (Alaska 1981); U.S. v. Twelve Ermine Skins, 78 F. Supp. 734 (D. Alaska 1948).

Because the in rem action is civil rather than criminal, the case must be filed within two years (AS 09.10.070); in rem civil actions are not bound by the criminal procedure four-month rule.

Most forfeiture statutes, like AS 16.05.195, are silent on the question of whether a jury trial is of right. The opportunity for a jury trial will probably be favored in Alaskan courts, but because of the complexity and nature of civil forfeiture proceedings, judge trials are preferable, as is the practice in admiralty. In general, courts look to admiralty procedures in handling forfeitures, U.S. v. \$5,372.85 U.S. Coin and Currency, 283 F. Supp. 904 (D.N.Y. 1968); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). Also see, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L. Ed.2d 284 (1982). As a general rule, admiralty cases are tried by a court, not a jury. The Paolina S., 11 F. 171 (_____ 1880); Clark v. U.S., 5 F. Case No. 2, 837 (C.C. Pa. 18__); see also, Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co., 342 F. Supp. 786 (D. Pa. 1972); American of Puerto Rico, Inc. v. Transocean Tankers Corp., 317 F. Supp. 798 (D. Puerto Rico 1969); Texas Menhaden Co. v. Palermo, 328 F.2d 579 (6th Cir. 1964).

Some courts refuse to apply admiralty procedure that denies a trial by jury in civil forfeitures for state or federal

drug violations. This position is based on the argument that although admiralty forfeitures are prosecuted in rem according to admiralty practice, seizures on land are not admiralty cases but "common law informations," in which a jury trial is demandable. People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). The court in People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951) distinguishes between forfeitures of contraband, where there is no right to trial by jury, and forfeitures of otherwise lawful instrumentalities, where trial by jury is a constitutional right. The court in State Conservation Dept. v. Brown, 55 N.W.2d 359 (Mich. 1952) held that forfeiture actions are statutory and not founded in the common law, and claimants therefore are not accorded a right to a jury trial.

Another important distinction between a criminal case and an in rem civil action, is that the in rem civil forfeiture is not considered strictly a punishment or penalty, but rather is a deterrent and remedial, i.e., it is a way to remove an instrumentality from the hands of one using it improperly, in order to protect the state's resources. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Gulp v. U.S., 523 F.2d 557 (3th Cir. 1975). A court may be more willing to order forfeiture in a civil in rem proceeding than in a criminal action where there may be a large disparity between the maximum fine or penalty (generally, the maximum fine for fish and game violations is \$1,000 and one year in jail) and the value of the vessel or

aircraft that is seized and forfeited, which may be in excess of \$1,000,000. However, many courts, while recognizing the deterrent and remedial aspects, still view forfeitures as primarily a punishment or penalty and not favored in the law. See One Cocktail Glass v. State, 565 P.2d 1265 (Alaska 1977).

Because the value of property subject to forfeiture may be so great, some courts favor granting partial forfeiture of the equipment, or ordering forfeiture of a bond or other security in lieu of the item itself. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L.Ed.2d 284 (1982).

Neither AS 16.05.195 nor the rules of civil procedure in Alaska provide specific guidelines for the procedure to be followed in an in rem action. The closest rules or guidelines are, as discussed above, the Federal Admiralty Rules that relate to bringing a complaint or libel against a vessel, and Alaska Rules of Civil Procedure 4 and 5; courts will look to these procedures as guidelines for the action.

C. Guidelines for Bringing Civil In Rem Actions.

An action for forfeiture of valuable equipment such as a vessel or airplane is an extreme measure and represents the harshest penalty for a fish and game violation. On the other hand, vessels and airplanes provide a unique opportunity to

deplete the fish and game populations of the state, and it is for this reason that special consideration has been given to the matter by the legislature, which granted broad authority for forfeiture under AS 16.05.195.

In determining whether to prosecute in rem a boat or aircraft used in a fish and game violation, one should keep in mind that forfeiture actions are difficult and time-consuming to prosecute and may take up to three to five years attorney commitment time. Therefore, the following is an outline of the criteria to assess before bringing a civil forfeiture action:

1. Does the violation involve a substantial commercial benefit to the violator, i.e., a "windfall profit"? E.g., big game guiding, commercial fishing, fish guiding.
2. Is the violation, even if committed by a sport hunter or fisherman, egregious? Is there any intent involved or was the crime a mistake that would be excused if strict liability did not apply to fish and game violations? E.g., herding and harassing game, grossly over limit on fish or game, waste, inhumane kill, destruction of significant breeding stock, hunting in closed area. In particular, is there a likely detriment to the species or stock?

3. Is the equipment, vessel, vehicle, or aircraft an integral part of the violation? E.g., spotting from aircraft, using boat for access to closed area.
4. Is this the second or third similar violation by the offender?
5. Is there a significant need to deter the public that necessitates bringing a case to civil trial on evidence that would not support a criminal action? E.g., violation occurring on identified vessels but crewmen now known.
6. What is the value of the equipment, vessel, vehicle, or aircraft relative to the commercial profit or damage to the resource?

If the violation does not fit one or more of these categories, civil forfeiture is probably not appropriate.

D. Relationship Between Civil and Criminal Actions.

A criminal case against an individual for a fish or game violation is an action independent of any in rem proceeding for forfeiture. Haas v. One 1965 Ford Auto, 529 P.2d 410 (Cr. App. 1974). See also State v. Graybill, 545 P.2d 629 (Alaska 1976). A judge in a criminal action has authority to forfeit, as part of the criminal sentencing procedure, the equipment, aircraft, vessels, etc. used in or in aid of a violation of the

fish and game statutes or regulations, under AS 16.05.190; whether a prosecuting attorney in a criminal case will ask for forfeiture is a decision to be made by the district attorney. Many cases will involve a criminal prosecution only, for example, where a private sport hunter flies his aircraft to an open hunting area where he is then involved in a minor game violation not related to the use of the airplane; here the attorney general would not bring a civil in rem proceeding because the case does not fall within the category of cases outlined above.

Because an action in rem for forfeiture is independent of any criminal prosecution, a forfeiture action may be brought even though the individual defendant in the underlying criminal case was acquitted. United States v. One 1961 Cadillac Hardtop, 207 F. Supp. 693 (D. Tenn. 1962); U.S. v. Three Thousand Two Hundred Thirty Six Dollars, 167 F. Supp. 495 (D. Alaska 1958). Also, there may be situations where no criminal case can be brought, yet where there is sufficient evidence to proceed with a civil in rem action (for example, when there is no positive identification of the pilot or passengers of an aircraft, but there is a clear description of the aircraft used in a violation). Cases resting on circumstantial evidence are particularly appropriate for civil action because the extensive discovery procedures available can identify critical evidence.

If both civil and criminal actions are contemplated, it is best to bring both cases simultaneously, or as near to the same time as possible. If the cases are brought simultaneously,

and if the criminal case, which will probably be heard first, is dismissed or if the defendants are acquitted, the defendants will not be in a position to argue that the in rem case was brought merely because the criminal case was lost and the state is "out to get" the defendants. Furthermore, it is very helpful for an assistant attorney general to attend a criminal case before trying the same general issues in a subsequent civil in rem action. The criminal court might decline to grant forfeiture, even if the case were won by the district attorney, and the attorney general in that situation would be in a position to continue with the in rem action against the aircraft or vessel itself. This may be particularly appropriate in cases, such as fishing in closed areas, where a maximum criminal penalty is insufficient to deter the conduct, because the value of the harvest far exceeds the criminal fine. In some instances the criminal court may choose not to order forfeiture because of the pending civil action.

If a criminal case is won and forfeiture is granted but the judgment is appealed, the attorney general may wish to proceed with an action in rem on the theory that if the criminal conviction were overturned on appeal, the in rem action would still be valid. Although the attorney general need not wait for the final outcome of a criminal action before proceeding in rem, strategy may favor staying action in the civil case until the criminal action is over. The primary advantage of this sequence is that it will preclude the criminal defendant's resort to the

fifth amendment right to remain silent which might hinder evocation of pertinent evidence in the civil suit.

II MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS

A. Notification.

As mentioned above, it is important that the district attorney's office notify the attorney general's office (and vice versa) of any fish and game violation that involves a possible forfeiture, if the violation falls within the guidelines for civil prosecution in rem as outlined above. It is essential for the attorney general's office to become involved in the case from the very beginning, so that the attorney general's office can review the evidence and make a determination as to whether there is sufficient basis to proceed with a civil in rem case.

If there is a stipulation to release the vessel or airplane in the criminal action, the attorney general's office has a strong interest in making sure that the release will cover the subsequent civil in rem action, i.e., the release must provide for a sufficient bond or other security for the equipment, and include an agreement that the vessel or aircraft is properly insured and will not leave the state or be sold or encumbered. The release agreement should also obviate the need to re seize the vessel or aircraft for the civil in rem action in order to "serve" the item.

3. Seizure and Service of Process.

A.S. 16.05.195 provides: "Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action." At least one superior court judge in Anchorage has ruled that, notwithstanding this language, the state must actually or constructively seize the equipment in order to bring it within the court's jurisdiction; merely filing a notice of lis pendens was held insufficient to obtain jurisdiction. State v. One Blue and White PA-18 Airplane, No. 3AN-78-900 Civ. (Super. Ct. Third Jud. Dist. Alaska, Sept. 1978). There are several other reasons why actual seizure may be appropriate. First, looking to the Rules of Admiralty for guidance in bringing an in rem action, seizure is the means for bringing the action, and the libel must be posted on the vessel. (Supplemental Rule C, FRCP provides that the clerk of court issue an arrest warrant when a verified complaint is filed.) Since an action in rem is brought against the item itself, it may be necessary to "serve" the aircraft or vessel while it is within the jurisdiction of the court; due to the high mobility of aircraft and vessels, seizure may be the only way to assure that the res will be within or remain within the jurisdiction of the court. It would be pointless to bring a forfeiture action against an aircraft or vessel that may subsequently disappear from the jurisdiction of the court or be sold or otherwise encumbered.

Seizure for an in rem civil case should be made upon a warrant issued by a superior court judge. Evidence obtained as the result of an illegal search may not be admissible in a civil in rem action. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965). However, as long as the evidence supporting the forfeiture is not tainted, it can be argued that an illegal seizure of the defendant's property is not a basis for dismissal of the case. See, The Ship Richmond v. United States, 9 Cranch 102, 3 L.Ed. 670 (1815); United States v. One Chevrolet Sedan, 7 Alaska 605 (D. Alaska 1927). The court in Bovd v. United States, 116 U.S. 616 (1886) distinguished between a search for and seizure of a man's private books and papers for the purpose of obtaining information or using them as evidence against him, and seizure for the purpose of forfeiture. In United States v. One Ford Coupe Auto, 272 U.S. 321 (1926), the court held that where property declared forfeit by a federal statute is seized by one having no authority to do so, the United States may "adopt" the seizure with the same effect as if it originally had been made by a duly authorized officer.

C. Release.

Depending on the circumstances, it may be desirable to allow the defendant property to be released pending trial.

If an aircraft or vessel is released on stipulation, it is important that the agreement provide either a bond or

promissory note or at least insurance coverage for the value of the vessel or aircraft. If a bond is secured, it should cover at least the full value of the vessel, with a provision for alteration of the stated value in the event that the property increases in value during the pendency of the litigation. It may be impossible to accomplish this as a practical matter. In that event, it is best to establish the security or bond in much the same manner as bail. Any stipulation for release should also include a provision that the owner not sell or otherwise encumber the property, and that the owner will produce the item upon demand.

D. Service and Parties.

In accordance with admiralty procedure, service on a ship (or airplane) can be effected by posting a copy of the complaint on the property and leaving a copy with the person having control of it, and by publication of a notice of filing a forfeiture complaint.

Alaska courts may require personal service of the notice of filing a forfeiture action on all ascertainable owners or claimants, so a title search should be made in connection with service of process. The U.S. Supreme Court has ruled that where the government knew that the owner of a forfeited car was not at the address to which notice was sent, the service was inadequate. Robinson v. Hanrahan, 409 U.S. 38 (1972).

Because the action is in rem, there are no "necessary" parties to the action, other than the "res" and the state. Utah Liquor Control Comm'n. v. Wooras, 93 P.2d 455 (Utah 1939). For a case contra this general rule, see People v. Broad, 12 P.2d 941 (Cal. 1932). The presence of the owner or claimant is not necessary for the action to proceed. The owner of the item, or anyone claiming an interest in it, although not named as a party, may appear and make a defense, either by filing a claim and answer or by moving to intervene. People v. One 1941 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Because of AS 16.05.195(a), a lis pendens giving notice of the forfeiture action must be filed against the ship or aircraft, with the U.S. Coast Guard, FAA, or local recording district, as appropriate. In the case of vessels, the U.S. Coast Guard will file the notice, with the vessels documentation papers.

III DISPOSITION OF FORFEITED EQUIPMENT

AS 16.05.195 provides that equipment, including aircraft and boats, forfeited for a fish and game violation is to be disposed of at the discretion of the Department of Fish and Game. The statute does not require that the department sell the equipment at public auction, nor does it specify that the department pay off liens or mortgages on the forfeited equipment. However, the Alaska Supreme Court, in State v. Rice, 626 P.2d 104

(Alaska 1981) held that where a third party (in that case, a financial institution) had done all it reasonably could be expected to do to avoid illegal use of equipment in which it had an interest, it was entitled to remission of its interest in the forfeited equipment.

FORFEITURE CHECKLIST: INITIATING THE ACTION

1. Seizure Warrant, Affidavit of Return. (n.b. - separate court number and file for the seizure warrant).
2. Receipt and Inventory of aircraft/floats/skis, or vessel and gear.
3. Civil Complaint for Forfeiture, Summons (post on vessel or airplane), Return.
4. Title Search.
5. Notice of Filing Complaint - send to owner and lienor.
6. Motion for Service by Publication, Affidavit, Order.
7. Notice of Filing Complaint (for publication in newspaper).
8. Affidavit of Publication.
9. Lis Pendens (file in Oklahoma City, for aircraft, or State Recording Office further equipment).
10. Stipulation for Release, bond, insurance coverage, etc.

OPERATOR'S
SEIZURE INFORMATION
(AIRCRAFT)

1. Make of aircraft _____
2. Model of aircraft _____
3. Official F.A.A. Registration No. _____
4. Engine Serial No(s). _____
5. Airframe Serial No. _____
6. Floats (Skiis) type _____
7. Floats (Skiis) - Serial No. _____
8. Floats (Skiis) - Estimated value today _____
9. Description of aircraft, (wheels, STOL kits, stall fences, types of fabric, color scheme, etc.)

10. Value when purchased \$ _____
11. a. Date of last reappraisal _____, 19____
b. Value at last reappraisal \$ _____
c. Name and address of appraiser _____

12. Estimated value today \$ _____
13. Place and date of most recent overhauls or repairs
_____, 19____
_____, 19____
14. a. Name of owner(s) _____
b. Address of owner _____

Tele. () _____

15. Liens. _____

| Name & Address | Balance | Date Incurred | Payment Schedule |
|----------------|---------|---------------|------------------|
| a. _____ | _____ | _____, 19__ | \$ _____ per mo. |
| b. _____ | _____ | _____, 19__ | \$ _____ per mo. |
| c. _____ | _____ | _____, 19__ | \$ _____ per mo. |

16. Insurance coverage.

| Names of | Insurance Company | Type of Insurance | Amount of Insurance | Premium Amount and Due Date |
|----------|-------------------|-------------------|---------------------|----------------------------------|
| a. _____ | _____ | _____ | _____ | \$ _____ per _____; Due _____ |
| b. _____ | _____ | _____ | _____ | \$ _____ per _____; Due _____ |
| c. _____ | _____ | _____ | _____ | \$ _____ per _____; Due _____ |

17. Description of instruments, radios, and appurtenant equipment and other paraphernalia.

| Item | Model No. | Serial No. | Date of Purchase | Condition |
|----------|-----------|------------|------------------|-----------|
| a. _____ | _____ | _____ | _____ | _____ |
| b. _____ | _____ | _____ | _____ | _____ |
| c. _____ | _____ | _____ | _____ | _____ |
| d. _____ | _____ | _____ | _____ | _____ |

DATED this ___ day of _____, 19__, at _____, Alaska.

Signature of Operator(Owner)

OPERATOR'S
SEIZURE INFORMATION
(VESSEL)

1. Name of vessel _____
2. Kind of vessel _____
3. Official U.S.C.G. No. _____
4. Port of Registry _____
5. ADF&G No. AK _____
6. Value when purchased \$ _____
7. a. Date of last reappraisal _____, 19__
 b. Value at last reappraisal \$ _____
 c. Name and address of appraiser _____
8. Estimated value today _____
9. Place and date of most recent overhauls or repairs
 _____, 19__
 _____, 19__
10. a. Name of owner _____
 b. Address of owner _____

 Tele. () ____-____

11. Names of others with a right, title or interest in vessel
 (e.g. Banks, NOAA, state, materialmen, supplies, crews
 wages, etc.)

| Name & Address | Balance | Date Incurred | Payment Schedule |
|----------------|---------|---------------|------------------|
| a. _____ | _____ | _____, 19__ | \$ _____ per mo. |
| _____ | | | |
| b. _____ | _____ | _____, 19__ | \$ _____ per mo. |
| _____ | | | |

12. Insurance coverage.

FORM NO. 2 (cont.)

| Names of | Insurance Company | Type of Insurance | Amount of Insurance | Premium Amount and Due Date |
|----------|-------------------|-------------------|---------------------|-------------------------------|
| a. _____ | _____ | _____ | _____ | \$ ___ per ___ ; Due _____ |
| b. _____ | _____ | _____ | _____ | \$ ___ per ___ ; Due _____ |
| c. _____ | _____ | _____ | _____ | \$ ___ per ___ ; Due _____ |

13. Description of navigational equipment, fishing gear and other paraphernalia.

| Item | Model No. | Serial No. | Date of Purchase | Condition |
|----------|-----------|------------|------------------|-----------|
| a. _____ | _____ | _____ | _____ | _____ |
| b. _____ | _____ | _____ | _____ | _____ |
| c. _____ | _____ | _____ | _____ | _____ |
| d. _____ | _____ | _____ | _____ | _____ |
| e. _____ | _____ | _____ | _____ | _____ |
| f. _____ | _____ | _____ | _____ | _____ |
| g. _____ | _____ | _____ | _____ | _____ |
| h. _____ | _____ | _____ | _____ | _____ |
| i. _____ | _____ | _____ | _____ | _____ |
| j. _____ | _____ | _____ | _____ | _____ |
| k. _____ | _____ | _____ | _____ | _____ |
| l. _____ | _____ | _____ | _____ | _____ |

Alaska. DATED this _____ day of _____, 19__ at _____,

Signature of Operator

Operator's Printed Name

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ONE RED AND WHITE PIPER)
 airplane, _____, Serial)
 Number _____ and)
 contents thereof, including)
 appurtenant instruments,)
 radios, and floats,)
 Serial No.s _____ and _____,)
 JOHN DOE and JANE DOE,)
)
 Defendants.)
 _____)

Civil No. _____

COMPLAINT FOR FORFEITURE AND DAMAGES
(AS 16.05.195)

The State of Alaska, through its Attorney General,
alleges as follows:

First Cause of Action

1. This is an action for forfeiture of Piper
N _____ [describe] and the contents of the aircraft,
including appurtenant instruments and radios. This action is
brought under AS 16.05.195.

2. On or about _____, 19____, in the
vicinity of _____,
Judicial District, State of Alaska, the above-described aircraft
was used by defendants _____
to [describe violation]

These actions constitute violations of fish and game regulations

3. AS 16.05.195 provides that aircraft and other paraphernalia or gear may be forfeited to the state upon judgment of a court of competent jurisdiction in an action in rem that the aircraft and paraphernalia or gear were used in or in aid of a violation of a fish or game statute or regulation.

4. On _____, 19____, pursuant to a seizure warrant issued on _____, 19____, the above-described aircraft, its floats and equipment were seized at _____, Alaska, _____ Judicial District, and the aircraft, floats and equipment are or will be within the jurisdiction of this court during the pendency of the proceedings in this matter.

WHEREFORE, the State of Alaska prays for:

I. Judgment forfeiting the above-described aircraft, floats, and equipment to and for the use of the State of Alaska.

II. Costs, attorney fees and such further relief as the Court may deem appropriate.

Second Cause of Action

1. The State of Alaska realleges and reaffirms the allegations of paragraphs 1 through 4 above.

2. This is an action for damages, for the value of [describe resource]

taken in violation of Alaska fish and game statutes and

regulations. This action is brought under AS 16.05.195, which provides that an action for damages may be joined with an action for forfeiture of aircraft and equipment used in or in aid of a violation of an Alaska fish and game statute or regulation.

3. The defendants _____ are, and at all times relevant to this action have been, residents of _____, Alaska, _____ Judicial District.

4. On or about _____, 19____, in the vicinity of _____, _____ Judicial District, State of Alaska, defendant _____

[describe violation]

in violation of Alaska Fish and Game regulation _____

- the offense being [describe]

5. As a result of the actions of defendants _____ described above, the State of Alaska has been irreparably damaged by the illegal appropriation of _____ in an amount no less than \$ _____.

WHEREFORE the State of Alaska prays for relief as follows:

I. Damages in an amount not less than \$ _____ said damages to be proven more specifically at trial.

II. Costs, attorney fees and such further relief as

this Court may deem appropriate.

DATED at Anchorage, Alaska this _____ day of
_____, 19____.

ATTORNEY GENERAL

By:

Assistant Attorney General

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

DIRECTIONS FOR SERVICE

| | | |
|-------------------------------------|---|--------------|
| STATE OF ALASKA, |) | DATE: |
| |) | |
| Plaintiff, |) | COURT NO.: |
| |) | |
| vs. |) | SERVICE NO.: |
| |) | |
| ONE RED AND WHITE _____ |) | |
| airplane, N _____, Serial |) | |
| Number _____ and contents |) | |
| thereof, including appurtenant |) | |
| instruments and radios, and floats, |) | |
| Serial Nos. _____ and _____, and |) | |
| _____ |) | |
| |) | |
| Defendants. |) | |
| |) | |

Nature of Writ: COMPLAINT FOR FORFEITURE AND DAMAGES
(AS 16.05.195) and SUMMONS

SERVE: One red and white _____
airplane, N _____ Serial
Number _____ and contents
thereof, including appurtenant
instruments and radios, and floats,
Serial Nos. _____ and _____, by
posting a copy of this complaint
and summons upon said aircraft,
located at the Fish and Wildlife
Protection hangar, State of Alaska,
Department of Public Safety, Lake
Hood, Anchorage, Alaska.

Please make return of service to:

Clark of the Superior Court
303 K Street
Anchorage, Alaska 99501

FORM NO. 3

with copy to:

Office of the Attorney General
1031 4th Avenue, Suite 200
Anchorage, Alaska 99501

ATTORNEY GENERAL

By: Assistant Attorney General

SEIZURE WARRANT FORMS

A civil forfeiture action must be coupled with actual or constructive seizure of the res. At least one state superior court judge has ruled that filing a notice of seizure and a lis pendens in the appropriate recording office is not sufficient constructive seizure. Physical seizure or chaining or immobilizing the equipment and attaching a copy of the complaint is appropriate. An item may be seized without a warrant under AS 16.05.190, but a subsequent seizure warrant should be obtained even in such a case in order to obtain judicial approval.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

Warrant to Seize

IN THE NAME OF THE STATE OF ALASKA

TO ANY PEACE OFFICER AUTHORIZED TO EXECUTE WARRANTS

Sworn testimony has been given by _____,
Alaska Fish and Wildlife Enforcement Officer, on _____,
19__, that he has reason to believe that a [describe item]
registration number _____, is at this time at or near
_____ Judicial District,
State of Alaska. Pursuant to AS 16.05.170, AS 16.05.190, and
AS 16.05.195, the aircraft:

1. Is evidence of the particular crime of _____
in violation of _____ and _____.
2. Is evidence of the particular crime of _____
in violation of _____.
3. May be forfeited to the State of Alaska under AS 16.05.195, upon determination by a court of competent jurisdiction, in a proceeding in rem, that the aircraft was used in or in aid of a violation of an Alaska Fish and Game statute or regulation.

I am satisfied that there is probable cause to believe that the aircraft so described above was used in or in aid of a violation of _____.

I am satisfied that there are grounds for issuance of a warrant to seize the aircraft described above under AS 16.05.170 et seq., and AS 16.05.195, as well as on the other foregoing grounds.

I am satisfied that seizure of the above-described aircraft is necessary in order to insure that the aircraft will come within the jurisdiction of this court.

FORM NO. 5 (cont.)

YOU ARE HEREBY COMMANDED to seize the aircraft designated in this warrant above, registration number _____, serving this warrant between 7:00 a.m. and 10:00 p.m. Upon seizing said aircraft, you are commanded to hold it secure pending further court order, leaving a copy of this warrant, a copy of the supporting affidavits, if any, and a receipt for the property taken, and to prepare a written inventory of the property seized and to return this warrant and bring the property before me (or a receipt thereof) within ten (10) days of this date, as required by law.

(SEAL)

DATED: _____, 19____. _____
Judge/Magistrate

RETURN

I received the attached Warrant to Seize on _____,
19__, and have executed it as follows:

On _____, 19__, at _____ (a.m.)(p.m.),
I seized the property described in the warrant, and I left a copy
of the warrant (with) (at) _____.

The following is an inventory of the property taken pursuant to
the warrant:

This inventory was made in the presence of _____
_____ and of _____.

I swear that this inventory is a true and detailed account of all
property taken by me on the authority of this warrant.

Name and Title

SIGNED and SWORN to before me this _____, day of _____,
19__.

(SEAL)

Judge/Magistrate

NOTICE OF FORFEITURE

Vessels, airplanes, vehicles, fishing gear, hunting equipment, fish and game or parts of fish and game, including aquatic plants subject to civil forfeiture under AS 16.05.190 and .195 are typically subject to various claims of interest. To avoid allegations that persons claiming an interest in objects have been denied due process, a notice of forfeiture should be signed by the clerk of court and served upon all persons known to have an interest in the items. In addition, publication in local or industry newspapers giving notice of the criminal or civil forfeiture action provides further compliance with judicial due process standards of notice. Notice to lienholders or owners of record must also be provided before forfeiture in a criminal action, and the interest of an "innocent" lienholder who has taken all reasonable steps to insure that the item was not used illegally cannot be forfeited, State v. Rice, No. 13969 3E, (Superior Ct, Fairbanks May 16, 1979). A joint venture, however, may not be deemed an "innocent" third party. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The Notice of Forfeiture summarizes the complaint and advises interested parties how to obtain copies of the complaint and how to file a claim to the res. This notice is a substitute for the more costly publication of the entire complaint.

Each Notice of Forfeiture should allow an opportunity for the interested party to obtain a hearing for release of the res. Several state supreme courts have decided the state must

take the initiative to set up this hearing. Other states conclude the hearing is not mandatory. Alaska law does not require such a hearing (the omission is a major point on appeal in the F/V American Eagle v State, 620 P.2d 105 (Alaska 1980) cert denied, and State v. Rice, 626 P.2d 104 (Alaska 1981). Because petitions for release will always be entertained by our courts, the opportunity for a hearing should be confirmed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

| | |
|------------------------------|---|
| STATE OF ALASKA, |) |
| |) |
| Plaintiff, |) |
| |) |
| vs. |) |
| |) |
| THE F/V MR. WONDERFUL, its |) |
| paraphernalia and gear, the |) |
| proceeds of 52,349 pounds of |) |
| king crab delivered pursuant |) |
| to ADF&G Fish Ticket |) |
| No. E 534219, LARRY EDFINGER |) |
| and PAUL TATUM, |) |
| |) |
| Defendants. |) |

No. 3AN - - CIV

NOTICE OF FORFEITURE

TO: The above-named defendants and all other persons claiming any right, title or interest in the F/V Mr. Wonderful, its paraphernalia and gear.

On _____, 19__ an action under AS 16.05.105. **

The complaint alleges the illegal taking, possession and transportation of king crab in waters subject to the jurisdiction of the State of Alaska on or about September 16, 1978.

You must file claim to the defendant items with the clerk of this court and with the Attorney General's Office on or

** For the forfeiture of the F/V Mr. Wonderful, its paraphernalia and gear and proceeds of 52,349 pounds of Alaska king crab landed on September 16, 1978 under ADF&G ticket No. E 534219 was commenced in the Superior Court in Anchorage.

FORM NO. 7 (cont.)

before 20 days after service by mail or personal delivery or within 30 days after the last date of publication of this notice whichever is sooner. After filing your claim you must, within twenty (20) days after receiving a copy of the complaint, file with the court and serve on the Office of the Attorney General, State of Alaska, 420 L Street, Suite 100, Anchorage, Alaska, 99501, Telephone (907) 276-3550, your answer. If you fail to do so judgment will be entered for the relief demanded in the Complaint.

DATED this _____ day of _____, 19__ at Anchorage, Alaska.

Clerk of the Courts
303 K Street
Anchorage, Alaska 99501

RELEASES

A. AIRCRAFT.

In general, it is simpler not to release seized aircraft pending litigation unless directed otherwise by the court; however, if the case is likely to take a long time to resolve, or state storage facilities are full, it may be advisable to release under appropriate terms. A bond or other security, preferably in twice the value, should be posted in order to cover unforeseen problems and potential losses or liabilities. If an aircraft is not released, it should be carefully stored with the engine "pickled", and be kept under adequate custodial care.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)

No. 3AN _____ - _____ CIV.

STIPULATION FOR RELEASE OF AIRCRAFT

I

This is an action for forfeiture of the above-described defendant items.

II

The known parties with an interest, right or title to the defendant items are:

1. (State of Alaska) _____
2. (Government bureaus) _____
 - a. Taxes _____
 - b. Loans _____
3. (Owner/Operator) _____
4. (Bank) _____
5. (Lienor or Mortgagor) _____
6. (Materialmen and Mechanics) _____
7. (Other) _____

III

The above-described aircraft was seized on _____, 19____, under (a warrant issued on _____ in the _____ court of _____ Alaska).

IV

It is presently in the best interests of all parties that the defendant items name in Exhibit A to this agreement be provided an opportunity to engage in lawful activities until _____, 19____, (or such time as a [district or superior] court decision on forfeiture is rendered).

THEREFORE the parties agree as follows:

1. Plaintiff, which has limited storage facilities, agrees to release, under the terms and conditions of this stipulation, the described aircraft with appurtenant instruments and radios, to the control and custody of _____, hereinafter referred to as "custodian", or his agent or designated employees. The aircraft is subject to and remains under the state's constructive seizure.

2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments presently known are:

| | <u>Lender</u> | <u>Total</u> | <u>Monthly Payments</u> | <u>Due Date</u> |
|----|---------------|--------------|-----------------------------|---------------------|
| a. | _____ | _____ | _____ | _____ |
| b. | _____ | _____ | _____ | _____ |
| c. | _____ | _____ | _____ | _____ |

3. Each lender shall confirm receipt of each required payment in writing within five days of due date.

4. Custodian _____ as registered/joint-owner of the aircraft in _____, agrees to keep and maintain the aircraft within the State of Alaska and neither sell, dispose, nor otherwise encumber or diminish his ownership or equity in the aircraft unless specifically authorized by order of the court or upon stipulation with the state.

5. Custodian agrees to hold the state harmless for any damages or obligations which may occur after delivery to custodian under this agreement. Custodian agrees to abide by all orders of this court or any appellate court, interlocutory or final, and will deliver the aircraft to the state at such place and such time as may be directed to this court or any appellate court in the same or better condition as received from the state by virtue of this order, ordinary wear and tear excepted.

6. Custodian agrees to obtain insurance (hull and liability) on the items being delivered in an amount equal to their replacement value and to keep such a policy in force for the full replacement amount at all times.

7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

| <u>Date of Seizure</u> | <u>Value \$</u> |
|------------------------|-----------------|
| _____ | _____ |
| _____ | _____ |

8. To secure the state's interest in the aircraft, custodian shall (post a bond in the amount of _____) or (deposit the sum of \$ _____ in cashier's check with the clerk of the court, _____, court, State of Alaska).

9. (Bond/Deposit) shall be increased whenever there is an assessed increase in value of the defendant items equal to twenty percent of the value given in item number 7 above. Custodian agrees that in the event of the accidental loss of the aircraft, or substantial loss to the aircraft, or loss of the aircraft by theft or act of God, or otherwise, or his failure to return the aircraft upon court order forfeiting his interest in the aircraft, the (stipulated value of the aircraft on deposit as set forth in paragraph 7) or (bond) shall be forfeited to the State of Alaska. The state shall retain the accrued interest on the amount deposited. In the event of partial damage to the

aircraft, custodian shall either repair the damage, and restore the aircraft to the same or better condition which existed prior to the damage, to the satisfaction to the state, or forfeit that percent of the stipulated value required to restore the aircraft to the same condition which existed before the damage.

10. Custodian shall be penalized as follows for delay in delivery from the time custodian or his representative receives oral or written notice of a decision of forfeiture.

| <u>Delay (Days)</u> | <u>Penalty</u> |
|---------------------|---|
| a. 0-1 | None |
| b. 2-3 | 5% of the value of paragraph _____ or the value of the returned items at time of delivery, whichever is higher. |
| c. 4-5 | 10% |
| d. 6-7 | 50% |
| e. More than 7 | Forfeiture of bond/value on deposit. |

11. Custodian shall do no act with the aircraft, nor permit nor allow any act to be done by his agents or employees that could subject it to forfeiture or seizure by this state, any other state, federal or private authorities, and agrees to keep the aircraft current in annual inspections, and to keep and maintain the aircraft in accordance with all Federal Aviation Administration regulations and directives.

12. Custodian absolves the State of Alaska, its agents and employees, of any liability for damage that might have

occurred while the aircraft was in state custody, and further agrees to receive the aircraft as is and where is at the time of release.

13. In the event that improvements are made to the aircraft during the aircraft's release, including but not limited to the addition of avionics, overhauling or replacing the engine(s), repairing or replacing mechanical parts of the aircraft, refabricating, etc., beyond ordinary maintenance including annual and 100 hours inspections, the state will reimburse the custodian for any additional fair market value over that at the time of seizure, which is directly attributable to the improvements in the aircraft at the time of forfeiture, if the aircraft is forfeited in this action. If the parties cannot agree, the fair market value for the improvements shall be determined by the court.

14. This Stipulation and Release of the aircraft becomes effective only upon two days written notice to the undersigned Assistant Attorney General and to the Department of Public Safety, Fish and Wildlife Protection, the two days to be counted excluding legal holidays and weekends. After two days' notice, the aircraft shall be released only between the hours of 3 a.m. and 4 p.m., Monday through Friday.

DATED at _____, Alaska this _____ day of

_____, 19____.

Custodian

Plaintiff

Judicial Representative

Interested Parties

FORM NO. 8 (cont.)

DATED at _____, Alaska this _____ day of
_____, 19__.

Custodian

Plaintiff

Custodian Representative

Interested Parties

- 5. (Crewmember's wage claims) _____
- 6. (Materialmen and suppliers) _____

III

It is presently in the best interest of all parties that the defendant items named in Exhibit A to this agreement have an opportunity to engage in lawful activities until _____, 19__ (or such time as a [district or superior] court decision on forfeiture is rendered).

Therefore the parties agree as follows:

1. The defendant items named in Exhibit "A" are released to the control and custody of _____, hereinafter referred to as "Custodian".

2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments include:

| | Lender | Total | Monthly Payment | Due Date |
|----|--------|-------|-----------------|----------|
| a. | _____ | _____ | _____ | _____ |
| b. | _____ | _____ | _____ | _____ |
| c. | _____ | _____ | _____ | _____ |

3. Each lender shall confirm receipt of each required payment in writing to the state within five days of the due date.

- 4. No additional obligation may encumber the vessel without written permission of the state.
- 5. Custodian agrees to hold the state harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
- 6. Custodian agrees to obtain insurance on the items being delivered in an amount equal to their full replacement value and to keep such a policy in force at all times.
- 7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

Date of
Seizure

Total
Value

_____, 19__ \$ _____

- 8. Custodian posts a bond in the amount of \$ _____ to protect the interests of the state during the period of release.
- 9. Bond shall be increased whenever there is an increase in value of the defendant items equal to 20% of the value given in No. 7.
- 10. Upon a superior (district) court decision favorable to the plaintiff, the released items shall be immediately delivered to _____, Alaska within thirty (30) days of the date of the

10. court's decision. If the value of the released items exceeds the value given in paragraph 7, the bond less any penalty shall be exonerated upon delivery. If the value of the returned items is less than the value given in paragraph 7, the bond only in amount equal to the value of the returned items shall be exonerated.
11. Custodian shall be penalized as follows for delays in delivery:
- | | Delay
(days) | Penalty |
|----|-----------------|--|
| a. | 0-3 | None |
| b. | 4-7 | 5% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| c. | 7-14 | 10% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| d. | 14-30 | 50% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher. |
| e. | More than 30 | Forfeiture of bond in addition to defendant items. |
12. Upon a judgment in favor of the defendant items, the bond shall be exonerated and any remaining defendant items returned to the custodian.

13. Custodian shall keep, maintain, and preserve the defendant items in accordance with applicable laws, regulations, and ordinances and generally accepted standards of the industry. The items shall be maintained in at least as good a condition as when seized. Improvements made with written approval of the state shall be credited to defendants and the agreed amount shall be paid or credited defendants upon a decision of forfeiture by the court.
14. In the event Custodian fails to maintain the vessel in as good a condition as when seized, the state shall repossess the vessel with or without notice. Custodian shall reimburse state for all repossession costs and maintenance, upkeep, or refurbishing costs.
15. Custodian shall keep the defendant items in the Third Judicial District unless otherwise authorized by order of this court or agreement of the parties.
16. On the first day of every month Custodian shall prepare a monthly summary, stating the location of the vessel and the activities of the defendant items, and deliver the summary to plaintiff and each interested party.

17. On the first day of every month Custodian shall prepare a proposed itinerary for that month and deliver the itinerary to plaintiff and each interested party.
18. The bond securing the release of the defendant items shall be forfeited to the plaintiff upon: 1) failure to deliver in accordance with paragraph 9; 2) loss or destruction or disability to use the defendant items for a period exceeding 30 days.

Forfeiture of bond is not cause for dismissal of the lawsuit.

1(a) _____
Custodian

2. _____
Plaintiff

1(b) _____
Custodian Representative

3(a) _____
Interested Parties

3(b) _____

3(c) _____

3(d) _____

MEMORANDUM

State of Alaska

TO: Susan S. McLean
Assistant District Attorney
Kodiak

DATE: April 26, 1983

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

SUBJECT: Release of Crab
Pots

This is a somewhat tardy response to your February 23, 1983 memo requesting a form for the release of crab pots.

It is difficult to develop a universal agreement for release of crab pots or other gear, because the circumstances of the seizure, the nature of the gear seized and other matters may differ from case to case and require special tailoring. However, the form that is enclosed should be a good general guideline for release of crab pots and other gear (including vessels) seized in connection with district court criminal matters. It could also be modified to address civil seizure and forfeiture actions. A few comments are in order:

1. In general, when we seize a fishing vessel we do not wish to enter into a stipulation "for value" whereby the stipulation would result in substitution of the bond or other security for the vessel itself. This is because the value of a fishing vessel is likely to increase during the pendency of the action. However, crab pots and other gear are likely to depreciate in value, particularly if released and subjected to use and deterioration from the elements. Therefore, we would probably wish to enter into a stipulation for value with respect to depreciating goods such as crab pots so that we would have the benefit of the value of the crab pots when seized, rather than be left with what might be virtually worthless equipment at the end of a criminal trial or appeal. Whether equipment for which you would like to use the stipulation appreciates or depreciates should determine whether to call it a stipulation for value and whether to use the language suggested in paragraph 11.

Musan S. McLean
Assistant District Attorney
Kodiak

April 26, 1983
Page 2

2. Depending on the nature of the goods, you may or may not need the language in paragraph 13 (that the items will be maintained in as good a condition as when seized.) If we intend to substitute the bond anyway, that language would not be necessary. I have attempted to cover both situations in paragraph 11 by allowing the state to have the option of either retaining the goods or accepting the bond or other security as a substitution.
3. Other paragraphs in this draft may or may not be applicable, given the particular facts of a specific case. For example, there may be no need for paragraph 5 relating to obligations if it is clear that none exist for the equipment. In other cases, there may be very complicated financing, particularly if you have seized expensive gear.

I hope this will be of some use to you, and I reiterate that we would be glad to assist you as necessary in implementing these kinds of release agreements.

You may also be interested to know that the Alaska Board of Fisheries (and also the Alaska Board of Game) adopted regulations during the last regulatory meeting in March and April specifying that fish and game regulations are intended to be strict liability offenses unless otherwise provided by the regulations or statute. The Board of Fisheries regulation should be sent to the Lt. Governor's office for filing sometime within the next week or two, and hence would be in effect 30 days thereafter. We are hopeful that this action by the boards will remedy some of the problems created by the Reynolds decision.

Best regards.

SEM/jmo

cc: John Gissberg
Kathleen McGuire
Larri Spengler

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

STATE OF ALASKA)

v.)

Case No. _____

STIPULATION FOR VALUE AND AGREEMENT
FOR RELEASE OF [CRAB POTS]

The State of Alaska, through [DA/AG], and
[claimant/defendant] hereby stipulate and agree as follows:

1. [Claimant/defendant] is the owner of the
[vessel/gear/crabpots], ADF&G No. [_____].
2. On or about [_____, 19__], officers of the State
of Alaska, Department of Public Safety, Division of Fish
and Wildlife Protection, (hereinafter F&WP) observed
[describe violation, location, storage depth], a violation
of 5 AAC [___] and AS 16.05.920.
3. On or about [_____, 19__], officers of the F&WP
seized the [crab pots/gear] referenced in paragraph 1 of
this agreement [under authority of a seizure warrant
issued on _____/ under authority of a warrantless
search under AS 16.05.180]. The [crab pots/gear] are
presently in the state's custody at [_____],
Alaska.
4. For the mutual convenience of the parties to this
agreement, the parties desire to release [crab pots/gear,
ADF&G No.] to the care and custody of [_____]
(hereinafter "Custodian") upon the terms and conditions of

this agreement. This release agreement shall become effective when signed by the parties.

5. Custodian shall meet all obligations on the [crab pots/gear], which include:

| | <u>Lenders</u> | <u>Total</u> | <u>Monthly Payment</u> | <u>Due Date</u> |
|----|----------------|--------------|------------------------|-----------------|
| a. | _____ | _____ | _____ | _____ |
| b. | _____ | _____ | _____ | _____ |

6. Custodian may not further encumber the [crab pots/gear]
7. Custodian shall hold the State harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
8. The stipulated value of the [crab pots/gear] at the date of seizure [_____, 19__], is [_____].
9. Custodian shall post [with the court], at the time this agreement is executed, a [cash bond/other security] in the amount of \$[_____] to protect the State's interests during the period of release.
10. Upon a court judgment forfeiting the [crabpots/gear] to the State, custodian shall deliver the [crab pots/gear] as soon as possible, and in no event more than 30 days after forfeiture is ordered, to [_____], Alaska.
11. If the [crab pots/gear] are returned in substantially the same condition as when released, so that their value is equal to or exceeds that set in paragraph 8 of this agreement, the bond shall be exonerated. If the value of the [crab pots/gear] at the time forfeiture is ordered is

less than the amount set in paragraph 3 of this agreement, the State may, at its option, retain the bond and any interest as a substitution for the [crab pots/gear].

12. Upon judgment [of acquittal/denying forfeiture of crabpots/gear], the bond will be exonerated and the [crab pots/gear] will be returned to custodian.
13. Custodian shall keep, maintain, and preserve the [crabpots/gear] in accordance with all applicable laws, regulations, and ordinances, and generally accepted fishing industry standards. The items shall be maintained in as good a condition as when seized.
14. Custodian shall keep the [crabpots/gear] within the [_____] Judicial District unless otherwise agreed by the State.
15. This agreement is for the purpose of release of [crab pots/gear] only, and does not constitute an admission of liability or wrongdoing by either party.
16. This agreement contains the entire agreement between the parties, and its terms are contractual and not a mere recital.
17. This agreement shall be construed under the laws of the State of Alaska.
18. If custodian breaches the terms of this agreement, the custodian must deliver the items to the State immediately;

any failure to deliver within ten days after the breach of any terms of this agreement will automatically forfeit the bond to the State.

Dated: _____

Assistant District Attorney

Dated: _____

[Claimant/owner]

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/19/87

FURTHER REFERRALS: Judiciary

DATE: 1-26-87

The State Affairs Committee has considered HB 52

"An Act relating to motor vehicle forfeiture."

RECOMMENDS:

- replace with _____ 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:

Cliff Davidson

Frank Holmer

James Holmer

James (Dowley)

SIGNING OTHER RECOMMENDATIONS:

Frank Holmer

 Chairman's signature

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER

HB 52 "AN ACT RELATING TO MOTOR VEHICLE FORFEITURE."

Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities. After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. In Fairbanks, only one person in three years has been ordered to forfeit their car. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. During the first 11 months of 1986, this figure increased to 412 drunk driving accidents. These alarming statistics have led me to introduce this legislation.

The purpose of HB 52 is to strengthen the legislative intent of AS 28.35.036 by stating that "...the state shall [may] move the court to order the forfeiture of the motor vehicle..." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second time DWI offense.

It is important to realize that under AS 28.35.037 (Remission of Forfeitures) an offender can go to court in order to retrieve his or her car, thereby protecting and third party interests in the motor vehicle. The offender must follow the guidelines within statute and present relevant arguments to the judge. Sec. 28.35.037(c) states that if the person satisfies these requirements, the court shall order that the motor vehicle and title be released.

It is routine practice of Alaska game wardens to immediately confiscate cars, trucks and guns when a hunting violation is charged, prior to completion of the violator's due process proceedings. It is my feeling that the protection of human life should be considered at least as important in state law as a hunting or parking violation.

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

It is no secret that the effects of Driving While Intoxicate (DWI), are a major health problem. Once again 1985 statistics compiled by individual state departments of highway, Alaska has ranked third nationwide for the highest rate per capita of alcohol-related crash fatalities (see attached). Death, injury, and trauma occur to the victims and victim families of DWI crashes. Economically this problem is costing our communities millions annually in lost wages, court costs, unrecoverable medical charges, higher insurance rates, and other related expenses.

Mothers Against Drunk Driving (MADD), is an organization whose primary goal is to reduce the number of deaths and injuries resulting from DWI crashes through our educational, legislative and Victim Assistance programs.

In the past three years, we have asked you, our legislators, to increase the penalties for DWI, and refusal to submit to a breath test, to raise the drinking age to 21, to prohibit Happy Hour sales, to institute mandatory driver insurance, and to allow for vehicle confiscation for second time DWI offenders, and other related legislation.

We are once again faced with making a request that you consider amending AS 28.35.036 Forfeiture of Motor Vehicle.

It has been our observation since the passage of HB-6 which was signed into law in September of 1983 by then Governor Sheffield, that our district attorneys and judges have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date, our district attorney's office in Fairbanks (Fourth Judicial District), have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date our district attorney's office reports that they have only confiscated one (1) vehicle.

We do not feel that the confiscation of one vehicle in nearly three years serves as a deterrent for anyone, and without referenda that call the public's attention, we can never hope to see a decrease in this type of conduct. In fact, we have seen a serious rise in the number of people killed and injured in the Fairbanks Northern Star Borough area with the

M A D D

MOTHERS AGAINST DRUNK DRIVERS

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FORFEITURE OF VEHICLE

OBJECTIVE

page 2

In 1985 ~~seventeen~~ (17) FNSB residents were killed in alcohol-related crashes, one boy was killed Outside and two UAF students (brother and sister) were killed outside of Wasilla. In 1986 fifteen (15) FNSB residents were killed in alcohol-related crases, two were killed in California. Five of the impaired drivers responsible for deaths in 1986 had prior DWI convictions and one was driving with an illegally obtained license at the time he killed a young woman on Farmers Loop Road.

We are told that the reason the district attorney's office in Fairbanks has not requested confiscation of a vehicle is because that most defendants do not have clear title to the vehicle, or that the vehicle is of such poor quality that it would not be cost effective to impound and then later auction older model cars. We feel the philosophy of confiscation as a deterrent to others is being overlooked here.

We do not feel that these are sufficient reasons to fail to exercise the option under HB-6, particularly when there is a risk of further human lives being lost! Both the Fairbanks Police Department and the Alaska State Troopers have higher arrest statistics the past two years for individuals Driving With Suspended Operators Licnese (DWSOL). This is due in part to the fact that our community is painfully aware thrt both law enforcements agencies have experienced labor cutbacks that translates into fewer officerson the road at any given time. In other words like everyone else DWI offenders recognize that their chances for being stopped have been minimized. The magnitude of this problem demands that the DWI offender be refused further access to his or her vehicle to ensure that further lives and injuries are not caused by their continuing to drive without a license.

It is admirable that the judges were given a chance to use discretion to confiscate, by the word "may" being used in the content of HB 15, 16. However, it has become obvious that the justice system is in a state of disrepair and it is common sense in the discretion to use this power as a deterrent and as a deterrent measure to others, and was therefore...

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MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 3

protect the public. Under the circumstances we would ask that the word "may" be changed to "shall" in AS 28.35.032(a), to ensure that first time DWI offenders realize that if convicted for a second offense they will no longer have a vehicle in their possession with which to jeopardize human loss of life and limb.

To counter the argument of "clear title" we refer you to AS 28.35.037 Remission of Forfeitures which specifically addresses lienholders rights.

Additionally we feel sure that once the public is notified of the amendment to this law, credit companies will request that potential creditors who already have a DWI conviction to increase mandatory SR22 premiums to cover possible forfeiture of vehicles.

To counter the argument of immediate confiscation of vehicles used in the commission of a crime i.e., DWI/refusal to submit to a breath test, we remind you of the routine practice of Alaska Game Wardens in their authority to immediately confiscate not only cars and trucks, but guns, planes, snow-machines, etc., when a hunting violation is charged, prior to due process being completed. We are secure that the precedent set there should certainly extend to the protection of human lives, as opposed to animal life!

In anticipation of the argument that the impaired driver may not be arrested while driving his/her own registered vehicle, consider this option. Upon the first conviction for DWI/Refusal, and upon completion of other requirements made by the court for the return of the offenders license we would suggest color-coded driver's licenses to indicate to car rental agencies, employers, or others who might "loan" vehicles to inform and protect them from possible forfeiture. Remembering that a lienholder must, according to AS 28.35.037, prove that "the petitioner did not know or have reasonable cause to believe that it would be used in the commission of a crime." Obviously insurers would want to inform clients of possible loss of coverage should the insured loan a car to individual prior to inspection and return of license.

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

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(907) 456-3964

FORFEITURE OF VEHICLE

REQUESTS

page 4

1st CONVICTION DWI/REFUSAL

- * In addition to administrative and court ordered requirements now in place, impound the vehicle until the individual purchases special risk policy (SR22), incorporating leinholders protection from forfeiture for possible future offenses. Insurance must be "term" that cannot be cancelled by vehicle owner. If insurance expires for non-payment, or a refund is requested thereby cancelling the policy, the insurance company is required to inform the State Division of Motor Vehicles within 24 hours.
- * Upon completion of all requirements to reinstate the drivers license the DMV be required to color-code, or otherwise plainly note, the DWI conviction visibly on the license.
- * Accompanying costs to above procedure i.e., impoundment fees, filing fees, record search fees, be paid by the applicant.

2nd CONVICTION DWI/REFUSAL

- * Vehicle used in the commission of the crime DWI/Refusal be confiscated by the state and disposed of at public auction. Proceeds to be returned to the General Fund or designated for compensation to victims of drunk driving. (It might be noted that an increased fleet of cars available to auction are a great resource for non-profit groups who typically might have manpower and in-kind contributions to repair damaged cars at little or no cost, then use them as a raffle item).
- * Ninety (90) days prior to the effective date of this legislation public notification is given to the public informing all of the ramifications of the act.

Attachments:

1985 Alcohol-Related Traffic Fatalities - USA

AS 28.35.037

Effect of Bankruptcy on DWI Judgments

1985 ALCOHOL RELATED TRAFFIC FATALITIES*

| State | Fatalities | Population In Millions | Fatalities Per Million | State | Fatalities | Population In Millions | Fatalities Per Million |
|---------------|------------|---------------------------|---------------------------|----------------|------------|---------------------------|---------------------------|
| Alabama | 214 | 3.9 | 55 | Montana | 118 | .8 | 145 |
| Alaska | 69 | .4 | 173 | Nebraska | 91 | 1.6 | 57 |
| Arizona | 315 | 2.8 | 120 | Nevada | 112 | .9 | 124 |
| Arkansas | 324 | 2.3 | 141 | New Hampshire | 102 | .9 | 113 |
| California | 2,412 | 23.7 | 102 | New Jersey | 246 | 7.4 | 33 |
| Colorado | 242 | 2.9 | 83 | New Mexico | 293 | 1.3 | 224 |
| Connecticut | 252 | 3.1 | 81 | New York | 695 | 17.6 | 39 |
| Delaware | 73 | .6 | 122 | North Carolina | 637 | 5.9 | 108 |
| Florida | 1,294 | 9.7 | 133 | North Dakota | 50 | .7 | 71 |
| Georgia | 700 | 5.4 | 130 | Ohio | 746 | 10.8 | 69 |
| Hawaii | 77 | 1.0 | 77 | Oklahoma | 279 | 3.0 | 93 |
| Idaho | 118 | .9 | 131 | Oregon | 285 | 2.6 | 110 |
| Illinois | 554 | 11.4 | 49 | Pennsylvania | 767 | 11.9 | 64 |
| Indiana | 232 | 5.5 | 42 | Rhode Island | 50 | .2 | 250 |
| Iowa | 234 | 2.9 | 81 | South Carolina | 385 | 3.1 | 124 |
| Kansas | 152 | 2.4 | 63 | South Dakota | 69 | .7 | 99 |
| Kentucky | 168 | 3.6 | 47 | Tennessee | 318 | 4.6 | 69 |
| Louisiana | 401 | 4.2 | 95 | Texas | 589 | 14.2 | 41 |
| Maine | 56 | 1.1 | 51 | Utah | 110 | 1.5 | 73 |
| Maryland | 741 | 4.2 | 176 | Vermont | 41 | .5 | 82 |
| Massachusetts | 222 | 5.8 | 38 | Virginia | 479 | 5.3 | 90 |
| Michigan | 719 | 9.3 | 77 | Washington | 326 | 4.1 | 80 |
| Minnesota | 261 | 4.1 | 64 | West Virginia | 257 | 2.0 | 129 |
| Mississippi | 300 | 2.5 | 120 | Wisconsin | 187 | 4.7 | 40 |
| Missouri | 486 | 4.9 | 99 | Wyoming | 70 | .5 | 150 |

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

Chapter 77

Forfeited under this section may be disposed of at the discretion of the department. *(if sold at auction I put in to victim fund)*

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

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

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

- (1) the petitioner has an interest in the motor vehicle acquired in good faith;
- (2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and
- (3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without

6

REVIEW RESOURCES FOR PROSECUTORS

In most states, the public prosecutor has a great deal of discretionary power in deciding what cases he wants to try and what charges will be filed. Some states allow for the hiring of a private prosecutor if a victim is not satisfied with the public prosecutor. In some of those states the public prosecutor must get the private prosecutor permission to try the case. Victims should be aware of their state statutes regarding this procedure.

In most states, prosecutors are subject to review both by the bar association and by a state regulatory group usually referred to as a "Prosecutor's Council" or "Prosecutor Review Board." Call the switchboard of your state capitol to get the phone number and address of such a group. Usually they consist of other prosecutors, so the review is by peers.

A few states have what is called a "John Doe Statute" or a "One Man Jury Statute" in which a person may go directly to a judge if he believes that a crime was committed and the prosecutor has not filed charges. Wisconsin's statute follows:

§3.26 John Doe proceeding. If a person complains to a judge that he has reason to believe that a crime has been committed within his jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the judge may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but such counsel shall not be allowed to examine the client, cross-examine other witnesses or argue before the judge. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. Subject to § 971.23, the record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used by the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used.

A defendant must be allowed to use testimony of witnesses at a secret John Doe proceeding to impeach the same witnesses at the trial, even if the prosecution does not use the John Doe testimony. *Myers v. State*, 60 W (2d) 248, 208 NW (2d) 311.

Immunity hearing must be in open court. *State ex rel. Newspapers, Inc. v. Circuit Court*, 65 W (2d) 66, 221 NW (2d) 894.

Person charged as result of John Doe proceeding has no recognized interest in the maintenance of secrecy in that proceeding. *John Doe discussed. State v. O'Connor*, 77W (2d) 261, 252 NW (2d) 671.

No restrictions of the 4th and 5th amendments preclude enforcement of an order for handwriting exemplars directed by presiding judge in John Doe proceeding. *State v. Doe*, 78 W (2d) 161, 254 NW (2d) 210.

See note to Art. I, sec. 3, citing *Ryan v. State*, 79 W (2d) 83, 255 NW (2d) 910.

This section does not violate constitutional separation of powers doctrine. *John Doe discussed. State v. Washington*, 83 W (2d) 808, 266 NW (2d) 597 (1975).

Balance between public's right to know and need for secrecy in John Doe proceedings discussed. In re Wis. Family Counseling Services v. State, 95 W (2d) 670, 291 NW (2d) 671 (Cr. App. 1980).

John Doe judge may not issue material witness warrant under 969.01 (3). *State v. Brady*, 118 W (2d) 154, 345 NW (2d) 533 (Cr. App. 1984).

REVIEW RESOURCES FOR JUDGES

In most states, there is a review procedure for the handling of complaints about judges. It is usually called a "Commission on Judicial Conduct," a "Judicial Review Board," or other similar title. Call your local bar association or State Capitol switchboard to learn what is available in your state.

If you file a complaint, grievance, or concern, *be sure you know the facts.*

CHAPTER TO FILE COMPLAINT AGAINST LOCAL JUDGE, PRESIDENT SAYS

By Steve McGonigle
Staff Writer of The News

The president of the Dallas County chapter of Mothers Against Drunk Driving said Thursday that her group will file a complaint with the state Commission on Judicial Conduct against County Criminal Court Judge Harold Entz in connection with Entz's handling of a recent drunken driving case.

Milo Kirk said Entz acted without authority when he allowed Martin Vareas Rivera of Dallas to plead guilty on Jan. 16 to a misdemeanor charge that did not reflect the fact that Rivera had seriously injured four people in a bar accident.

Entz initially granted Rivera probation but later re-sentenced Rivera to a maximum two-year jail term after Rivera's attorney requested that the guilty plea be voided and that Rivera be given a new trial.

Entz said he granted Rivera probation by mistake after reading an incomplete probation report and after the defendant assured him that there were no injuries in the accident. He has maintained he did nothing improper.

Mrs. ... her group will file the complaint against Entz after a court hearing Thursday to determine whether Entz should be disqualified from hearing a request by Rivera's new attorney for a third trial.

Chief misdemeanor prosecutor Mike Gillett requested the disqualification because he contended that Entz has shown he cannot be fair to the prosecution.

Retired state District Judge R. C. Vaughan of Sherman ruled at the conclusion of the hearing that prosecutors had not proved Entz was biased, though Vaughan said he was bothered by the handling of the case.

ATTENTION CIVIL ATTORNEYS!! EFFECT OF BANKRUPTCY ON DWI JUDGMENTS

The U.S. Constitution and Federal Statutes allow liberal protection of debtors through relief in the Bankruptcy Courts. A debtor is allowed to have certain liabilities discharged by operation of law, rendering the creditor's claim valueless. In bankruptcy, the holder of a civil judgment obtained in a lawsuit against a drunk driver is considered a *Creditor*, and the drunk driver a *Debtor*.

CHAPTER 7

An individual debtor has two options in bankruptcy. The most commonly used is liquidation under Chapter 7 of the Bankruptcy Code. The debtor has most obligations forgiven and keeps a portion of his or her assets to facilitate a "fresh start" after bankruptcy. The debtor keeps such things as a homestead, clothing, household furnishings, personal effects, tools of trade and, generally, an automobile.

These are typical of the assets exempted by law from execution to satisfy judgments. The rest of the assets are returned to secured creditors or liquidated (sold) to pay the creditors on a pro-rata basis. *Certain debts are not discharged and forgiven, such as taxes, child support, alimony, and DWI judgments.* The DWI judgment holder should carefully follow the bankruptcy case, and might consider retaining counsel to be sure the origin of the claim is brought to the attention of the Bankruptcy Court, and the non-dischargeable nature of the debt is noted and even confirmed.

It should be remembered that holding a non-dischargeable debt is still no guarantee of collecting any money since the debtor, immediately after bankruptcy, holds only property which cannot be taken to satisfy a judgment. The creditor holding the DWI judgment, unlike those creditors whose claims are discharged, will be able to wait and attempt to collect as the debtor rebuilds assets following bankruptcy.

CHAPTER 13

An individual debtor could seek relief under Chapter 13 of the Bankruptcy Code and effect an adjustment of his or her debts. The debtor typically pays a portion of the debts, and has a portion discharged through a court supervised plan of three to five years. Some debts that would be non-dischargeable in a Chapter 7 liquidation are dischargeable in a Chapter 13 Debt Adjustment plan. *A DWI judgment could be discharged after a partial payment under such a plan.* The DWI judgment holder should retain counsel if the debtor attempts a Chapter 13 plan. *The entire plan can be rejected if the Bankruptcy Court finds it has been proposed in "bad faith."* The timing of the bankruptcy, the amount of the DWI judgment compared to the entire amount of debt, the effect on the holder of the judgment compared to other creditors, and many other factors will be considered by the court in evaluating a plan with an objecting creditor.

Defeating the entire plan may be the only way to prevent the discharge of the DWI judgment. If unsuccessful, the holder of the DWI judgment should still follow the Chapter 13 plan very closely, because many debtors do not follow through with their plan to completion and the discharge of the debts. Some Chapter 13 plans are converted to Chapter 7 liquidations where the DWI judgment is not discharged.

It is not uncommon for attorneys representing defendants in lawsuits to threaten that their client will resort to bankruptcy relief if the suit is pursued to judgment. However, this threat has much less impact on victims of drunk drivers because of the preferential treatment of such judgments in the bankruptcy code.

MRS. ALICE ... A PROTECTION FOR ... LLIMPLEBES

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

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

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034. (§ 21 ch 117 SLA 1982; am § 22 ch 77 SLA 1983)

Effect of amendments. - The 1933 amendment in subsection (a) substituted "an offense . . . driving a motor vehicle" for "the crime of driving" and in subsection (b) revised the internal reference in the present first sentence and added the present second sentence.

NOTES TO DECISIONS

Stated in *Copelin v. State*, Sup. Ct. Op. No. 245 (File No. 6174), 664 P.2d 169 No. 2617 (File Nos. 5453, 5708), 259 P.2d (1983).
1206 (1983); *Pena v. State*, Ct. App. Op.

Sec. 28.35.036. Forfeiture of motor vehicle. (a) After conviction of an offense under AS 28.35.030 or AS 28.35.032 involving a motor vehicle of a type for which a driver's license is required, the state may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted 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 AS 28.35.030 or another law or ordinance with substantially similar elements; or
- (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(b) 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.

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted

person of the time and court may order the fo without a jury, determ forfeiture of the motor purposes:

- (1) deterrence of the offenses under AS 28.
- (2) protection of the
- (3) deterrence of ot 28.35.030; or
- (4) expression of p nature of the convict
- (d) Upon forfeiture surrender of the regis cle. The registration department.
- (e) If not released under this section m ment. (§ 23 ch 77 S

Sec. 28.35.037. R notice from the cour 28.35.036, the state tainable ownership notice that includes

- (1) a description
- (2) the time and
- (3) the legal au; forfeited;
- (4) notice of the r vehicle.

(b) At the heari interest in the mot evidence that

- (1) the petitione good faith;
- (2) a person oth that resulted in ti
- (3) before parti know or have reas commission of an

(c) If a person court shall order interest in the mo order that the mo title to the motor

person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

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

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department. (§ 23 ch 77 SLA 1983)

Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without prejudice to the rights, and does not extinguish the claims of a creditor with an interest in the motor vehicle. § 28 ch 77 SLA 1983)

Sec. 28.35.038. Municipal impoundment and forfeiture. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title. § 28 ch 77 SLA 1983.

Article 3. Reckless and Negligent Driving.

Section

- 40 Reckless driving;
- 45 Negligent driving

Sec. 28.35.040. Reckless driving. a) A person who drives a motor vehicle in the state in a manner which creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v. Lenord*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle

in a manner which creates an unjustifiable risk. *Bailey v. Lenord*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. *Calder v. State*, Sup. Ct. Op. No. 2224 (File No. 4296), 619 P.2d 1026 (1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dan-

gerous weapon and misdemeanor charge of: already been adjudicated because, although in the same general incident. *Calder v. State*, Sup. Ct. Op. No. 2224 (File No. 4296).

Trooper arriving without warrant, — trooper has classified and operating or driving under the influence as misdemeanors. Trooper who arrived at an accident arrest a driver with either reckless driving since neither of committed or attempted. *Layland v. State*, Sup. Ct. Op. No. 2264 (File No. 2264), 535 P.2d 1192 (1976), overruled on *Anchorage v. Geber*, Sup. Ct. Op. No. 2827 (File Nos. 2827, 40 P.2d 1192, 1979).

Sentencing considerations. — it was undisputed at three people in the pickup who were excluded case of any accident properly consider the evaluating the ex-

Collateral reference. — 2d. Automobiles at §§ 312 to 320.

61A C.J.S. Motor: 624.

What amounts to negligence in driving on the defense of contributory negligence. *ALR 1424, 72 ALR 119 ALR 654.*

Sec. 28.35.04 vehicle in the state harm to a person the risk, actual driving. An unjustifiable failure to avoid that a reasonable defendant actually knowing that, a

BILL NO: HB 52

DATE: January 22, 1987

TITLE: An Act relating to motor vehicle forfeiture

CONTACT: ^{Tim} T. Michael Lewis
465-4374

DEPARTMENT OF
PUBLIC SAFETY

POSTAL PERMIT NO. 1504

This bill would provide a strong deterrent to the act of drinking and driving in that it increases the possibility of forfeiture of the motor vehicle for repeat offenses. As the public became more aware of this added sanction, there would be an increased inclination to seek alternative modes of transportation when drinking. Although mandatory jail terms, fines and license revocation are effective for first time offenders, these sanctions do not seem to deter the multiple offender to any great extent.

It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid. In the case of the individual that continues to drink and drive in spite of several alcohol related offenses, the loss of the offenders vehicle would virtually remove this hazardous driver from our highways.

The department supports this bill.



William R. Nix
Acting Commissioner

RECEIVED JAN 26 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version: HB52
Publish Date: _____

REQUEST: _____

Revision Date: _____
Title: An Act relating to motor vehicle forfeiture

Agency Affected: Public Safety
BRU: AK Highway Safety Planning Agency

Sponsor: Koponen
Requestor: House State Affairs

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|-------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |
| CAPITAL | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

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

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

JMR
1/23/87
 Prepared by: T. Michael Lewis *TML*
 Division: Alaska Highway Safety Planning Agency
 Approved by Commissioner: *[Signature]* *[Signature]*
 Agency: _____

Phone: 465-4374
 Date: 1/22/87
 Date: 1/23/87

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

DATE: 3-23-87

The Judiciary Committee has considered HB 52

An Act relating to motor vehicle forfeiture."

RECOMMENDS:

- replace with _____ 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:

Walter Brumby

John W. ...

Jan ...

...

...

SIGNING OTHER RECOMMENDATIONS:

...

...

...

...

...

...

...

...

...

...

...

Chairman's signature

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE: 465-4322

March 11, 1987

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

At the request of your staff, 24 convictions for driving while intoxicated (DWI) were randomly selected for analysis.

The results are as follows:

Four of the 24 vehicles involved, or 16.6 percent, were driven by the owners. There were no lien holders or other registered owners.

Eleven of the 24, or 45.8 percent, were not driven by the registered owners; however, two of the drivers had the same last name as the registered owner.

Of the 11 apparently loaned vehicles, eight, or 72.7 percent, had no lien holder.

Five of the 24, or 20.8 percent, were driven by the owner; no others were listed on the registration, but there was a lien holder.

One of the 24, or four percent, was driven by the registered owner; others were listed as registered owners, but there was no lien holder.

Three of the 24, or 12.5 percent, were driven by the registered owner; other persons were listed as registered owners, and there was a lien holder listed.

Thirteen of the 24, or 54 percent, had no lien holder.

One vehicle, or 4 percent, was a model year between 1960 and 1969.

Twelve vehicles, or 50 percent, were model years between 1970 and 1979.

The Honorable Niilo Koponen

-2-

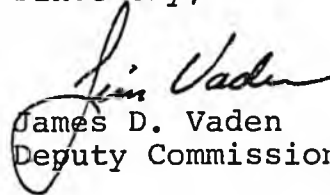
March 11, 1987

Eleven vehicles, or 46 percent, were model years between 1980 and 1986.

Of the 11 loaned vehicles, eight, or 72.7 percent, were model years between 1970 and 1979.

I trust this information will be of service to you.

Sincerely,


James D. Vaden
Deputy Commissioner

Attachment

| <u>Year</u> | <u>Make</u> | <u>Driven by Registered Owner?</u> | <u>Others Listed on Registration? (more than 1)</u> | <u>Lien Holder</u> |
|-------------|----------------|--|---|------------------------|
| 1978 | Chevrolet P.U. | Yes | No | No |
| 1981 | Subaru | Yes | No | No |
| 1969 | Chevrolet | Yes | No | No |
| 1976 | Buick | Yes | No | No |
| 1972 | Volkswagen | No | Yes | No |
| 1971 | Toyota | No | No | No |
| 1974 | Pontiac | No | No | No |
| 1975 | Buick | No | No | No |
| 1970 | Chevrolet | No | No | No |
| 1973 | Chevrolet | No | No | No |
| 1974 | Mercury | No | No | No |
| 1976 | Datsun | No | No | No |
| 1985 | Subaru | No (SLN) ¹ | No | Yes |
| 1984 | Ford | No (SLN) ¹ | Yes | Yes |
| 1984 | Chevrolet | No | Yes | Yes |
| 1985 | Dodge P.U. | Yes | No | Yes |
| 1984 | Chevrolet | Yes | No | Yes |
| 1986 | Chevrolet | Yes | No | Yes |
| 1984 | Chevrolet | Yes | No | Yes |
| 1978 | Chevrolet | Yes | No | Yes |
| 1977 | Plymouth | Yes | Yes ² | No |
| 1984 | Dodge | Yes | Yes ² | Yes |
| 1982 | Ford P.U. | Yes | Yes ² | Yes |
| 1986 | Toyota | Yes | Yes | Yes |

1 - (SLN) Driver's registered owner had same last name

2 - Appeared to be spouses

MEMORANDUM

TO: Representative Barnes

FROM: Julia Coster

SUBJECT: CSHB 52 (Judiciary), An Act relating to motor vehicle forfeiture

DATE: March 17, 1987

HB 52 as it was originally drafted amended AS 28.35.036 by requiring the prosecutor in a 3rd time DWI conviction to move for forfeiture of the motor vehicle. The problem with this approach, as pointed out by prosecutor Pat Conheady, is that under this proposal the judge in the case still has the option of denying the motion for forfeiture. Apparently in some jurisdictions the prosecutors have voluntarily moved for forfeiture of the vehicle after multiple convictions for DWI and the judges have refused to order the forfeiture. To address this situation and get at the heart of the problem a Judiciary CS has been drafted. This CS amends AS 28.35.030 and .032 by requiring the judge to order forfeiture of the vehicle upon conviction of a 3rd DWI offense or refusal to submit to a chemical breath test.

Sectional Analysis:

Section 1 - amends AS 28.35.030(c) - (a section prescribing the sentence for persons convicted of operating a vehicle while intoxicated) by providing that a court shall order forfeiture of the vehicle used in commission of the offense if it is the 3rd or more DWI conviction. The new language specifically mentions that the forfeiture is subject to remission of forfeiture under AS 28.35.037.

Section 2 - amends AS 28.35.032(g) - (a section prescribing the sentences for persons convicted of refusing to submit to a chemical test) with exactly the same language as in section 1.

Section 3 - repeals and reenacts AS 28.35.036 - Forfeiture of Motor Vehicle. Specifically, new .036 gets rid of the subsections in old .036 which outline the factors the judge should use when deciding whether to order forfeiture. Under the new CS the judge does not have the discretion to not order forfeiture, therefore these factors are not necessary. New .036 also gets rid of extra language which is incorporated in .030 and .032. Subsection (b) in section 3 is a new. This subsection was added to set out a specific time frame in which a 3rd party having an interest in the vehicle must assert that claim.

Section 4 - adds a new subsection to AS 28.35..037 - Remission of Forfeiture. This new subsection makes it clear that a person who has a 3rd party interest in the vehicle may request a hearing to establish that interest and move for remission of forfeiture of their interest.

MEMORANDUM

3/20/87

TO: Rep. Fran Ulmer, Vice-Chair,
House Judiciary Committee

FROM: J. Hartle, *JH* Committee Staff

RE: HB 52 Forfeiture of motor vehicles

Summary of testimony to date:

Rep. Niilo Koponen, Prime sponsor: "Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities... In Fairbanks, only one person in three years has been ordered to forfeit their car... The primary intent of HB 52 is to limit drunk driving fatalities... This legislation may act as a deterrent... It is routine practice of Alaska game wardens to immediately confiscate cars...prior to completion of the violator's due process proceedings."

Dean Guaneli, Assistant A.G., Criminal Division: "The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (see fiscal note)...the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests. ...it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety."

Bill Niemi, Acting Commissioner, Dept. of Public Safety: "This bill would provide a strong deterrent to the act of drinking and driving in that it increases the possibility of forfeiture of the motor vehicle for repeat offenses... It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid... the loss of the offender's vehicle would virtually remove this hazardous driver from our highways... The department supports this bill."

Michael L. Wolverton, Assistant Public Defender: "...we believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming, and generally fruitless exercise for the criminal justice system as a whole. In our experience, the vast majority of defendants who would be subject to the provisions of this law do not

own the vehicles that they were driving at the time they were apprehended. ...it could very well devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency. In addition, these forfeiture proceedings would typically involve vehicles whose value would not warrant the exercise.

James Vaden, Deputy Commissioner, Public Safety ...24 convictions for DWI were randomly selected for analysis. 4 of 24 vehicles were driven by owners. (See memo attached)

Vehicle forfeiture procedures:

Vehicles are very rarely forfeited for DWI in Alaska. Karla Forsythe could only find one case in Fairbanks and none at all in Anchorage that any judge could recall.

AS 28.35.036 (a) provides that the D.A. may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if...[3rd offense].

AS 28.35.036 (c) provides that upon receipt of a motion of forfeiture, the court shall schedule a hearing on the matter. At the hearing the judge (without a jury) determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

- deterrence of the convicted person
- protection of the safety and welfare of the public
- deterrence of other persons who are potential offenders
- expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

The court shall require the surrender of the registration and title. If the vehicle is not released through remission, the vehicle may be disposed of at the discretion of the department.

Examples:

If there is a lienholder, he is able to get his interest remitted. If a person is convicted for the third time of DWI, the D.A. may (shall under HB 52) move the court for forfeiture. If the court orders forfeiture, the state must notify anyone with an ownership interest in the vehicle. If there is a lien, under remission procedures the lienholder will be able to have his interest returned. If there is no lien, the state may dispose of the vehicle as it pleases (e.g. sell or use as undercover vehicle). So, if the vehicle is sold by the state for \$8,000 and there is a \$6,000 lien, the state gets the difference and the driver is out what he or she has put into it. If the vehicle is owned outright, the driver is out the total cost of the vehicle.

PUBLIC DEFENDER AGENCY and State of Alaska, Department of Law, Appellants,

v.

SUPERIOR COURT, THIRD JUDICIAL DISTRICT, Appellee.

No. 2071.

Supreme Court of Alaska.

April 9, 1975.

Because of divorced father's arrearage in child support, the court trustee moved for an order to show cause to issue against father. The Superior Court, Third Judicial District, James K. Singleton, J., ordered the public defender to represent father and the Attorney General's office to prosecute and public defender agency and department of law appealed. The Supreme Court, Connor, J., held that although the Attorney General has power to prosecute a civil contempt for nonsupport proceeding, court does not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases; that it would violate doctrine of separation of powers to charge the court trustee with the duty to prosecute contempt actions; and that the public defender is empowered to represent indigent father.

Reverse in part and affirmed in part. Fitzgerald, J., did not participate.

1. Contempt 41, 43

Civil contempt proceedings can normally only be initiated by the aggrieved party or by one who has an interest in the right to be protected.

2. Attorney General 7

In light of the substantial state interest in the enforcement of child support orders, contempt of such an order is a violation of state law within meaning of statute providing that the Attorney General shall prosecute all cases involving violation of state law. AS 09.55.210, 11.35.010, 11.35.-

01), 25.25.010 et seq., 44.23.020, 47.25.310 et seq.

3. Attorney General 6

Generally, an Attorney General has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020.

4. Attorney General 7

Under the common law, an Attorney General is empowered to bring any action which he thinks necessary to protect the public interest and possesses the corollary power to make any disposition of the state's litigation which he thinks best. AS 44.23.020.

5. Attorney General 7

Attorney General's discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. AS 44.23.020.

6. Constitutional Law 73

When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts.

7. Constitutional Law 58

Alaska recognizes the separation of powers doctrine.

8. Constitutional Law 73

Under the separation of powers doctrine, court does not have power to control the exercise of the Attorney General's discretion as to whether he will take any action in any particular cases of contempt for nonsupport of child. AS 44.23.020.

9. Courts 73

Court may not combine prosecutorial and judicial functions.

10. Constitutional Law 73

It would violate doctrine of separation of powers to charge court trustee with duty to prosecute a civil contempt for nonsupport proceeding. W.S.A. 247.29; M.C. L.A. § 552.251; AS 09.55.210; Rules of Civil Procedure, rule 67

Now, I talk to M.L. Ford. He agrees that the bill is OK, but he sees your point. He says that the AK supreme court has historically given the legislature from powers to limit executive discretion.

Mark - I agree w/you this doesn't say the legislature couldn't direct the DA to prosecute. CF AS 44.23.020 (b)(7) cited at 980

Map

file file w/my HB53 bill file.

11. Parent and Child \S 3.3(9)

Public defender is empowered to represent indigent father in a civil contempt for nonsupport proceeding. AS 18.85.100, 18.85.170(5)(A).

12. Statutes \S 219(3)

Continuous, contemporaneous and practical interpretation of statute by executive officers and courts is a valuable aid in determining meaning.

13. Parent and Child \S 3.3(9)

Fact that statute providing for legal services by the public defender agency to indigent persons charged with a serious crime antedated judicial decisions concerning right to counsel did not preclude determination that the agency was authorized to represent indigent father in a civil contempt for nonsupport proceeding. AS 18.85.100, 18.85.170(5)(A).

Lawrence J. Kulik, Asst. Public Defender, Herbert D. Soll, Public Defender, Anchorage, for appellant—Public Defender Agency.

Gerald W. Markham, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellant State.

Duncan Campbell Webb, Anchorage, for appellee.

Before RABINOWITZ, C. J., and CONNOR, ERWIN and BOOCHEVER, JJ.

CONNOR, Justice.

This case presents questions about the manner in which civil child support orders should be enforced. In particular, this case involves a determination of who should prosecute and defend in such proceedings.

The facts which give rise to the present controversy are as follows:

Upon divorce in 1968, Agnes Johnson was awarded custody of the six children of

1. Judge Singleton found that issues regarding representation were separate and distinct from the problems facing Mr. Johnson, and that his order on the matter was final. Without determining whether this order was final

her marriage to John Johnson. Mr. Johnson was ordered to pay monthly child support of \$125 plus a 3% collection charge through the court trustee. Because of substantial arrearage, the court trustee moved on January 3 or 4, 1973, for an order to show cause to issue against Mr. Johnson. Superior Court Judge Singleton held a pretrial conference on the matter with a representative of the Department of Law and with Herbert Soll, the Public Defender. They discussed the possibility of the Department of Law prosecuting the action and the Public Defender Agency defending it. Judge Singleton then directed the two agencies to submit briefs on the legal and practical problems involved in such an arrangement. He also directed the court trustee to submit a brief on the factual issues and on the position of the court trustee with regard to the prosecution of contempt proceedings for non-support. After consideration of the materials submitted, Judge Singleton ordered the Public Defender, over objection, to represent Mr. Johnson and the Attorney General's office, again over objection, to prosecute. The parties seek review of this order.¹

The issues presented for review are:

1. May the superior court order the Attorney General to prosecute a civil contempt for nonsupport proceeding?
2. Is the court trustee the proper party to prosecute such a proceeding?
3. Can the Alaska Public Defender, consistent with the Alaska Public Defender Act, be ordered to defend an alleged contemnor in a civil nonsupport action?

The Attorney General

Before the validity of the order to prosecute can be considered, it is first necessary to determine whether the Attorney General's office has any authority to proceed in the area of enforcement of support orders

within the meaning of Alaska Civ.R. 51(b). We find that this appeal meets the requirements of a petition for review set forth in App.R. 24(a).

[1] The type of contempt has traditionally been considered on the civil side of the court have recognized that it may have criminal overtones. *Ottom v. P.2d 537* (Alaska 1974); *State, 491 P.2d 75* (Alaska) contempts are designed

"to preserve and enforce private parties to suits, a obedience to orders and for enforcing the rights among the remedies to which found them to be entitled [They] are civil, remedial in their nature, and the part interest as to their conduct are the individuals whose rights and remedies they wish to enforce." *United States v. Wood, 6 Alaska 255* (1920)

Such civil contempt proceedings may only be initiated by the party or by one who has an interest in right to be protected. *In re P. 403, 407* (2d Cir. 1924); "Civil Contempt in the Federal F.R.D. 167, 172 (1955). The necessary has often been characterized "primary" or "pecuniary." *United States, 236 F.2d 140* (1956) cert. denied, 352 U.S. 915, 1 L.Ed.2d 119 (1956); *Wilerville Parish School Board, 2542, 545* (E.D.La.1967); *Savel 213 Miss. 869, 58 So.2d 41, 43* (1952)

The relevant duties of the Attorney General are found in AS 44.23.020:

"(b) The attorney general shall (2) represent the state in actions in which the state is a party"

2. The doctrine of *parens patriae* the inherent power and authority to provide protection of the person of a person non sui juris *Bros. Pictures v. Brodol, 179 P.2d 417* (Cal.App.1947). Under the doctrine has the sovereign power of guardianship of infants. *Helton v. Crawley, 241 P.2d 41 N.W.2d 60, 70-71* (1950). The state to exercise guardianship does not depend on a statute ass

[1] The type of contempt involved here has traditionally been considered as falling on the civil side of the court, although we have recognized that it may have certain criminal overtones. *Otton v. Zahorac*, 525 P.2d 537 (Alaska 1974); *Johansen v. State*, 491 P.2d 759 (Alaska 1971). Civil contempts are designed

"to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made for enforcing the rights and administering the remedies to which the court has found them to be entitled. . . .

[They] are civil, remedial and coercive in their nature, and the parties chiefly in interest as to their conduct and prosecution are the individuals whose private rights and remedies they were instituted to enforce." *United States ex rel. Noyes v. Wood*, 6 Alaska 255 (1920).

Such civil contempt proceedings can normally only be initiated by the aggrieved party or by one who has an interest in the right to be protected. *In re Paleis*, 296 F. 403, 407 (2d Cir. 1924); "Civil and Criminal Contempt in the Federal Courts", 17 F.R.D. 167, 172 (1955). The interest necessary has often been characterized as "primary" or "pecuniary." *MacNeil v. United States*, 236 F.2d 149, 153 (1st Cir. 1956) cert. denied, 352 U.S. 612, 77 S.Ct. 150, 1 L.Ed.2d 119 (1956); *Williams v. Iberville Parish School Board*, 273 F.Supp. 542, 545 (E.D.La.1967); *Savell v. Savell*, 213 Miss. 869, 58 So.2d 41, 43 (1952).

The relevant duties of the Attorney General are found in AS 44.23.020:

"(b) The attorney general shall . . .

(2) represent the state in all civil actions in which the state is a party;

2. The doctrine of *parens patriae* refers to the inherent power and authority of the state to provide protection of the person and property of a person non sui juris. *Warner Bros. Pictures v. Brodel*, 179 P.2d 57, 64 (Cal.App.1947). Under the doctrine the state has the sovereign power of guardianship over infants. *Helton v. Crawley*, 241 Iowa 296, 41 N.W.2d 60, 70-71 (1950). The right of the state to exercise guardianship over a child does not depend on a statute asserting that

(3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;"

[2] In light of the substantial state interest in the enforcement of child support orders, we find that contempt of such an order is a violation of state law within the meaning of AS 44.23.020(b)(3). Traditionally, the states have been legitimately concerned with the area of family law, and, under the doctrine of *parens patriae*,² in particular, in the promotion of the welfare of children dwelling within their boundaries. This interest is prompted, at least in part, by the fact that the state is viewed as the ultimate source of a child's support in the event his parents should fail him. *Johansen v. State*, *supra*, at 765.

Alaska has manifested this interest by making wilful non-support a misdemeanor, AS 11.35.010, AS 11.35.090; by providing for support of a minor when he is removed from the home, AS 47.25.310 et seq.; by participation in a state-federal program to aid dependent children, AS 47.25.310 et seq.; and through its participation under the Uniform Reciprocal Enforcement of Support Act, AS 25.25.010 et seq. It has also set up a program whereby the court trustee monitors payments under support orders, and takes steps preliminary to formal contempt proceedings to encourage payment of any arrearage. AS 09.55.210; Alaska Civ.R. 67. The interest of the state is adequate to support the authority of the Attorney General to proceed under AS 44.23.020.³

power. The state's protective power depends upon the presence of the infant within its territorial limits, and not upon the place of his domicile or his ownership of property within the state. *Finlay v. Finlay*, 240 N.Y. 129, 148 N.E. 624, 625 (1925); 42 Am.Jur.2d Infants § 14 (1969).

3. From materials submitted to the trial court, it is apparent that, as a practical matter, the Attorney General's office has neither the bud-

[3] The authority to proceed under AS 44.23.020 does not, however, empower the court to order the Attorney General to prosecute any particular contempt for non-support. Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. *Pierce v. Superior Court*, 1 Cal.2d 759, 37 P.2d 460 (1934); *Van Riper v. Jenkins*, 140 N.J.Eq. 99, 45 A.2d 844 (1946); *People v. Debt Reducers, Inc.*, 5 Or.App. 322, 484 P.2d 869 (1971). AS 44.23.020 indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law:

"(b) The attorney general shall . . .
(7) perform all other duties required by law or which usually pertain to the office of the attorney general in a state."

[4.5] Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. *State v. Finch*, 128 Kan. 665, 280 P. 910 (1929). This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. *United States v. San Jacinto Tin Co.*, 125 U.S. 273, 279, 8 S.Ct. 850, 31 L.Ed. 747 (1888); *Federal Trade Commission v. Claire Furnace Co.*, 274 U.S. 160, 174, 47 S.Ct. 553, 71, L.Ed. 978 (1927); *Smith v. United*

get nor the manpower to effectively prosecute all of the support orders which are presently in arrears. An effective resolution of the problems present in the area of child support can only be made by the legislature through the appropriation of additional funds to the Department of Law for prosecution of contempt proceedings or through the establishment of an independent office charged with the enforcement of support orders. All we do today is to find that the Attorney General, if he so chooses, has the legal authority to carry out his duty to prosecute.

4. See *Lira v. Billings*, 106 Kan. 726, 414 P.2d 13, 16 (1966), where the Kansas Su-

States, 375 F.2d 243, 246-47 (5th Cir. 1967); *United States v. Cox*, 342 F.2d 167 (5th Cir. 1965); *Boyne v. Ryan*, 100 Cal. 265, 34 P. 707 (1893); *Ames v. Attorney General*, 332 Mass. 246, 124 N.E.2d 511 (1955).

[6,7] When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. Although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. *Wade v. Nolan*, 414 P.2d 689, 698 (Alaska 1966). The state constitution is divided into a number of separate articles. Since Article III concerns the executive branch, it can fairly be implied that this state does recognize the separation of powers doctrine.⁴

Both federal and state courts have consistently and carefully observed the line which divides their branch of government from that of the executive.⁵ They have held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding.

"In that field, the discretion of the Attorney General is plenary. He is a constitutional officer . . . and, as such, the head of the state's legal department. His discretion as to what litigation

preme Court acknowledges that the doctrine is implied from the existence of the three separate constitutional provisions.

5. *O'Donoghue v. United States*, 289 U.S. 516, 530, 53 S.Ct. 740, 77 L.Ed. 1356 (1933); *Nashville I-40 Steering Committee v. Ellington*, 387 F.2d 179, 185 (6th Cir. 1967), cert. denied, 390 U.S. 921, 88 S.Ct. 857, 19 L.Ed. 2d 982 (1968); *California State Employee Assoc. v. State*, 32 Cal.App.3d 103, 108 Cal. Rptr. 60, 64 (1973); *Marrone v. State*, 458 P.2d 736, 739-40 (Alaska 1969). *State v. Cabbage*, 210 A.2d 555, 564 (Del.1965).

tion shall or shall not be him is beyond the control of officer or department of State ex rel Peterson v. C 191 Minn. 427, 254 N.W. (1934).⁶

The order to prosecute by Court overstepped this line a fringement upon the discretion residing in the executive branch order is not within the province of court.

[8] We conclude that, have jurisdiction to entertain to find, as we have, the existing authority, we do not have power the exercise of the Attorney discretion as to whether he will any particular cases of contempt support.

The Court Trustee

The Department of Law the court trustee would be a private party to institute the tion. In at least two states e cees are empowered to institute proceedings for violation of st Wisconsin Stats.Anno. § 2 Supp.1974-75); Michigan Co 552.251, M.S.A. § 25.171 (1967

AS 09.55.210 provides:

"*Judgment.* In a judgment for divorce or action declaring void or at any time ment, the court may prov

6. See, e. g., *United States v. C 167 (5th Cir. 1965)*, cert. den 985, 85 S.Ct. 1767, 14 L.Ed.2d States v. Woody, 2 F.2d 262 (1 In re Grand Jury January, 31 (D.Md.1970); *Boyne v. Ryan*, 34 P. 707 (1893); *Hermann* 298 Ky. 632, 183 S.W.2d 807 v. Attorney General, 332 Mass. 24 511 (1955); *State ex r Young*, 44 Wyo. 6, 7 P.2d 216 tenor of all of these decisions are certain areas, which includ of whether to prosecute and be in which the Attorney General

tion shall or shall not be instituted by him is beyond the control of any other officer or department of the state." State ex rel Peterson v. City of Fraser, 191 Minn. 427, 254 N.W. 776, 778-79 (1934).⁶

The order to prosecute by the Superior Court overstepped this line and was an infringement upon the discretionary powers residing in the executive branch. Such an order is not within the province of the court.

[8] We conclude that, although we have jurisdiction to entertain this case and to find, as we have, the existence of legal authority, we do not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases of contempt for non-support.

The Court Trustee

The Department of Law suggests that the court trustee would be a more appropriate party to institute the contempt action. In at least two states court appointees are empowered to institute contempt proceedings for violation of support orders. Wisconsin Stats. Anno. § 247.29 (West Supp.1974-75); Michigan Compiled Laws 552.251, M.S.A. § 25.171 (1967).

AS 09.55.210 provides:

Judgment. In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide

(5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;"

Civil Rule 67 provides:

"(b) In any action where payment of moneys for purposes of child support is ordered, payment shall be made to a court trustee appointed by the presiding superior court judge, unless another method is ordered by the court in cause."

Facially, this statute and rule do not appear to prohibit a court trustee from prosecuting contempt actions in non-support cases. However, the functions performed by court trustees are not uniform throughout this state. We take judicial notice that in some districts the court trustee works closely with family court judges and often serves as a master in divorce proceedings.

[9, 10] A well established principle of law is that the court may not combine prosecutorial and judicial functions. United States v. Jacquillon, 469 F.2d 380, 387 (5th Cir. 1972), cert. denied 410 U.S. 938, 93 S.Ct. 1400, 35 L.Ed.2d 604; State v. Browder, 486 P.2d 925, 939 (Alaska 1971). Although this precept most often arises in the criminal context, it is equally applicable in the civil area where the conflict of interest and the combination of functions is as readily apparent. For this reason, it would be unwise if not unconstitutional, as a violation of the doctrine of separation of

6. See, e. g., United States v. Cox, 312 F.2d 167 (5th Cir. 1965), cert. denied, 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700; United States v. Woody, 2 F.2d 262 (D.Mont.1924); In re Grand Jury January, 315 F.Supp. 962 (D.Md.1970); Boyne v. Ryan, 100 Cal. 265, 34 P. 707 (1893); Hermann v. Morledge, 298 Ky. 632, 183 S.W.2d 807 (1944); Ames v. Attorney General, 332 Mass. 216, 124 N.E. 2d 511 (1955); State ex rel Wilson v. Young, 44 Wyo. 6, 7 P.2d 216 (1932). The tenor of all of these decisions is that there are certain areas, which include the decision of whether to prosecute and how to proceed, in which the Attorney General has complete

control, and the court will in no way interfere with that control, at least not by compelling the officer to perform an act entrusted to his discretion. Some courts have, however, indicated several of these cases are applicable to the situation at hand. E. g., Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); United States v. Cox, 312 F.2d 167 (5th Cir. 1965), cert. den., 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700; United States ex rel. Schneider v. Esperdy, 108 F.Supp. 640 (S.D.N.Y.1952), writ dismissed, S.D.N.Y., 108 F.Supp. 916, aff'd 205 F.2d 212 (2d Cir. 1953); People v. Newcomer, 284 Ill. 315, 120 N.E. 244 (1918).

powers, to charge the court trustee with the duty to prosecute contempt actions.⁷

The Public Defender

The trial court found that the defendant in a contempt for non-support proceeding is entitled to court-appointed counsel if he is indigent, a finding which is in agreement with our recent decision in *Ottom v. Zaborac, supra*. The Public Defender recognizes that the defendant has the right to counsel, but argues that the agency is not empowered to provide such representation.

The legislation creating the Public Defender Agency states that the services of an attorney and concomitant legal services are to be provided by the Public Defender Agency to

"(a) An indigent person who is being detained by a law enforcement officer in connection with a serious crime, or is under formal charge of having committed, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Supreme Court Rules of Children's Procedure, or against whom commitment proceedings for mental illness have been initiated . . ." AS 18.85.100.

AS 18.85.170(5)(A) defines a "serious crime" as including "a criminal matter in which a person is entitled to representation by an attorney under the Constitution of the State of Alaska or the United States Constitution." This court has defined a "criminal prosecution" as any offense for which incarceration could be a direct penalty, and from this definition have flowed the rights to jury trial and court-appointed counsel in misdemeanor cases, based upon constitutional considerations. *Baker v. City of Fairbanks*, 471 P.2d 386 (Alaska 1970);

7. While the discretion of Alaska Legal Services in accepting clients is not unlimited (42 U.S.C. § 2809(a)(3), *Dimmick v. Watts*, 490 P.2d 483 (Alaska 1971)), no authority has been brought to our attention suggesting that an indigent is foreclosed from seeking the assistance of Alaska Legal Services in the prosecution of child non-support contempt actions.

Alexander v. City of Anchorage, 490 P.2d 910 (Alaska 1971).

[11] In *Johansen v. State*, 491 P.2d 759 (Alaska 1971), we went beyond traditional classifications and, in essence refused to classify contempt for non-support as either totally civil or totally criminal.⁸ In *Ottom v. Zaborac, supra*, we held that the indigent defendant in a non-support contempt proceeding is constitutionally entitled to court-appointed counsel. Thus, under AS 18.85.170(5)(A), the Public Defender is empowered to represent Mr. Johnson; the agency is to act in criminal matters, and a criminal matter under that statute is one in which a person is entitled to representation either under the state or federal constitutions.

[12] The agency's primary argument is that, since the passage of the empowering statutes antedates our judicial decisions concerning right to counsel,⁹ the legislature could not possibly have intended this class of defendant to be represented by the Agency. This argument is at odds with general precepts of statutory interpretation. Legislation is most often prospective in nature and couched in terms broad enough to embrace future applications which are not and cannot be foreseen with precision at the time of enactment. Continuous, contemporaneous and practical interpretation by executive officers and the courts is a valuable aid in determining meaning, and judicial interpretation is conclusive. Legislative inaction can be evidence of intent, although it is not always a reliable guide.¹⁰ In *Alexander v. City of Anchorage, supra*, our interpretation resulted in significantly expanded authority for the Public Defender Agency. That case reasoned that since an indigent de-

8. See also *Gwynn v. Gwynn*, 530 P.2d 1311 (Alaska 1975).

9. The statutes were passed in 1969 (S.L.A. 100 SLA 1969).

10. 2A J. Sutherland, *Statutes & Statutory Construction* § 49.01-49.10 (4th Ed. 1973).

PUBLIC DEFENDER AG

defendant is entitled to represent counsel when a direct penalty of incarceration, it follows that a defense is a serious matter and "crime" within the meaning of the Defender Act. 490 P.2d at 916.

[13] Although the legislature at the time of enactment of the act, might not have foreseen the development of the area and, therefore, might not have seen this precise application of the law, there is also no indication that the legislature intended to exclude this class of defendant from representation. To so include the defendant would be violative of the violence to the rules of construction.¹¹

As we have noted above, the legislature's intent in the enactment of child support orders is in the public interest. This is a matter in which the legislature could fashion a more effective system to en-

11. Again, budgetary limitations might tend to preclude the agency from performing an adequate job on this type of case. However, until there is an appropriation for the prosecution of these cases, the increase in the agency's caseload will be minimal.

defendant is entitled to representation by counsel when a direct penalty may be incarceration, it follows that any such offense is a serious matter and a "serious crime" within the meaning of the Public Defender Act. 490 P.2d at 916.

[13] Although the legislature, at the time of enactment of the act, may not have foreseen the development of the law in this area and, therefore, might not have foreseen this precise application of the act, there is also no indication that it intended to exclude this class of defendants from representation. To so include them does no violence to the rules of statutory construction.¹¹

As we have noted above, the enforcement of child support orders is affected with the public interest. This is an area in which the legislature could fashion a new and more effective system to enforce the

11. Again, budgetary limitations may effectively preclude the agency from performing an adequate job on this type of case. However, until there is an appropriation for the prosecution of these cases, the increase in the agency's caseload will be minimal. This is

¹¹ 4 P.2d—601.

parental obligation to furnish child support. We recommend that the legislature consider the enactment of new legislation in this field. In particular, we note that, under the present scheme, the custodial parents and children are often unable to afford private counsel and are thus unable to enforce child support orders. We hope that the legislature will rectify this situation as soon as possible by providing a means of efficiently and effectively enforcing a child's right to support payments. Until such a system is created, a child's right to support will be unfairly burdened in that, unlike the non-custodial parent, the child and the custodial parent will have no guarantee that a publicly supported attorney will vindicate their rights under the child support order.

Reversed in Part and Affirmed in Part.

FTZGERALD, J., not participating.

within the area of the legislature's discretion. Nothing we have said forecloses the indigent defendant in a child non-support contempt proceeding from seeking the aid of Alaska Legal Services.

| ARREST DATA | | 1985 STATEWIDE | | | | | | | | | | | | |
|-------------|----------------------------|----------------|-----|------|-------|-------|-----------------|-----|-----------------------------|------|-------|-----|--|--------------|
| Month | Number of Licenses Revoked | | | | | Total | 30 Hard 60 Soft | | Number of Revocat. Recinded | | | | | Total Arrest |
| | 1st | 2nd | 3rd | Ref. | Limit | | 1st | 2nd | 3rd | Ref. | Total | | | |
| Nov84 | 455 | 109 | 30 | 72 | 594 | 141 | 15 | 4 | 0 | 1 | 20 | 61 | | |
| Dec | 629 | 124 | 23 | 94 | 776 | 152 | 7 | 3 | 1 | 1 | 12 | 78 | | |
| Total | 1084 | 233 | 53 | 166 | 1370 | 293 | 22 | 7 | 1 | 2 | 32 | 140 | | |

| ARREST DATA | | 1985 STATEWIDE | | | | | | | | | | | | |
|-------------|----------------------------|----------------|-----|------|-------|-------|-----------------|-----|-----------------------------|------|-------|-----|--|--------------|
| Month | Number of Licenses Revoked | | | | | Total | 30 Hard 60 Soft | | Number of Revocat. Recinded | | | | | Total Arrest |
| | 1st | 2nd | 3rd | Ref. | Limit | | 1st | 2nd | 3rd | Ref. | Total | | | |
| Jan85 | 506 | 117 | 37 | 81 | 660 | 238 | 20 | 1 | 0 | 0 | 21 | 68 | | |
| Feb | 339 | 87 | 21 | 53 | 446 | 151 | 13 | 4 | 0 | 0 | 17 | 46 | | |
| Mar | 494 | 110 | 24 | 65 | 623 | 125 | 17 | 6 | 0 | 5 | 28 | 65 | | |
| Apr | 580 | 89 | 21 | 65 | 690 | 188 | 11 | 2 | 1 | 2 | 15 | 70 | | |
| May | 419 | 112 | 20 | 78 | 555 | 111 | 12 | 3 | 3 | 1 | 19 | 57 | | |
| Jun | 439 | 110 | 31 | 59 | 590 | 121 | 24 | 7 | 2 | 4 | 37 | 61 | | |
| Jul | 390 | 97 | 21 | 31 | 503 | 143 | 8 | 2 | 1 | 1 | 12 | 52 | | |
| Aug | 336 | 121 | 43 | 73 | 550 | 109 | 8 | 3 | 1 | 0 | 12 | 56 | | |
| Sep | 384 | 92 | 40 | 58 | 516 | 111 | 11 | 6 | 0 | 2 | 19 | 58 | | |
| Oct | 388 | 91 | 36 | 53 | 515 | 101 | 12 | 2 | 0 | 2 | 16 | 53 | | |
| Nov | 298 | 94 | 28 | 60 | 418 | 93 | 5 | 4 | 0 | 1 | 10 | 42 | | |
| Dec | 343 | 121 | 40 | 72 | 504 | 56 | 3 | 1 | 0 | 1 | 5 | 50 | | |
| Total | 4963 | 1242 | 365 | 798 | 5570 | 1547 | 144 | 41 | 8 | 19 | 212 | 678 | | |

| REVOCATION DATA | | 1986 STATEWIDE | | | | | | | | | | | | |
|-----------------|----------------------------|----------------|-----|------|-------|-------|-----------------|-----|-----------------------------|------|-------|------|--|---------------|
| Month | Number of Licenses Revoked | | | | | Total | 30 Hard 60 Soft | | Number of Revocat. Recinded | | | | | Total Arrests |
| | 1st | 2nd | 3rd | Ref. | Limit | | 1st | 2nd | 3rd | Ref. | Total | | | |
| Jan86 | 353 | 116 | 42 | 65 | 516 | 113 | 10 | 2 | 0 | 1 | 13 | 529 | | |
| Feb | 292 | 105 | 46 | 49 | 443 | 114 | 5 | 3 | 3 | 3 | 13 | 456 | | |
| Mar | 171 | 90 | 27 | 55 | 233 | 93 | 3 | 0 | 0 | 0 | 3 | 291 | | |
| Apr | 255 | 73 | 30 | 65 | 353 | 95 | 2 | 1 | 1 | 1 | 5 | 363 | | |
| May | 269 | 82 | 30 | 62 | 381 | 95 | 5 | 1 | 0 | 1 | 7 | 388 | | |
| Jun | 313 | 103 | 41 | 54 | 457 | 125 | 3 | 1 | 0 | 0 | 4 | 461 | | |
| Jul | 286 | 70 | 49 | 64 | 405 | 70 | 3 | 0 | 0 | 0 | 3 | 408 | | |
| Aug | 329 | 38 | 34 | 56 | 451 | 55 | 3 | 4 | 2 | 1 | 10 | 461 | | |
| Sep | 315 | 74 | 43 | 62 | 432 | 63 | 4 | 1 | 0 | 1 | 6 | 438 | | |
| Oct | 311 | 102 | 40 | 82 | 453 | 88 | 5 | 0 | 1 | 0 | 6 | 459 | | |
| Nov | 264 | 97 | 30 | 56 | 381 | 35 | 5 | 2 | 0 | 1 | 8 | 389 | | |
| Dec | 382 | 137 | 50 | 63 | 548 | 93 | 4 | 1 | 1 | 0 | 6 | 554 | | |
| Total | 3545 | 1097 | 471 | 732 | 5113 | 1032 | 52 | 15 | 8 | 9 | 84 | 5197 | | |

210 THE LICENSES REVOKED FROM 1985
 AND LICENSES ARE REVOKED FOR 1986

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

February 19, 1987

House Judiciary
P.O. Box V
Juneau, Ak 99811

To: House Judiciary Committee
Re: HB 52, Department of Law Fiscal Note

The Fairbanks Northern Lights Chapter of MADD supports HB 52, motor vehicle confiscation as a prevention mechanism to decrease the number of alcohol-related traffic fatalities and injuries in the state of Alaska.

The State Office on Alcoholism and Drug Abuse (SOADA) 1985 statistics show that traffic fatalities are the second cause of death in the state of Alaska, half of those traffic fatalities were alcohol-related. Alaska ranks third highest nationwide for alcohol-related traffic fatalities per capita, see attached. The National Highway Traffic Safety Administration (NHTSA) estimates traffic accidents cost society - taxpayers, insurance rate payers and employers, \$40 billion each year. Costs include emergency services, public assistance programs, insurance, and legal costs. NHTSA estimates the total public cost of highway deaths and injuries translates to \$300 for every man, woman, and child in America, each and every year. Each employee fatality is estimated to cost an employer \$120,000. The cost of lifetime care for a person who sustains a serious head injury in an accident could total between \$4 million and \$9 million, according to the National Head Injury Foundation, see attached. All these costs are borne by society.

Conclusion: Alaska has a seriously high incidence of alcohol-related traffic fatalities and injuries, and that we all pay the price economically and emotionally! If we can agree that these tragedies need not occur and that measures to prevent further tragedies ^{are} cost effective, we will recognize that even if the Department of Law's fiscal note were accurate and HB52 became law, and even one individual were saved from the victimization of an impaired driver: the state of Alaska will have saved money!

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House Judiciary Committee

Re: HB 52, Department of Law Fiscal Note

page 2

According to AS 28.35.037 Remission of Forfeitures, attached, the state shall provide written notice to include:

1. Description of the vehicle
2. Time & place of forfeiture.
3. Legal authority for forfeiture.

Legal notice would need to be published in a local paper four times within 30^{days} notifying the public on the above three points.

The Fairbanks Daily News-Miner charges .74¢ a line (3 to 5 words per line) for the first issue and .68¢ a line for every issue thereafter. The three points listed above should fit into 10 lines. The total cost for the four ads required for each confiscation would then total \$28.20. Multiply that by the 400 annual forfeitures estimated by the Department of Law and your total annual cost for legal notice publication is \$11,280. rather than the \$25,000. estimated by the Department of Laws Fiscal Note!

Notification by registered mail to lien-holders and co-owners would also need to be done 30 days prior to the forfeiture^{hearing}. That information can be gotten with one phone call to the Department of Motor Vehicles.

As stated in our original Position Paper, see attached, both the record search cost at DMV and the public notification cost for newspaper ads, as well as other related costs should be backcharged to the defendant.

Fish and Game statues in Title 16 (160F 10) are streamlined to such an extent that forfeitures handled by that department are 90% to 95% paperwork complete by the time the field officer submits the charges to the District Attorney. That is as it should be.

Rather than hire a full-time Attorney III, the Department of Law should look at providing appropriate law enforcement officials with short & concise forms the arresting officer could complete at the same time he/she is completing the DWI paperwork. The DA could then process the paperwork on both charges simultaneously.

Yes, HB 52 would necessitate additional administrative support work hours to accomplish notification to lienholders and co-owners, and public

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House Judiciary Committee

Re: HB 52, Department of Law Fiscal Note

page 3

notification. Still if affidavits and motions were shortened and processed simulataneously with the original charge the request for a full-time Attorney and Typist III for an annual estimated caseload of 400 seems suspect!

The Department of Law's Fiscal Note increases to \$205,000. in 1992. We submit that the number of forfeitures will decrease annually once the population recognizes that a second DWI conviction jeopardies their automobile. Administrative support to secure vehicles would also decline.

The Department of Law also states that the Municipality of Anchorage reports that 90% to 95% of their forfeitures do not hold clear title to the vehicle being confiscated. Caveat emptor applies to the lending institution who would choose to extend a line of credit to an individual with a previous DWI conviction. In our position paper we suggested that once creditors and insurers are made aware of this law they will seek to protect themselves from financial loss by requiring that applicants with DWI records purchase lienholders insurance at the time they purchase the vehicle. Financial institutions receive pay-off from the insurers, while the insurance company may still hold the defendent liable for the original note. The burden of proof during the forfeiture hearing would fall on the insurer to convince the judge that they did not have "reasonable cause" to believe that the vehicle would be used in the commission of an offense. Not having "clear title" would not then preclude the court from forfeiting the vehicle. Bear in mind the insurers protection lies with ^{THE} Federal Bankruptcy Code which prohibits protection to debtors whose claims arise from DWI charges.

If, as suggested in our position paper, legislators wanted to pursue the protection of lienholders, insurers, co-owners, rental agencies, etc., further it could require that the reinstated licenses of DWI offenders be given a distinct color-code. It would then be difficult for petitioners to argue during forfeiture proceedings that they didn't know the vehicle might be used in the commission of an offense. An individual before loaning a car, renting a car, etc., need only ask to see the driver's license first.

M A D D

MOTHERS AGAINST DRUNK DRIVERS

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House Judiciary Committee

Re: HB 52, Department of Law Fiscal Note

page 4

While we find the Department of Law's Fiscal Note on HB 52 to be questionably high; we believe that if HB 52 were passed it would act as a deterrent to impaired driving and would save the state of Alaska money in the final analysis if only one person were saved from death or serious injury each year as a result of its enactment.

On behalf of all the Fairbanks Northern Lights Chapter of MADD members we urge your committee to pass this bill in recognition of its preventative capabilities. Money spent now will reduce the cost to Alaskans in human suffering and economic dependency.

Respectfully,



Roberta Bitters

President, Northern Lights Chapter of MADD.

Attachments:

1985 Alcohol-related Traffic Fatalities

National Head Injury Foundation

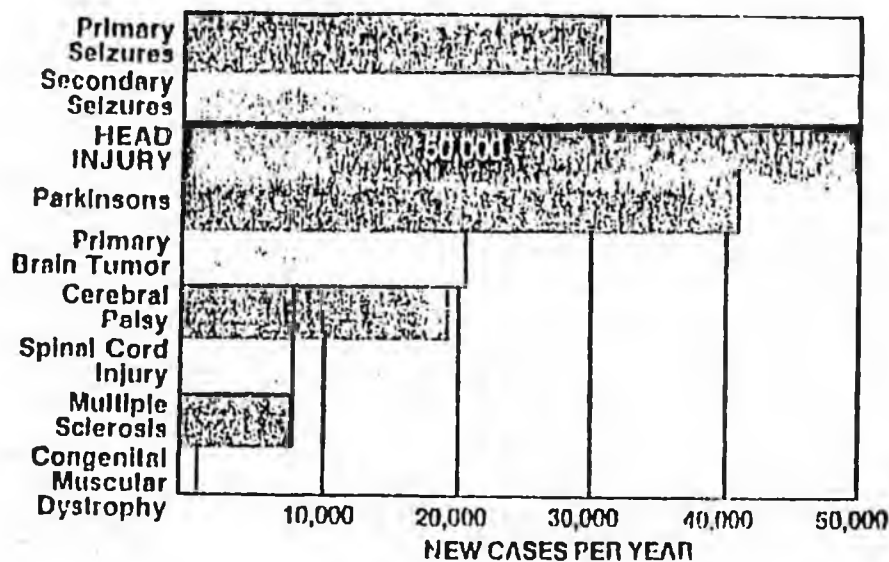
MADD Position Paper on HB 52

1985 ALCOHOL RELATED TRAFFIC FATALITIES*

| <u>State</u> | <u>Fatalities</u> | <u>Population In Millions</u> | <u>Fatalities Per Million</u> | <u>State</u> | <u>Fatalities</u> | <u>Population In Million</u> | <u>Fatalities Per Million</u> |
|---------------|-------------------|-----------------------------------|-----------------------------------|----------------|-------------------|----------------------------------|-----------------------------------|
| Alabama | 214 | 3.9 | 55 | Montana | 118 | .8 | 148 |
| Alaska | 69 | .4 | 173 | Nebraska | 91 | 1.6 | 57 |
| Arizona | 335 | 2.8 | 120 | Nevada | 112 | .8 | 140 |
| Arkansas | 324 | 2.3 | 141 | New Hampshire | 102 | .9 | 113 |
| California | 2,412 | 23.7 | 102 | New Jersey | 246 | 7.4 | 33 |
| Colorado | 242 | 2.9 | 83 | New Mexico | 293 | 1.3 | 225 |
| Connecticut | 252 | 3.1 | 81 | New York | 695 | 17.6 | 40 |
| Delaware | 73 | .6 | 122 | North Carolina | 637 | 5.9 | 108 |
| Florida | 1,294 | 9.7 | 133 | North Dakota | 50 | .7 | 71 |
| Georgia | 700 | 5.4 | 130 | Ohio | 746 | 10.8 | 69 |
| Hawaii | 77 | 1.0 | 77 | Oklahoma | 279 | 3.0 | 93 |
| Idaho | 118 | .9 | 131 | Oregon | 285 | 2.6 | 110 |
| Illinois | 554 | 11.4 | 49 | Pennsylvania | 767 | 11.9 | 64 |
| Indiana | 232 | 5.5 | 42 | Rhode Island | 50 | .9 | 56 |
| Iowa | 234 | 2.9 | 81 | South Carolina | 385 | 3.1 | 124 |
| Kansas | 152 | 2.4 | 63 | South Dakota | 69 | .7 | 99 |
| Kentucky | 168 | 3.6 | 47 | Tennessee | 318 | 4.6 | 69 |
| Louisiana | 401 | 4.2 | 95 | Texas | 989 | 14.2 | 70 |
| Maine | 56 | 1.1 | 51 | Utah | 110 | 1.5 | 73 |
| Maryland | 741 | 4.2 | 176 | Vermont | 41 | .5 | 82 |
| Massachusetts | 222 | 5.8 | 38 | Virginia | 479 | 5.3 | 90 |
| Michigan | 719 | 9.3 | 77 | Washington | 326 | 4.1 | 80 |
| Minnesota | 261 | 4.1 | 64 | West Virginia | 257 | 2.0 | 129 |
| Mississippi | 300 | 2.5 | 120 | Wisconsin | 187 | 4.7 | 40 |
| Missouri | 486 | 4.9 | 99 | Wyoming | 70 | .5 | 140 |

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

ESTIMATED YEARLY INCIDENCE OF PERSONS LEFT WITH DISABILITY AFTER HEAD INJURY COMPARED TO OTHER IMPORTANT NEUROLOGIC DISEASES



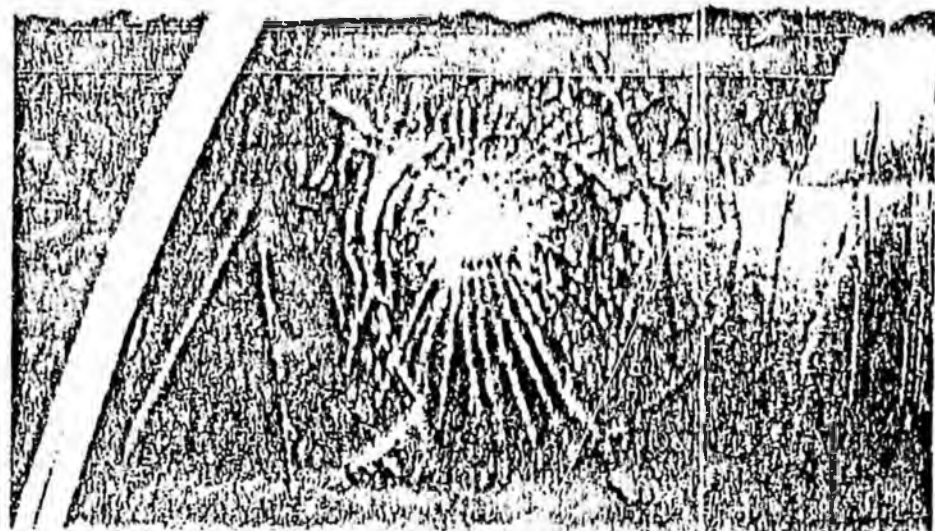
Cerebrovascular disease is the commonest neurological dysfunction accounting for 450,000 cases yearly.

Compared to other neurological diseases the incidence of head injuries is much greater.

TRAUMA IS THE LEADING CAUSE OF DEATH IN THE UNITED STATES FOR PERSONS UNDER THE AGE OF 34, ACCORDING TO THE SURGEON GENERAL'S REPORT, HEALTH UNITED STATES, 1980.

The number of deaths each year, resulting from trauma of the head is estimated at over 100,000. The estimated prevalence of head injuries in the U.S. is 1,000,000 - 1,800,000.

Even more staggering is the fact that 50,000 people a year who survive with a serious head injury, are left with intellectual impairment of such a degree as to preclude their return to a normal life. These figures clearly reflect a problem of epidemic proportions.



50,000 people a year are permanently disabled! Most people who sustain head injury are under the age of 30, and most are injured as the result of tragic motor vehicle or sports accidents. Accidents that physically disable and intellectually impair for a lifetime

Until the establishment of NHIF in 1980, no single existing federal, state, or private agency concerned itself exclusively with the unique problems faced by the head injured and their families. Until NHIF, this "lost population" was silently and shamefully closeted away, and inappropriately placed in psychiatric institutions, schools for the retarded, or nursing homes.

Today, the National Head Injury Foundation proudly serves as the only advocacy organization working to improve the quality of life for those persons confronted by "The Silent Epidemic".

The NHIF and its State Associations are a membership organization composed of those families, friends, medical, and social service professionals concerned with the physical and emotional well-being of the head injured.

The NHIF is a non-profit agency supported by membership dues, fund raising events, contributions and grants.

Dedicated to the restoration and maintenance of the dignity of life for the victims of this "Silent Epidemic", the National Head Injury Foundation looks to our friends in public and private business and industry to help us in our cause.

For information on the NHIF and your State Association, write or call:

National Head Injury Foundation, Inc.
 18A Vernon Street
 Framingham, Massachusetts 01701
 (617) 870-7477

Chapter 77

forfeited under this section may be disposed of at the discretion of the department. *(if sold at auction I get in to)*

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes:

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

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that:

- (1) the petitioner has an interest in the motor vehicle acquired in good faith;
- (2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and
- (3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without

M A D D

MOTHERS AGAINST DRUNK DRIVERS
Fairbanks Northern Lights Chapter
P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

February 20, 1987

MEMO TO: Niilo Koponen

FROM : Barbara Gaston, Chairman Legislative Affairs Committee

As I read over the testimony given by this Judiciary Committee regarding HB-52, requesting confiscation of vehicles on the SECOND offense, several matters jumped out at me, and I feel they need addressed.

One was, "What was the point in forfeiture, as third time offenders cannot legally drive for ten years anyway?" The other, was, "Who are we really hurting?" An additional issue, was cost.

Although, over the past 10 years, the Alaska Legislative Body has passed some of the most stringent drunk driving laws in the nation, we have still not gotten and held the "drunk driver's" attention.

There are still too many "outs" for them in our laws, and even taking their drivers licenses has not stopped them from continuing to drive. They simply drive with a suspended, revoked or cancelled drivers license. To take a license is not enough.

Since the enactment of legislation three years ago, granting the courts permission to confiscate vehicles on the THIRD offense, the number of vehicles seized in the State of Alaska has been less than five. The number of second and third time offenders arrested has more than doubled. Taking the license, and even the threat of serving jail time, has not seemed to phase our multiple offenders. Part of this reason, of course, is how these matters are handled in the court system. The majority are still getting off with a slap of the wrist,

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and only the presumptive and mandatory sentences are being given by the courts.

Do you think for one minute that if we did not have strong game laws wherein forfeiture of the vehicles and firearms used in commission of the offense were mandated, that we would not have thousands of game violaticns? We do not give game violators "outs", why should drunk drivers and their families be any different? Just how many chances do we need to give them to kill or injure?

The truth is our American Society has to wake up to the reality that drunk driving is serious, and the law has to have teeth in it in order to save lives and the public has to be made more aware that too many people are being killed and injured on our highways. We must get and keep their attention. Drunk drivers need to learn never to make the same mistake again. All of society needs to learn not to drink and drive, or to drive under the influence of any drugs.

The slapping of the wrist that goes on in our court system, is not going to bring this about. There have been two cases in the entire state of individuals being charged with second degree murder in connection with alcohol related traffic fatalities; yet the rest are getting off with criminally negligent homicide; manslaughter or even less -- making examples of two individuals will do nothing to get or keep the drunk drivers attention, neither will the taking of less than five vehicles in three years. It must be consistent, and "yes" in the beginning, we may well have to confiscate 300 - 400 vehicles each year; but don't you suppose that will get people to stop and think? It would certainly get my attention.

3.

We must state, we are... inclined to agree with Jim Vaden, in that the remission portion of this bill should be revised to make it as tough as possible (every bit as tough as the game laws) to get the vehicle back. Part of the problem in making stiffer laws, is that we have always given these people an "out".

Not wanting to seem calloused, but when we in MADD originally gave consideration to having this bill put before you, we gave a lot of thought, to who would we really be hurting?"

We came to the conclusion, that the families of the habitual offender, already are hurt by this individual's alcohol and/or drug abuse.. Why should some innocent victim's family be made to suffer as well. Why not force them as a family to met and deal with their ~~particular~~ problem first hand?

There are many programs where they can reach out and get help, if it is identified that they need help, many of those are state supported programs....these same programs are not available to the victims. There is even talk of cutting the victim compensation fund.

Yes, there will undoubtedly be some families forced to use public transportation, because that family car was seized, yes, it will be an inconvenience - but think of the cost to the innocent victims family. / ^{to society as a whole.} These people have a choice - they do not have to drink and drive, and no matter how hard it will be, that family can reach out for help. More often than not, the victims of drunk drivers, have no choice in the matter.

4. We should make it as difficult as possible for that vehicle NOT to be returned. Please do not continue to give them an "out". If it works no hardship on the offenders, it will serve no purpose, but to be another unenforcable piece of legislation, abused by the discretion of the courts. We must have a bill with "teeth" in it. We can no longer afford to "baby" the offenders - members of their families can be killed or injured just as easily as other innocent members of society transversing on our highways.

Are we going to be hurting their families or helping them? The real test will be TIME.

There is no question, that substantial cost will be involved in the beginning. However, I see no reason why there would need to be a special hearing - why couldn't this issue be addressed at the initial arraignment? Thereby, eliminating that cost almost entirely.

I believe a portion of the other cost would be there anyhow, should these 300 - 400 repeat offenders kill or injure themselves, their families, or most often some innocent victim's family.

What is the price of taking vehicles and having them sold at public auctions that the state already holds to get rid of its excess equipment versus, the cost of having these same people come through the courts anywhere from two - seven or more times? You have pre-trial motions, omnibus hearings, pre-trial hearings, plea negotiation conferences; trial and appeals, and if convicted, the cost of imprisonment.

(2)

5.

Is there a need for HB-52? In view of all the concerns addressed, all the arguments, the undeniable answer is YES! We must have a bill mandating the courts to take the vehicle on the SECOND OFFENSE, we must have a bill with "teeth" in it. We must continue to do everything in our power to continue to get and hold the drunk drivers attention, and to stop as much of the killing and injuring of our citizens as possible.

We must keep up the pressure for reform, and the ultimate goal will be achieved -- reducing drunk driving deaths and injuries down to a bare minimum .

(5)

465-4322

August 20, 1986

The Honorable George P. Kiester
Senior Judge
Fiftieth Judicial
District of Pennsylvania
Butler, PA 16001

Dear Judge Kiester:

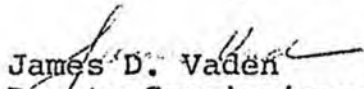
Thank you for your response to my correspondence.

I sat on a Governor's Task Force on drunk driving last year. If my recollection serves me correctly, all members of the Task Force who were with criminal justice agencies supported your concept.

We were woefully outvoted, and this change in legislation did not even get listed as one of the lesser priorities.

We will, however, continue to support vehicle forfeiture legislation.

Sincerely,


James D. Vaden
Deputy Commissioner

cc: Sandra J. Borbridge
Special Staff Assistant
Office of the Governor

xc w/attachments: The Honorable Niilo Koponen ✓
Alaska State Legislature

2/10/87 - jlm

T.M. Lewis

JUDGE'S CHAMBERS
FIFTIETH JUDICIAL DISTRICT OF PENNSYLVANIA
BUTLER, PENNSYLVANIA

GEORGE P. KIESTER
Senior Judge

August 14, 1986

James D. Vaden
Deputy Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Re: Forfeiture of a motor vehicle operated
in violation of a DUI law

Dear Mr. Vaden,

Your response of August 7 to my letter of July 21 addressed to Governor Sheffield is acknowledged. I am not surprised by the "non-use" of Alaska's vehicle forfeiture law. An effective law must provide for the elimination of all interests in the vehicle unless the vehicle was stolen. The responsibility must be placed on parents, lessors, employers, lenders and all those with an interest in the vehicle that no-one operates it while intoxicated. The "Remission of forfeitures" provision renders the Alaska law impractical and ineffective. That is my opinion.

If there have been any studies/reports made of the Alaska law I would welcome a reference to the same. Until proven wrong I will continue to believe that the forfeiture I espouse would substantially end the DUI offense.

I enclose copies of several "papers" I have prepared on the DUI subject. Also enclosed is an editorial published August 10, 1986 in the Pittsburgh Press.

Pennsylvania adopted "tough" laws with mandatory sentences. They have aggravated serious congestion problems in the judicial and prison systems. There is no evidence that there has been any reduction in highway deaths and destruction that can be credited to the tough laws.

COMMUNICATIONS SECTION
COMMISSIONER'S OFFICE
JUNEAU, ALASKA

AUG 19 1986

Sincerely,
George P. Kiester
George P. Kiester
Senior Judge

GPK/ram

Page 2

cc: Ms. Sandra Borbridge

Enclosures:

1. MADD Luncheon - April 15, 1982
2. A Practical Way to End a Non-Crime Problem - June 3, 1982
3. Some Objections to Imprisonment and A Practical Alternative
August 10, 1982
4. An Alternative To Costly And Ineffective DUI Laws
July 27, 1983
5. Letter "To The Editor" - July 10, 1984
6. "Crack buyers lose wheels" - Pittsburgh Press, August 10, 1984

YOU COULD SAVE YOUR LIFE

BY HELPING TO

PREVENT DRUNK DRIVING

MADD LUNCHEON

April 15, 1982

57th Annual Safety Conference
Expo Center
Monroeville, PA

George P. Kiester
Senior Judge
Butler County

At this 57th. Annual Conference sponsored by the Western Pennsylvania Safety Council and American Society of Safety Engineers, the subject of the panel discussion is "The Effect of the Drunken Driver on Society." - I have been assigned to address the legal point of view.

The effect of the drunken driver on society is devastating. Since the year 1900 a total of 426,105 Americans have died in battle. During the past 20 years alone approximately one million Americans have been killed on public highways. At least 1/2 of those deaths involved a drinking driver. We are killing Americans on the highways at the rate of 8^{1/2} times faster than our enemies killed Americans in two World Wars plus the Korean and Viet Nam conflicts. People hate war and support efforts to avoid war. On the other hand Americans depend on the motor vehicle to transport goods and people. They love the automobile and the highways. There is no effective, organized campaign to end death and destruction on the highways. One of the reasons is that no acceptable solution to the driving under the influence (DUI) problem has been proposed.

DUI is a misdemeanor of the third degree under the Pa Vehicle Code, effective July 1, 1977. There is a mandatory, auto-

matic 12 month license suspension. The maximum sentence is imprisonment for not more than one year and a fine of \$2500.00. The license suspension is a severe penalty for most. If it was not for the ARD program, an overloaded judicial system would experience a substantial increase in DUI trials.

A repeat offender may receive up to a maximum fine and prison sentence by some judges. The alcoholic may be sent to a rehabilitation center. There is no evidence that the application of the most severe penalty as a matter of policy by a court has been a deterrent to others.

In recent years the practice has been to process the first offender through the ARD program. The defendant is placed on probation and ordered to attend a drug and alcohol school. In large measure the cost of the program is borne by the offender. This program was initiated to relieve congestion in the courts but quickly became a rehabilitative device.

Considering the huge volume of DUI offenders that are processed through the system it is my guess that a relatively small percentage become repeaters. In my opinion the drug and alcohol schools, the rehabilitation programs and the probation services do an excellent job in educating and treating the individual offender. I believe that the programs have a high rate of success on an individual basis. On the other hand, I doubt that the many programs, the penalties mandated by statute, the sentences imposed by judges have been markedly successful in keeping a sig-

nificant number of persons from drinking while driving. One reason is that comparatively few DUI offenders are ever apprehended.

If I were confident that a mandatory jail sentence and/or fine would substantially reduce drunk driving, I would support such legislation.

It is my opinion that the principal result of such legislation would be the building and maintaining of prison cells for the 90%, more or less, of first offenders. These are persons who would never repeat the offense under the existing law.

I am not convinced that a mandated sentence of fine and imprisonment will deter those who should be deterred. This includes ones who drive regardless of license suspension, the juvenile and the many who are not arrested and who continue to believe that their ability to drive is unaffected by drugs and alcohol.

There may be three effective ways to prevent drunk driving:

- (1) Prohibition
- (2) Road blocks with drug & alcohol tests.
- (3) Vehicle confiscation.

The first is impractical. The second is cost prohibitive and of questionable legality. Vehicle confiscation might work and should not add to the tax burden.

The confiscation of the vehicle would end the problem authorities have with those who drive w/o a license. They would have no vehicle to drive, and no sensible person would loan his vehicle to the violator. A confiscation law would ground most of these violators who are a continuing problem to police and courts.

By confiscating the vehicle every violator, rich or poor, employed or unemployed, juvenile or adult, would be treated alike. In addition, the owner of the vehicle, the security interest and the insurer would forfeit the vehicle and any interest therein to the state upon conviction of the driver for DUI.

The law would be based on the fact that an automobile like a gun becomes a dangerous weapon and should be contraband when used in violation of the criminal laws of the state. Unless it has been stolen, the vehicle would be confiscated by the state when operated by a drunken driver. The owner, whether employer, lessor, a family member or friend as well as the security interest and insurer would assume the risk that the vehicle might be used in an unlawful manner. The fact that a motor vehicle is much more dangerous to human life and property than a gun should make confiscation for unlawful use an acceptable principle of law.

It is the involvement of one or several financial or property interests in the vehicle that could supply the pressure to make confiscation a successful deterrent to DUI. Both the driver and the owner would be constantly reminded of the penalty.

The publicity attendant to regular public sales of confiscated vehicles can only be a constant warning to everyone of the risk of driving while under the influence.

I recommend that the only change in DUI legislation be one mandating the confiscation of the vehicle in all convictions for DUI combined with the elimination of the penalty of license

suspension for the driver of the vehicle that is confiscated. License suspension is a harsh penalty for those who generally obey the law. If the legality of confiscation including the divestiture of all interests in the vehicle is upheld, then license suspension becomes an unnecessary penalty. I believe that our objective must be deterrence and prevention - - - not punishment.

A key to the success of vehicle confiscation as a deterrent probably requires that a person charged with DUI become ineligible for ARD unless the vehicle is first confiscated. This condition could be made by statute or rule.

If mandated imprisonment were the deterrent of choice, ARD for the DUI offender would have to be abandoned. Otherwise, the threat of imprisonment would have minimal impact on the statistics.

Responsible citizens must recognize that if there is failure to significantly reduce highway death and destruction through measures such as herein proposed, eventually much more stringent and less acceptable laws affecting all drivers must be enacted.

Industry, business, unions, safety and public service organizations should be encouraged to support constructive and effective DUI proposals. The liquor industry should be the leader in the common cause to save lives and property. The intoxicants it sells creates most of the problem for society.

A PRACTICAL WAY TO END

A NON-CRIME PROBLEM
(Intoxicated Driving)

Before

Liquor Control Committee
House of Representatives
Stanford I "Bud" Lehr, Chairman

Hearing:

Sheraton Inn
Greensburg, Pennsylvania
June 3, 1982
11:15 A.M.

Presented by

George P. Kiester, Senior Judge
50th Judicial District
Butler County

The motor vehicle is a dangerous machine. It is killing Americans on the highways at a rate of eight times faster than enemies killed Americans in two World Wars plus the Korean and Viet Nam conflicts. The motor vehicle is the highest cause of death among teenagers. They are responsible for approximately 25% of the alcohol related deaths on the highways. A civilized society can and should take the action necessary to stop this senseless destruction of life and property.

When operated by a negligent, careless, reckless, incompetent or intoxicated driver the motorized vehicle becomes a lethal weapon. The elimination of the intoxicated driver from the highways could reduce the toll of death and destruction by 50%. An intoxicated driver is easily identified but only one out of 2,000 such offenders are arrested and prosecuted. Undoubtedly this is the reason that penalties of imprisonment, fine and license suspension have had little or no impact as a deterrent. It is questionable that mandating more severe penalties of the same kind will have greater impact on the 99.9% of intoxicated drivers that will not be apprehended. Harsh punishment for driving under the influence cannot be justified unless it succeeds in deterring others from committing the same offense. Whatever new deterrent is enacted into law it will require only a few months to a year to measure its effectiveness. The statistics will prove or disprove the value of a particular punishment as a deterrent.

One result of more severe penalties for driving under the influence than are now imposed is likely to be an increase in jury trials and possibly more not guilty verdicts. In driving under the influence cases the attitude of many jurors is often that "There but for the grace of God might be me."

Another result of stiffer mandated penalties such as imprisonment could be fewer arrests. Fewer arrests as well as not guilty verdicts if this occurred would be counter-productive.

For the person who is required to drive a vehicle in his employment the suspension of operating privileges is a very severe penalty. Probably the General Assembly reduced the period of suspension from one year to six months because of the economic impact on the offender. There was also the lack of solid evidence that either a twelve month or a six month period of license suspension deterred people from drinking and driving.

A realistic program to persuade persons indulging in drugs or alcohol not to drive should be fair, certain and very different as to punishment from existing laws as well as the current proposals for change.

Drinking is not a crime. Many do not consider the illegal use of drugs as a crime. The approach to the problem of driving under the influence should recognize these facts.

I submit that the changes in the law that I propose meet the stated criteria. For reasons I will explain the result of the proposed changes in the law should be a substantial reduction in highway fatalities, injuries and property damages. The test would be in the statistics that followed the enactment into law of the proposed changes.

CONFISCATION OF THE VEHICLE

It must be recognized by the public and their representatives that a motor vehicle when operated by an intoxicated driver is transformed from a dangerous machine into a lethal weapon. (Statistics should be sufficient to prove this basic proposition). The machine should be confiscated by law like any other weapon that is used to violate the law. This would be fair, uniform and the most reasonable of all penalties for driving under the influence because every offender would receive the identical minimum punishment.

Declaring the vehicle contraband would be a new and radical change from punishment that has been imposed in the past. It is very different from the type of penalties that are being proposed in Pennsylvania and other states.

I believe that it is reasonable to assume that very few of the 99.9% of the offenders who take a chance and drive while intoxicated would continue to do so and risk the loss of a prized possession. However, I would not rely on the validity of this assumption.

OTHER PROPOSED REVISIONS OF THE LAW

Mandated confiscation of the vehicle to be fully effective as a deterrent must be joined with a number of other important changes in existing law. I will mention several of them:

FIRST: A person arrested for the first time on a charge of drugged or drunk driving should be declared by legislative enactment ineligible for A.R.D. until the vehicle has been forfeited. The advantages to the defendant who accepts this punishment without trial are (a) an avoidance of trial expense, (b) the defendant would not risk the loss of operating privileges if found guilty and the imposition of other penalties such as mandatory imprisonment should the law so provide.

SECOND: A.R.D. for a driving under the influence arrest would be available once to a defendant. A repeat offender would be ineligible for A.R.D.

THIRD: The practice in some districts of reducing driving under the influence charges to public drunkenness would be prohibited without prior written approval of the District Attorney. The District Attorney would be required to state on the record the legal or factual reason for a reduced charge.

FOURTH: Confiscation of the vehicle would be mandatory and excluded from the plea bargaining process.

FIFTH: Driving under the influence would be reduced from a criminal to a summary offense. Other than declaring the vehicle contraband, the current penalties could remain unchanged or even made more severe.

SIXTH: The juvenile offender would be subjected to the same punishment as the adult, imprisonment only excepted.

SEVENTH: Sophisticated on the spot drug and alcohol testing devices should be legalized and made available to state and local police authorities with appropriate penalties mandated for refusal by the accused to take the test.

Training programs should be offered to aid officers in identifying and describing the drugged and drunken conditions of those who refuse the breatholizer, blood or other test.

REASONS THAT VEHICLE CONFISCATION AND
OTHER CHANGES WILL SUBSTANTIALLY END
INTOXICATED DRIVING

The success of the confiscation plan combined with other changes would be attributable to a number of factors:

(a) Juveniles who are responsible for a large percentage of traffic deaths attributable to alcohol are included. Their punishment would be comparable to that of adults. It is the only proposal to attack the serious problem of punishing the juvenile offender. The parents and the juvenile could be expected to avoid risking a loss of the vehicle.

(b) Police would be vigilant in a strict enforcement of the law.

Initially the program should generate considerable revenue for municipalities. The net proceeds of vehicle sales would be paid to the municipality of the place of the offense. An illustration of what could happen is Butler County. In 1981 there were 612 arrests for driving under the influence. Assuming an average vehicle value of \$2,000 and that there were 500 successful prosecutions, the gross revenue would total \$1,000,000. Few police would jeopardize their jobs on behalf of a friend, out of sympathy for an offender or for any other reason.

NOTE: Upon seizure as contraband the vehicle would be stored unless cash or an approved security bond covering the value of the vehicle was posted with the district magistrate. The bond would be forfeited if the defendant was convicted. If the vehicle had been damaged in an accident connected with the offense, the accused would assign or be required to arrange for the assignment of the proceeds of the insurance policy. Otherwise, upon conviction the operator would become liable to the municipality for the value of the vehicle based on its condition prior to the occurrence of the damage.

(c) A legal duty would be placed on all those having an investment in the vehicle to insure that it is not used to break the law. This would include the owner whether a parent, friend or employer, The security interest could be expected to investigate the borrower and family users as to drinking habits. Pledges would be obtained that the owner-borrower would neither drive the encumbered vehicle while drinking nor permit any other person to do the same.

(d) Business and industry including distillers, bankers and insurers would be encouraged to embark on a permanent campaign to keep motorists off the highway when drinking.

(e) The Sheriff of each county would conduct at least monthly sales of confiscated vehicles. The sales would be advertised. The law would require the advertisement to contain

- (1) an identification of the owner
- (2) a description of the vehicle
- (3) the condition of the vehicle and the range of blue book values
- (4) an evaluation by a qualified appraiser

NOTE: Sheriff sales combined with the publicity attendant upon the seizure of each vehicle would be a constant reminder of the cost of driving under the influence. Furthermore, it could be expected that the media would report each driving under the influence case before a district magistrate as well as the disposition before a judge on any appeal.

OTHER INCIDENTAL BENEFITS TO
SOCIETY, TAXPAYERS & MOTORISTS

An effective driving under the influence deterrent could result in a reduction in crime. A substantial volume of crime is committed by persons high on drugs or alcohol traveling by motor vehicle at night.

The benefit to the taxpayers of the confiscation plan could be considerable. New jail cells would not be required. If driving under the influence violations are ended, police could be released from highway patrol to neglected criminal investigations.

The elimination of license suspension as a mandated penalty would constitute an economic boon to some families and society could benefit from a reduced demand on welfare.

The savings to insurance companies from a substantial reduction in deaths, injuries and property damages arising from alcohol related accidents would be considerable. Much of the savings should benefit the policy holder. The prospect of such savings should encourage the insurance industry to support an effective driving under the influence deterrent.

RECOMMENDATION

If the Liquor Control Committee concludes that there is merit in the confiscation proposal, the bill to carry out its objectives should be carefully prepared. Drafting of the bill should be assigned to experienced and skilled personnell who are in complete accord with the bill's objectives. Possibly a task force comprised of members of the legal profession, law schools, banking, insurance, social, civic as well as others might be formed for purposes of consultation and advice.

Few laws are enacted that are perfect. A confiscation law of this nature may be the first of its kind but it could mean life or death to many people.

If confiscation of the vehicle operated by the driving under the influence offender becomes law and is effective, it is predictable that the law in Penusylvania will become a model for every state.

CONCLUSION

The intoxicated person is not considered either by himself or by society as a criminal. Only the law that legalizes the use of alcohol classifies the intoxicated driver as a criminal. Punishment that confiscates the vehicle may more nearly fit the offense than imprisonment of the offender with common criminals.

PUBLIC HEARING

on D U I : S B 1548 P N 2080
H B 2533 P N 3403

Joint Senate / House Judicial Committee
Commonwealth of Pennsylvania

SOME OBJECTIONS TO IMPRISONMENT

AND A PRACTICAL ALTERNATIVE

George P. Kiester
Senior Judge
Butler County

9:30 A. M.
August 10, 1982
House Annex Hearing Room
Harrisburg, Pa.

H B 2533 (p.n. 3403) and S B 1548 (p.n. 2080) (driving under the influence) contain several provisions which deserve strong public support. I refer to the law enforcement provisions. They are excellent and will aid the authorities in the enforcement of the law.

I question the severe punishment rationale of mandatory imprisonment for a DUI violator other than the penalty relating to vehicular homicide. There are several reasons for my position:

1. A person convicted of DUI is not considered by society as a criminal. It is unnecessary for the law to treat a DUI violator as a criminal.
2. In my opinion mandatory imprisonment in these cases if enacted into law will probably save few lives and possibly none. Such a law may cause more problems than it solves. Time does not permit a discussion of all the problems.

The odds against arrest are 2000 to 1 according to statistics published by the National Highway Safety Administration. Mandatory imprisonment may not substantially change these statistics. Driving is an adventure. It gives most a sense of power and confidence which is frequently abused even by the sober driver. The fact is that the drinking driver seldom realizes that he has handicapped himself and that he may be violating the law.

Under the proposed law there would be some social drinkers

who would understandingly and intelligently take the small risk of being caught and placed on ARD.

It must be recognized that it is the social drinker, youth, the first offender as well as the DUI repeater and alcoholic who cause death and destruction on the highway. To these persons the remote threat of imprisonment may be little if any deterrent.

The objective of these bills is to deter DUI. I doubt that the deterrent effect will even be measurable if mandated imprisonment is enacted. I hope my prediction is wrong.

3. Juveniles cause a relatively high percentage of death and destruction on the highways. The bills before the Judiciary Committee fail to address this serious problem. This past week a U.S. Justice Department report stated that 40% of the serious crime is committed by juveniles, those under 18. With children involved in drugs and alcohol at 8 or 9 years of age and the involvement of children in serious crime, the proposed changes in DUI law fails to address the problem.

4. County jails and state prisons are over-crowded. Prison population grew at a record rate in 1981. There is no space in them for DUI offenders when there is a better alternative. With mandatory imprisonment for the DUI violator more cells would have to be provided by the state and most counties.

Death and destruction caused on the highways by the drunken/drugged driver must be stopped. This can be done. There is a plan that I believe is practical and one that would substantially accomplish that which we all seek. By adopting the plan it would be possible for Pennsylvania to lead the nation in reducing DUI statistics. Mandatory imprisonment will be no more successful in reducing DUI statistics than similar laws in other states.

Simply stated the plan is to confiscate the vehicle operated by the DUI violator whether it be his first, second, third or fourth offense. There are several sound reasons that confiscation of the vehicle would be the most effective DUI deterrent.

First. Although the odds would remain at 2000 to 1 against arrest, I am convinced that few youngsters, social drinkers, alcoholics or other prospective offenders would take the chance of losing the automobile by drinking and driving. I submit that there are few persons who will wager \$500.00 to \$10,000.00 (the value of a prized automobile) that they can drink and drive and not get caught. Most DUI violators are responsible citizens. With a confiscation law on the statute books, they would take care to avoid drinking and driving. For the public and the offender justice is better served by confiscating the vehicle rather than imposing imprisonment.

Second. In avoiding the risk of confiscation the prospective offender will be supported and encouraged by family, friends, the tavern keeper, the finance company and the insurance company. A

threat of the loss of the automobile would affect the offenders and others much more than a license suspension or a weekend or thirty days in prison.

Third. The Sheriff would constantly remind the prospective offender of the penalty and the risk by the monthly public sales of confiscated vehicles. Based on 1981 arrests there could be 612 public sales of vehicles in Butler County.

Fourth. The prospective offender will learn that police authorities are extra vigilant in enforcing the law. Under a confiscation law prosecutions would probably increase for a period of time. The income to a municipality could be considerable. Should arrests continue at the 1981 rate, municipalities in Butler County could receive more than a million dollars in contraband income. No officer would overlook a violation. It could mean his job.

Fifth. Of the greatest importance to society is the fact that a confiscation law would punish the juvenile offender. The juvenile cannot be imprisoned. The juvenile would not be deterred by the proposed law. Certainly a juvenile would not risk losing his own automobile, nor would the family risk a juvenile member drinking and driving the family vehicle.

Sixth. Many of the youths who speed through the countryside and the city streets at night indulging in drugs and alcohol while driving would be off the highways. There would be fewer accidents as well as less vandalism and crime.

Seventh. A confiscation law will keep non-criminals out of prison.

Jail cells will not be necessary to house the DUI offender. Compared to a mandatory imprisonment statute a confiscation law will save a considerable amount of tax dollars.

Eighth. Compared to mandatory imprisonment a confiscation law would not increase and might even decrease the case load of the judicial system.

DUI would be a summary violation.

Under a confiscation law neither the police authorities nor the judicial system would be burdened with an increasing volume of suspensions and revocation violations. The DUI offender, or at least most DUI offenders, would have no vehicle to drive.

Conclusion

In my opinion death and destruction on the highways caused by DUI may be nearly totally eliminated through the enactment of a confiscation statute. Confiscation is one law that would benefit everyone including the prospective offender at no cost to the taxpayer. Since there is no cost it is worth a trial. Within a few months statistics would prove its success or failure.

AN ALTERNATIVE TO
COSTLY AND INEFFECTIVE

DUI LAWS

George P. Kiester
Senior Judge

July 27, 1983

States have been enacting tough laws on intoxicated driving. One of the reasons is to be eligible for a share of the federal highway safety funds. Another reason is the demand by members of MADD and other such organizations that the death and destruction on the highways caused by the intoxicated driver be ended.

The principal result of mandatory jail sentences is predictably an increase in the number of jury trials and the need for more jail cells.

Studies show that harsh penalties may temporarily reduce drug/alcohol related accidents by ten to fifteen percent. They have no permanent deterrent effect. Such a small reduction should be unacceptable to all responsible citizens.

What is a reasonable solution to a problem that is a threat to every person using the public highways? Road blocks would be the most effective DUI deterrent. This kind of enforcement would be expensive, subject to abuse and constitutionally suspect.

The motor vehicle is a dangerous machine. It becomes a lethal weapon when operated by an intoxicated person. If so operated there is no good reason that it should not be confiscated.

The threat of confiscation may be the only effective and practical deterrent to intoxicated driving. Few persons will risk losing what for most is a highly prized possession. Persons with an interest in the

vehicle would become involved in insuring that no intoxicated person operated the vehicle. These would include the owner, lessor, employer, lien-holder and family. The vehicle used in a DUI violation would be declared contraband in an in rem proceeding. The sole exception would be a stolen vehicle.

The juvenile offender not subject to the penalties of the tough laws would be a loser for the first time. Without a vehicle there would be few repeaters, either juvenile or adult. License suspensions are largely ignored and are practically unenforceable. Confiscation would either keep the violator off the highway or deter that person from risking the loss of another vehicle by operating it during a period of DUI suspension.

Constituting DUI a summary offense, eliminating jury trials and prison for most offenders would benefit society. The problem of congested courts and over-populated prisons would be alleviated.

There would be strict local enforcement of a confiscation law. Based on the current arrest rate substantial income would be generated for municipalities.

Highway accidents related to drug and alcohol use can be eliminated. The threat of vehicle confiscation could be the much needed deterrent. Doesn't it make sense? Many prosecutors and judges believe it does.



Judge's Chambers
Fiftieth Judicial District of Pennsylvania
Butler, Pennsylvania

GEORGE P. KIESTER
Senior JUDGE

July 10, 1984

TO THE EDITOR:

The wars in which America has engaged do not begin to equal in death, injuries and destruction that which is caused by drunk drivers. The automobile operated by the drunk driver is the most dangerous and deadly force in America.

No legislation would benefit more people in greater measure than laws that would end drunk driving. Highways would be safer and automobile insurance premiums could be substantially reduced.

It should now be evident that mandatory imprisonment, license suspension and heavy fines cause congestion in both the courts and prison system with little or no effect on highway accident statistics.

Political leaders and legislators who support a national drinking age and other DUI penalties such as imprisonment have been engaged in what has been aptly described as "societal politics". Anti-drunk driving laws are popular with the press and the public. But the remedies thus far adopted are like placebos that neither cure nor aggravate the illness. They are largely ineffective.

There is a reasonable solution. Pennsylvania and other states should make drunk driving a summary offense. The offending vehicle would be impounded and confiscated by the state in an in rem proceeding. It is unlikely that anyone with an interest in a vehicle would permit it to be operated by a drunk driver. This includes parents, lessors, employers and others.

In the public interest members of MADD, RID and similar organizations should re-examine their positions. They should realize that it does little good and much harm to congest our courts and fill prisons with drunk drivers. On the other hand vehicle confiscation is a needed, practical deterrent to one of America's most serious problems.

George P. Kiester
Senior Judge
Court House
Butler, PA 16001

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OPINION

'Crack' buyers lose wheels

Local and federal law enforcement officials in New York City have come up with a new wrinkle in the battle against "crack," the potent cocaine derivative.

They began confiscating cars driven by persons coming into town to buy the illegal drug.

A 16-year-old federal law allows the confiscation of property used in drug transactions. Heretofore, the measure has been used mostly against drug dealers. But officials decided to start using it against buyers as well.

During a four-day period, 30 cars were taken in Manhattan, mostly from young persons living in middle-class suburban communities. Police Commissioner Benjamin Ward issued a warning:

"If you come to New York to buy crack, bring carfare and be prepared to take the bus back."

Other areas would do well to follow New York City's lead. If a person stands to lose his wheels, he might think twice about running out to buy a dangerous drug for a momentary high.

State aims 3 bills at repeat drunk drivers

By Jean Davidson

Illinois Secretary of State Jim Edgar will introduce legislation Thursday that would toughen the state's already-stringent drunken driving laws by increasing penalties for repeat offenders.

Among the punishments to be proposed by Edgar, a leader in Illinois' drunken driving crackdown, will be license revocations of at least 10 years and prison sentences of up to 3 years for

individuals convicted three times or more.

The three-bill package, to be introduced at a Springfield news conference Thursday morning, also is intended to strengthen current laws that make no distinction between first-time and repeat offenders in meting out license penalties, according to sources in Edgar's office.

The proposed legislation would:

- Set a minimum five-year license revocation for second-time

offenders and a minimum 10-year revocation for a third conviction for drunken driving, reckless homicide or leaving the scene of an accident involving a fatality or serious injury. After that period, the offender must apply to have the license reinstated. The current revocation period is one year after which an offender can seek reinstatement.

- Upgrade a third drunken driving conviction to a Class 4 felony that could carry a penalty of one to three years in prison

and a fine of up to \$10,000. Drunken driving is now a misdemeanor charge, and a third conviction is punishable by a mandatory 48-hour jail sentence.

- Increase the penalty for individuals who drive while their licenses are revoked to a 90-day jail sentence or 364 days of public service. The new provision, which would apply to individuals convicted of driving under the influence, reckless homicide or leaving the scene of a serious accident, would replace current

penalties of seven days in jail or 30 days of public service.

- Outlaw identification cards that simulate Illinois driver's licenses and that allow persons under the drinking age of 21 to buy liquor illegally. Such cards could not resemble licenses in color, size or photo location and would be required to carry disclaimers.

According to state records, there are now about 27,000 Illi-

Continued on page 18

Drunk

Continued from page 1

nois drivers with two convictions for driving while intoxicated and 9,000 people convicted three or more times.

The multiple-offender package is to be sponsored by a bipartisan team including State Reps. Thomas McCracken [R., Westmont], John Cullerton [D., Chicago], John Countryman [R., De Kalb], John O'Connell [D., Willow Springs], Roger McAuliffe [R., Chicago], Alfred Ronan [D., Chicago] and John Matijevich, [D., Waukegan].

If passed by the General Assembly, the crackdown measures would take effect Jan. 1, 1988, the sources said.

The new proposals follow a 1985 offensive led by Edgar that established the automatic suspension of driving privileges for drunken drivers. That legislation made Illinois laws the second toughest in the nation, when measured by the percentage—9 out of 10—of those arrested who lost driving privileges or suffered other penalties. Nearly 47,000 drivers had their licenses suspended or revoked in 1986, compared with slightly more than 13,000 the previous year.

Revocations and suspensions nearly doubled in Chicago, with 4,755 drivers penalized in 1986, compared to 2,561 the previous year.

Only Oregon has tougher laws. It sets a 0.08 blood-alcohol standard for drunkenness and imposes revocation and jail penalties comparable with those to be proposed by Edgar.

Original sponsor: Koponen

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 52 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

8 * Section 1. AS 28.35.030(c) is amended to read:

9 (c) Upon conviction under this section the court shall impose a
10 minimum sentence of imprisonment of not less than 72 consecutive hours
11 and a fine of not less than \$250 if the person has not been previously
12 convicted in this or another jurisdiction of driving while intoxicated
13 under this or another law or ordinance with substantially similar
14 elements or refusal to submit to a chemical test under AS 28.35.032 or
15 another law or ordinance with substantially similar elements. Upon
16 conviction under this section the court shall impose a minimum sen-
17 tence of imprisonment of not less than 20 consecutive days and a fine
18 of not less than \$500 if, within the preceding 10 years, the person
19 has been previously convicted once in this or another jurisdiction of
20 driving while intoxicated under this or another law or ordinance with
21 substantially similar elements or refusal to submit to a chemical test
22 under AS 28.35.032 or another law or ordinance with substantially
23 similar elements. Upon conviction under this section the court shall
24 impose a minimum sentence of imprisonment of not less than 30 consecu-
25 tive days and a fine of not less than \$1,000 and shall order for-
26 feiture of the vehicle used in commission of the offense, subject to
27 remission of forfeiture under AS 28.35.037, if [,] within the preced-
28 ing 10 years [,] the person has been previously convicted in this or
29 another jurisdiction of more than one of the following offenses or has

1 more than once been previously convicted of one of the following
2 offenses: (1) driving while intoxicated under this or another law or
3 ordinance with substantially similar elements; (2) refusal to submit
4 to a chemical test under AS 28.35.032 or another law or ordinance with
5 substantially similar elements. The execution of sentence may not be
6 suspended nor may probation be granted except on condition that the
7 minimum imprisonment provided in this section is served. Imposition of
8 sentence may not be suspended. In addition, if the offense involved
9 driving a motor vehicle for which a driver's license is required, the
10 person's driver's license shall be revoked in accordance with AS 28.-
11 15.181 [AND THE VEHICLE USED IN COMMISSION OF THE OFFENSE MAY BE
12 FORFEITED UNDER AS 28.35.036]. In addition, the court shall order,
13 and a person convicted under this section shall undertake, for a term
14 specified by the court, that program of alcohol education or rehabili-
15 tation that the court, after consideration of any information compiled
16 under (d) of this section, finds appropriate.

17 * Sec. 2. AS 28.35.032(g) is amended to read:

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

1 28.35.030 or another law or ordinance with substantially similar
2 elements or refusal to submit to a chemical test under this section or
3 another law or ordinance with substantially similar elements. Upon
4 conviction under this section the court shall impose a minimum sen-
5 tence of imprisonment of not less than 30 consecutive days and a fine
6 of not less than \$1,000 and shall order forfeiture of the vehicle used
7 in the commission of the offense, subject to remission under AS 28.-
8 35.037, if [,] within the previous 10 years [,] the person has been
9 previously convicted in this or another jurisdiction of more than one
10 of the following offenses or has more than once been previously con-
11 victed of one of the following offenses: (1) driving while intoxicated
12 under AS 28.35.030 or another law or ordinance with substantially
13 similar elements; (2) refusal to submit to a chemical test under this
14 section or another law or ordinance with substantially similar
15 elements. The execution of sentence may not be suspended nor may
16 probation be granted except on condition that the minimum imprisonment
17 provided in this section is served. Imposition of sentence may not be
18 suspended. If the offense involved driving a motor vehicle for which
19 a driver's license is required, the person's driver's license shall be
20 revoked under AS 28.15.181. In addition, the court shall order, and a
21 person convicted under this section shall undertake, for a term speci-
22 fied by the court, that program of alcohol education or rehabilitation
23 that the court, after consideration of any information compiled under
24 (h) of this section, finds appropriate. The sentence imposed by the
25 court under this subsection shall run consecutively with any other
26 sentence of imprisonment imposed on the committed person.

27 * Sec. 3. AS 28.35.036 is repealed and reenacted to read:

28 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) Upon forfei-
29 ture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) the
30

1 court shall require the surrender of the registration and certificate
2 of title of that motor vehicle. The registration and certificate of
3 title shall be delivered to the department.

4 (b) Forfeiture of a motor vehicle under AS 28.35.030(c) or
5 28.35.032(g) extinguishes the rights or claims of a person with an
6 ascertainable interest in the motor vehicle, unless the person seeks
7 remission of the forfeiture under AS 28.35.037 within 90 days after
8 the person receives notice of the right of remission under AS 28.35.-
9 037. Remission of forfeiture does not apply to a person convicted
10 under AS 28.35.030(c) or 28.35.032(g) whose vehicle is forfeited.

11 (c) If not released under AS 28.35.037, a motor vehicle for-
12 feited under AS 28.35.030(c) or 28.35.032(g) may be disposed of by the
13 department.

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

18 * Sec. 4. AS 28.35.037(a) is repealed and reenacted to read:

19 (a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or
20 28.35.032(g), the state shall provide written notice to each person
21 with an ascertainable ownership or security interest in the motor
22 vehicle, other than the person convicted of the offense resulting in
23 forfeiture, that

24 (1) the vehicle has been forfeited;

25 (2) the person has a right to intervene to protect an
26 interest in the motor vehicle under (b) of this section; and

27 (3) failure to seek remission of forfeiture within 90 days
28 will extinguish the rights of the person to the vehicle.

29 * Sec. 5. AS 28.35.037(b) is amended to read:

1 (b) At the request of a person with an ownership or security
2 interest in a vehicle forfeited under AS 28.35.030(c) or 28.35.032(g),
3 other than the person convicted of the offense resulting in forfei-
4 ture, the court shall schedule a hearing to determine if remission of
5 forfeiture shall be ordered as provided under this section. At the
6 hearing, a person who claims an ownership or security interest in the
7 motor vehicle must establish by a preponderance of the evidence that

8 (1) the petitioner has an interest in the motor vehicle
9 acquired in good faith;

10 (2) a person other than the petitioner was convicted of the
11 offense that resulted in the forfeiture; and

12 (3) before parting with the motor vehicle, the petitioner
13 did not know or have reasonable cause to believe that it would be used
14 in the commission of an offense.

15 * Sec. 6. AS 28.35.037(d) is repealed.
16
17
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Adopted

DRAFT

Original sponsor: Koponen

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 52 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

8 * Section 1. AS 28.35.030(c) is amended to read:

9 (c) Upon conviction under this section the court shall impose a
10 minimum sentence of imprisonment of not less than 72 consecutive hours
11 and a fine of not less than \$250 if the person has not been previously
12 convicted in this or another jurisdiction of driving while intoxicated
13 under this or another law or ordinance with substantially similar
14 elements or refusal to submit to a chemical test under AS 28.35.032 or
15 another law or ordinance with substantially similar elements. Upon
16 conviction under this section the court shall impose a minimum sen-
17 tence of imprisonment of not less than 20 consecutive days and a fine
18 of not less than \$500 if, within the preceding 10 years, the person
19 has been previously convicted once in this or another jurisdiction of
20 driving while intoxicated under this or another law or ordinance with
21 substantially similar elements or refusal to submit to a chemical test
22 under AS 28.35.032 or another law or ordinance with substantially
23 similar elements. Upon conviction under this section the court shall
24 impose a minimum sentence of imprisonment of not less than 30 consecu-
25 tive days and a fine of not less than \$1,000 and shall order for-
26 feiture of the vehicle used in commission of the offense, subject to
27 remission of forfeiture under AS 28.35.037, if [,] within the preced-
28 ing 10 years [,] the person has been previously convicted in this or
29 another jurisdiction of more than one of the following offenses or has

1 more than once been previously convicted of one of the following
2 offenses: (1) driving while intoxicated under this or another law or
3 ordinance with substantially similar elements; (2) refusal to submit
4 to a chemical test under AS 28.35.032 or another law or ordinance with
5 substantially similar elements. The execution of sentence may not be
6 suspended nor may probation be granted except on condition that the
7 minimum imprisonment provided in this section is served. Imposition of
8 sentence may not be suspended. In addition, if the offense involved
9 driving a motor vehicle for which a driver's license is required, the
10 person's driver's license shall be revoked in accordance with AS 28.-
11 15.181 [AND THE VEHICLE USED IN COMMISSION OF THE OFFENSE MAY BE
12 FORFEITED UNDER AS 28.35.036]. In addition, the court shall order,
13 and a person convicted under this section shall undertake, for a term
14 specified by the court, that program of alcohol education or rehabili-
15 tation that the court, after consideration of any information compiled
16 under (d) of this section, finds appropriate.

17 * Sec. 2. AS 28.35.032(g) is amended to read:

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

1 28.35.030 or another law or ordinance with substantially similar
2 elements or refusal to submit to a chemical test under this section or
3 another law or ordinance with substantially similar elements. Upon
4 conviction under this section the court shall impose a minimum sen-
5 tence of imprisonment of not less than 30 consecutive days and a fine
6 of not less than \$1,000 and shall order forfeiture of the vehicle used
7 in the commission of the offense, subject to remission under AS 28.-
8 35.037, if [,] within the previous 10 years [,] the person has been
9 previously convicted in this or another jurisdiction of more than one
10 of the following offenses or has more than once been previously con-
11 victed of one of the following offenses: (1) driving while intoxicated
12 under AS 28.35.030 or another law or ordinance with substantially
13 similar elements; (2) refusal to submit to a chemical test under this
14 section or another law or ordinance with substantially similar
15 elements. The execution of sentence may not be suspended nor may
16 probation be granted except on condition that the minimum imprisonment
17 provided in this section is served. Imposition of sentence may not be
18 suspended. If the offense involved driving a motor vehicle for which
19 a driver's license is required, the person's driver's license shall be
20 revoked under AS 28.15.181. In addition, the court shall order, and a
21 person convicted under this section shall undertake, for a term speci-
22 fied by the court, that program of alcohol education or rehabilitation
23 that the court, after consideration of any information compiled under
24 (h) of this section, finds appropriate. The sentence imposed by the
25 court under this subsection shall run consecutively with any other
26 sentence of imprisonment imposed on the committed person.

27 * Sec. 3. AS 28.35.036 is repealed and reenacted to read:

28 Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) Upon forfei-
29 ture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) the

1 court shall require the surrender of the registration and certificate
2 of title of that motor vehicle. The registration and certificate of
3 title shall be delivered to the department.

4 (b) Forfeiture of a motor vehicle under AS 28.35.030(c) or
5 28.35.032(g) extinguishes the rights or claims of a person with an
6 ascertainable interest in the motor vehicle, unless the person seeks
7 remission of the forfeiture under AS 28.35.037 within 90 days after
8 the person receives notice of the right of remission under AS 28.35.-
9 037.

10 (c) If not released under AS 28.35.037, a motor vehicle for-
11 feited under AS 28.35.030(c) or 28.35.032(g) may be disposed of by the
12 department.

13 * Sec. 4. AS 28.35.037(a) is repealed and reenacted to read:

14 (a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or
15 28.35.032(g), the state shall provide written notice to each person
16 with an ascertainable ownership or security interest in the motor
17 vehicle, other than the person convicted of the offense resulting in
18 forfeiture, that

19 (1) the vehicle has been forfeited;

20 (2) the person has a right to intervene to protect an
21 interest in the motor vehicle under (b) of this section; and

22 (3) failure to seek remission of forfeiture within 90 days
23 will extinguish the rights of the person to the vehicle.

24 * Sec. 5. AS 28.35.037(b) is amended to read:

25 (b) At the request of a person with an ownership or security
26 interest in a vehicle forfeited under AS 28.35.030(c) or 28.35.032(g),
27 other than the person convicted of the offense resulting in forfei-
28 ture, the court shall schedule a hearing to determine if remission of
29 forfeiture shall be ordered as provided under this section. At the

1 hearing, a person who claims an ownership or security interest in the
2 motor vehicle must establish by a preponderance of the evidence that

3 (1) the petitioner has an interest in the motor vehicle
4 acquired in good faith;

5 (2) a person other than the petitioner was convicted of the
6 offense that resulted in the forfeiture; and

7 (3) before parting with the motor vehicle, the petitioner
8 did not know or have reasonable cause to believe that it would be used
9 in the commission of an offense.

10 * Sec. 6. AS 28.35.037(d) is repealed.

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

Bill Version : HB52
Publish Date : _____

REQUEST: _____

Revision Date: _____
Title: An Act relating to motor vehicle forfeiture
Sponsor: Koponen
Requestor: House State Affairs

Agency Affected: Public Safety
BRU: AK Highway Safety Planning Agency
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|------------------------|------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | -0- | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

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

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Prepared by: T. Michael Lewis *TML*
Division: Alaska Highway Safety Planning Agency
Approved by Commissioner: *[Signature]*
Agency: _____

Phone: 465-4374
Date: 1/22/87
Date: 1/23/87

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

JML
1/23/87

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

REQUEST: _____

Bill Version: HB 52
Publish Date: _____

Revision Date: _____
Title: "An Act relating to motor vehicle
forfeiture."
Sponsor: _____
Requestor: _____

Agency Affected: Department of Law
BRU: Prosecution
Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

| OPERATING | FY 87 | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | 132.7 | 136.7 | 140.8 | 145.0 | 149.4 |
| TRAVEL | | 3.6 | 3.7 | 3.8 | 3.9 | 4.0 |
| CONTRACTUAL | | 38.8 | 40.0 | 41.2 | 42.4 | 43.7 |
| SUPPLIES | | 12.3 | 8.0 | 8.2 | 8.4 | 8.7 |
| EQUIPMENT | | 11.0 | -0- | -0- | -0- | -0- |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|--|-------|-------|-------|-------|-------|
| GENERAL FUND | | 198.4 | 188.4 | 194.0 | 199.7 | 205.8 |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | | | | | | |
|-----------|--|-----|-----|-----|-----|-----|
| FULL-TIME | | 3.0 | 3.0 | 3.0 | 3.0 | 3.0 |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: Feb. 9, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: Feb. 9, 1987

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

This bill amends AS 28.35.036(a) by mandating that the state seek forfeiture of the motor vehicle involved if the convicted person has been previously convicted more than once for driving while intoxicated or for refusing to submit to a chemical test. Under current law, the state has the option of seeking forfeiture, but it is not mandated to do so.

Department of Law records, as well as those of the Division of Motor Vehicles, indicate that the department would have to seek forfeiture in 300 to 400 cases annually, where it does not do so now. The forfeiture process can be somewhat complicated whenever parties other than the person convicted hold an ownership or security interest in the vehicle involved. A separate court hearing would have to be held in each individual case. A title search of each vehicle would have to be conducted. All third parties with an ownership interest would have to be notified so that they may assert their ownership interest at the hearings. If a third party proves their ownership or security interest, and proves that they did not know or have reasonable cause to know the vehicle would be used in the commission of an offense, the vehicle and title to vehicle is released to the party holding ownership, or an amount equal to the value in the vehicle held by the party holding a security interest is paid to that party. In any event, a substantial amount of resources will be required to acquire and hold vehicles, and to manage the proceeds from vehicles that have been sold.

Attorneys with the Municipality of Anchorage, which conducts a municipal forfeiture program under AS 28.35.038, have advised us that ownership or security interests are held by persons other than the person convicted of an offense in 90 to 95 per cent of the cases that they have handled. Thus, it appears that very few forfeitures will be straightforward or without need for costly legal proceedings. The Department of Law estimates that at least one attorney III, one paraprofessional, and one clerk typist will be required to prepare and handle forfeiture actions. In addition to normal personnel and support costs, a sum of \$25,000 will be needed to publish legal notices for lien holders, and others with ownership interests who cannot be easily contacted or readily identified. Other departments that will also probably see a fiscal impact if this bill is enacted are the Public Defender and the Court System, who would experience increased caseload. Likewise, the Department of Public Safety, who would be responsible for holding and disposing of vehicles, and for remitting the proceeds of sales to those having security interest in many of the vehicles that are to be sold, will also experience a fiscal impact. The department recognizes the valuable social purpose that this bill serves; however, it must caution against burdening it with new responsibilities in a budget year when many of the department's core prosecution functions are being severely curtailed due to budget constraints.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

HB 52 Fiscal Analysis

Funding Summary

| | <u>Atty III</u> | <u>P/A II</u> | <u>Clerk Typist III</u> | <u>Total</u> |
|-------|-----------------|---------------|-------------------------|--------------|
| 71000 | 62.5 | 42.6 | 27.6 | 132.7 |
| 72000 | 1.8 | 1.8 | -0- | 3.6 |
| 73000 | 29.8 | 4.8 | 4.2 | 38.8 |
| 74000 | 4.5 | 4.5 | 3.3 | 12.3 |
| 75000 | 1.5 | 1.5 | 8.0 | 11.0 |
| | <hr/> | <hr/> | <hr/> | <hr/> |
| Total | 55.2 | 100.1 | 43.1 | 198.4 |

Costs beyond FY 88 include a 3 per cent annual inflation factor.

| | | | | |
|--------------------------------|--------------------|---|-------------------|------------------------|
| Position Title Attorney III | | No. of Positions 1 | Range/Step 22A | Darg. Unit PX |
| Time Status PFT | Staff Months 12 | Location EBA - Anchorage | | Election District 8 |
| Type of Expenditure: | | Justification | | |
| 1 | 2 | 3 | | |
| Salary | 49,140 | This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by HB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended. | | |
| Benefits | 13,311 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | 62,451 | | | |
| Travel | | 1,800 | | |
| Contractual | | 29,800 | | |
| Commodities | | 4,500 | | |
| Equipment | | 1,500 | | |
| Other | | | | |
| Total Cost | | 100,051 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts | 1002 | | | |
| G. F. Match | 1003 | | | |
| General Fund | 1004 | 100,051 | | |
| I-A Receipts | 1006 | | | |
| CIP Receipts | 1061 | | | |
| Other | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 1 of 3
 Revised Date

FY 88

| | | | | | |
|--|--------------------|---|-------------------|------------------------|--------|
| Position Title Paralegal Assistant II | | No. of Positions 1 | Range/Step 16A | Barg. Unit GGU | |
| Time Status PFT | Staff Months 12 | Location EBA - Anchorage | | Election District 8 | |
| Type of Expenditure | | Justification | | | |
| | | <p>This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by HB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class.</p> | | | |
| Amount | | | | | |
| 1 | 2 | | | | 3 |
| Salary | 32,424 | | | | |
| Benefits | 10,127 | | | | |
| Premium Pay | | | | | |
| Other | | | | | |
| Total Personal Services | | | | | 42,551 |
| Travel | | | | | 1,800 |
| Contractual | | | | | 4,800 |
| Commodities | | | | | 4,500 |
| Equipment | | | | | 1,500 |
| Other | | | | | |
| Total Cost | | 55,151 | | | |
| Funding Source for Total Cost | | | | | |
| Federal Receipts | 1002 | | | | |
| G. F. Match | 1003 | | | | |
| General Fund | 1004 | 55,151 | | | |
| I-A Receipts | 1006 | | | | |
| CIP Receipts | 1061 | | | | |
| Other | | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 2 of 3
 Revised Date

FY 88

| | | | | |
|---|--------------------|-----------------------------|------------------|------------------------|
| Position Title Clerk Typist III | | No. of Positions 1 | Range/Step 8B | Barg. Unit GGU |
| Time Status PFT | Staff Months 12 | Location EBA - Anchorage | | Election District 8 |
| Justification | | | | |
| This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by HB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended. | | | | |
| Type of Expenditure | | Amount | | |
| 1 | 2 | 3 | | |
| Salary | 20,136 | | | |
| Benefits | 7,507 | | | |
| Premium Pay | | | | |
| Other | | | | |
| Total Personal Services | | 27,643 | | |
| Travel | | -0- | | |
| Contractual | | 4,200 | | |
| Commodities | | 3,300 | | |
| Equipment | | 8,000 | | |
| Other | | | | |
| Total Cost | | 43,143 | | |
| Funding Source for Total Cost | | | | |
| Federal Receipts 1002 | | | | |
| G. F. Match 1003 | | | | |
| General Fund 1004 | | 43,143 | | |
| I-A Receipts 1006 | | | | |
| CIP Receipts 1061 | | | | |
| Other | | | | |

**Request For
New Position**

Agency Department of Law
 BRU Prosecution
 Component Third Judicial District

Page 3 of 3
 Revised Date

FY 88

Alaska State Legislature
Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER

HB 52 "AN ACT RELATING TO MOTOR VEHICLE FORFEITURE."

Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities. After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. In Fairbanks, only one person in three years has been ordered to forfeit their car. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. During the first 11 months of 1986, this figure increased to 412 drunk driving accidents. These alarming statistics have led me to introduce this legislation.

The purpose of HB 52 is to strengthen the legislative intent of AS 28.35.036 by stating that "...the state shall [may] move the court to order the forfeiture of the motor vehicle..." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second time DWI offense.

It is important to realize that under AS 28.35.037 (Remission of Forfeitures) an offender can go to court in order to retrieve his or her car, thereby protecting and third party interests in the motor vehicle. The offender must follow the guidelines within statute and present relevant arguments to the judge. Sec. 28.35.037(c) states that if the person satisfies these requirements, the court shall order that the motor vehicle and title be released.

It is routine practice of Alaska game wardens ~~to~~ to immediately confiscate cars, trucks and guns when a hunting violation is charged, prior to completion of the violator's due process proceedings. It is my feeling that the protection of human life should be considered at least as important in state law as a hunting or parking violation.

MADD

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

It is no secret that the effects of Driving While Intoxicate (DWI), are a major health problem. Once again 1985 statistics compiled by individual state departments of highway, Alaska has ranked third nationwide for the highest rate per capita of alcohol-related crash fatalities (see attached). Death, injury, and trauma occur to the victims and victim families of DWI crashes. Economically this problem is costing our communities millions annually in lost wages, court costs, unrecoverable medical charges, higher insurance rates, and other related expenses.

Mothers Against Drunk Driving (MADD), is an organization whose primary goal is to reduce the number of deaths and injuries resulting from DWI crashes through our educational, legislative and Victim Assistance programs.

In the past three years, we have asked you, our legislators, to increase the penalties for DWI, and refusal to submit to a breath test, to raise the drinking age to 21, to prohibit Happy Hour sales, to institute mandatory driver insurance, and to allow for vehicle confiscation for second time DWI offenders, and other related legislation.

We are once again faced with making a request that you consider amending AS 28.35.036 Forfeiture of Motor Vehicle.

It has been our observation since the passage of HB-6 which was signed into law in September of 1983 by then Governor Sheffield, that our district attorneys and judges have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date, our district attorney's office in Fairbanks (Fourth Judicial District), have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date our district attorney's office reports that they have only confiscated one (1) vehicle.

We do not feel that the confiscation of one vehicle in nearly three years serves as a deterrent for anyone, and without deterrents that keep the public's attention, we can never hope to see a decrease in this type of conduct. In fact, we have seen a serious rise in the number of people who have been injured in the Fairbanks North Star Borough the last three years.

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

page 2

In 1985 ~~seventeen~~ ^{twelve} (12) FNSB residents were killed in alcohol-related crashes, one boy was killed Outside and two UAF students (brother and sister) were killed outside of Wasilla. In 1986 fifteen (15) FNSB residents were killed in alcohol-related crases, two were killed in California. Five of the impaired drivers responsible for deaths in 1986 had prior DWI convictions and one was driving with an illegally obtained license at the time he killed a young woman on Farmers Loop Road.

We are told that the reason the district attorney's office in Fairbanks has not requested confiscation of a vehicle is because that most defendents do not have clear title to the vehicle, or that the vehicle is of such poor quality that it would not be cost effective to impound and then later auction older model cars. We feel the philosophy of confiscation as a deterrent to others is being overlooked here.

We do not feel that these are sufficient reasons to fail to exercise the option under HB-6, particularly when there is a risk of further human lives being lost! Both the Fairbanks Police Department and the Alaska State Troopers have higher arrest statistics the past two years for individuals Driving With Suspended Operators Licnese (DWSOL). This is due in part to the fact that our community is painfully aware that both law enforcements agencies have experienced labor cutbacks that translates into fewer officer on the road at any given time. In other words like everyone else DWI offenders recognize that their chances for being stopped have been minimized. The magnitude of this problem demands that the DWI offender be refused further access to his or her vehicle to ensure that further lives and injuries are not caused by their continuing to drive without a license.

It is admirable that the judges were given a chance to use discretion to confiscate, by the word "may" being used in the content of AS 28.35.036. However, it has become obvious that the justice system has failed to exercise common sense in its discretion to use this option as a deterrent, confiscation and as a deterrent measure to others, and has therefore failed to

M A D D

MOTHERS AGAINST DRUNK DRIVERS

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FORFEITURE OF VEHICLE

OBJECTIVE

page 3

tect the public. Under the circumstances we would ask that the word "may" be changed to "shall" in AS 28.35.032(a), to ensure that first time DWI offenders realize that if convicted for a second offense they will no longer have a vehicle in their possession with which to jeopardize human loss of life and limb.

To counter the argument of "clear title" we refer you to AS 28.35.037 Remission of Forfeitures which specifically addresses lienholders rights.

Additionally we feel sure that once the public is notified of the amendment to this law, credit companies will request that potential creditors who already have a DWI conviction to increase mandatory SR22 premiums to cover possible forfeiture of vehicles.

To counter the argument of immediate confiscation of vehicles used in the commission of a crime i.e., DWI/refusal to submit to a breath test, we remind you of the routine practice of Alaska Game Wardens in their authority to immediately confiscate not only cars and trucks, but guns, planes, snow-machines, etc., when a hunting violation is charged, prior to due process being completed. We are secure that the precedent set there should certainly extend to the protection of human lives, as opposed to animal life!

In anticipation of the argument that the impaired driver may not be arrested while driving his/her own registered vehicle, consider this option. Upon the first conviction for DWI/Refusal, and upon completion of other requirements made by the court for the return of the offenders license we would suggest color-coded driver's licenses to indicate to car rental agencies, employers, or others who might "loan" vehicles to inform and protect them from possible forfeiture. Remembering that a lienholder must, according to AS 28.35.037, prove that "the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense". Obviously insurers would want to inform clients of possible loss of coverage should the insured loan a car to individual prior to checking the drivers license.

3

M A D D

MOTHERS AGAINST DRUNK DRIVERS

Fairbanks Northern Lights Chapter

P.O. Box 1167

Fairbanks, Alaska 99707-1167

(907) 456-3964

FORFEITURE OF VEHICLE

REQUESTS

page 4

1st CONVICTION DWI/REFUSAL

- * In addition to administrative and court ordered requirements now in place, impound the vehicle until the individual purchases special risk policy (SR22), incorporating leinholders protection from forfeiture for possible future offenses. Insurance must be "term" that cannot be cancelled by vehicle owner. If insurance expires for non-payment, or a refund is requested thereby cancelling the policy, the insurance company is required to inform the State Division of Motor Vehicles within 24 hours.
- * Upon completion of all requirements to reinstate the drivers license the DMV be required to color-code, or otherwise plainly note, the DWI conviction visibly on the license.
- * Accompanying costs to above procedure i.e., impoundment fees, filing fees, record search fees, be paid by the applicant.

2nd CONVICTION DWI/REFUSAL

- * Vehicle used in the commission of the crime DWI/Refusal be confiscated by the state and disposed of at public auction. Proceeds to be returned to the General Fund or designated for compensation to victims of drunk driving. (It might be noted that an increased fleet of cars available to auction are a great resource for non-profit groups who typically might have manpower and in-kind contributions to repair damaged cars at little or no cost, then use them as a raffle item).
- * Ninety (90) days prior to the effective date of this legislation public notification is given to the public informing all of the ramifications of the act.

Attachments:

1985 Alcohol-Related Traffic Fatalities - USA

AS 28.35.037

Effect of Bankruptcy on DWI Judgments

1985 ALCOHOL RELATED TRAFFIC FATALITIES*

| State | Fatalities | Population In Millions | Fatalities Per Million | State | Fatalities | Population In Million | Fatalities Per Million |
|---------------|------------|---------------------------|---------------------------|----------------|------------|--------------------------|---------------------------|
| Alabama | 214 | 3.9 | 55 | Montana | 118 | .8 | 147 |
| Alaska | 69 | .4 | 173 | Nebraska | 91 | 1.6 | 170 |
| Arizona | 335 | 2.8 | 120 | Nevada | 112 | .8 | 139 |
| Arkansas | 324 | 2.3 | 141 | New Hampshire | 102 | .9 | 111 |
| California | 2,412 | 23.7 | 102 | New Jersey | 246 | 7.4 | 100 |
| Colorado | 242 | 2.9 | 83 | New Mexico | 293 | 1.3 | 100 |
| Connecticut | 252 | 3.1 | 81 | New York | 695 | 17.6 | 100 |
| Delaware | 73 | .6 | 122 | North Carolina | 637 | 5.9 | 100 |
| Florida | 1,294 | 9.7 | 133 | North Dakota | 50 | .7 | 71 |
| Georgia | 700 | 5.4 | 130 | Ohio | 746 | 10.8 | 69 |
| Hawaii | 77 | 1.0 | 77 | Oklahoma | 279 | 3.0 | 93 |
| Idaho | 118 | .9 | 131 | Oregon | 285 | 2.6 | 110 |
| Illinois | 554 | 11.4 | 49 | Pennsylvania | 767 | 11.9 | 64 |
| Indiana | 232 | 5.5 | 42 | Rhode Island | 50 | .9 | 56 |
| Iowa | 234 | 2.9 | 81 | South Carolina | 385 | 3.1 | 124 |
| Kansas | 152 | 2.4 | 63 | South Dakota | 69 | .7 | 99 |
| Kentucky | 168 | 3.6 | 47 | Tennessee | 318 | 4.6 | 69 |
| Louisiana | 401 | 4.2 | 95 | Texas | 989 | 14.2 | 70 |
| Maine | 56 | 1.1 | 51 | Utah | 110 | 1.5 | 73 |
| Maryland | 741 | 4.2 | 176 | Vermont | 41 | .5 | 82 |
| Massachusetts | 222 | 5.8 | 38 | Virginia | 479 | 5.3 | 90 |
| Michigan | 719 | 9.3 | 77 | Washington | 326 | 4.1 | 80 |
| Minnesota | 261 | 4.1 | 64 | West Virginia | 257 | 2.0 | 129 |
| Mississippi | 300 | 2.5 | 120 | Wisconsin | 187 | 4.7 | 60 |
| Missouri | 486 | 4.9 | 99 | Wyoming | 70 | .5 | 140 |

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

Chapter 77

forfeited under this section may be disposed of at the discretion of the department. *(if sold at auction \$ pd, in to MCM fund)*

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

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

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

- (1) the petitioner has an interest in the motor vehicle acquired in good faith;
- (2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and
- (3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without

(Handwritten mark)

REVIEW RESOURCES FOR PROSECUTORS

In most states, the public prosecutor has a great deal of discretionary power deciding what cases he wants to try and what charges will be filed. Some states allow for the hiring of a private prosecutor if a victim is not satisfied with the public prosecutor. In some of those states the public prosecutor must get the private prosecutor's permission to try the case. Victims should be aware of their state statutes regarding this procedure.

In most states, prosecutors are subject to review both by the bar association and by a state regulatory group usually referred to as a "Prosecutor's Council" or "Prosecutor Review Board." Call the switchboard of your state capitol to get the phone number and address of such a group. Usually they consist of other prosecutors, so the review is by peers.

In a few states there is what is called a "John Doe Statute" or a "One Man Jury Statute" in which a person may go directly to a judge if he believes that a crime was committed and the prosecutor has not filed charges. Wisconsin's statute follows:

§2.26 John Doe proceeding. If a person complains to a judge that he has reason to believe that a crime has been committed within his jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed. The extent to which the judge may proceed in such examination is within his discretion. The examination may be adjourned and may be secret. Any witness examined under this section may have counsel present at the examination but such counsel shall not be allowed to examine the witness, cross-examine other witnesses or argue before the judge. If it appears probable from the testimony given that a crime has been committed and who committed it, the complaint shall be reduced to writing and signed and verified; and thereupon a warrant shall issue for the arrest of the accused. Subject to § 971.23, the record of such proceeding and the testimony taken shall not be open to inspection by anyone except the district attorney unless it is used in the prosecution at the preliminary hearing or the trial of the accused and then only to the extent that it is so used.

A defendant must be allowed to use testimony of witnesses at a secret John Doe proceeding to impeach the same witnesses at the trial, even if the prosecution does not use the John Doe testimony. *Myers v. State*, 60 W (2d) 248, 208 NW (2d) 311.

Immunity hearing must be in open court. *State ex rel. Newspapers, Inc. v. Circuit Court*, 65 W (2d) 66, 221 NW (2d) 894.

Person charged as result of John Doe proceeding has no recognized interest in the maintenance of secrecy in that proceeding. John Doe discussed. *State v. O'Connor*, 77W (2d) 261, 252 NW (2d) 671.

No restrictions of the 4th and 5th amendments preclude enforcement of an order for handwriting exemplars directed by presiding judge in John Doe proceeding. *State v. Doe*, 78 W (2d) 161, 254 NW (2d) 210.

See note to Art. 1, sec. 9, citing *Ryan v. State*, 79 W (2d) 83, 255 NW (2d) 910.

This section does not violate constitutional separation of powers doctrine. John Doe discussed. *State v. Washington*, 83 W (2d) 808, 266 NW (2d) 597 (1978).

Balance between public's right to know and need for secrecy in John Doe proceedings discussed. In re Wis. Family Counseling Services v. State, 95 W (2d) 670, 291 NW (2d) 631 (Ct. App. 1980).

John Doe judge may not issue material witness warrant under 969.01 (3). *State v. Brady*, 118 W (2d) 154, 345 NW (2d) 533 (Ct. App. 1984).

REVIEW RESOURCES FOR JUDGES

In most states, there is a review procedure for the handling of complaints about judges. It is usually called a "Commission on Judicial Conduct," a "Judicial Review Board," or other similar title. Call your local bar association or State Capitol switchboard to learn what is available in your state.

If you file a complaint, grievance, or concern, *be sure you know the facts.*

MADD CHAPTER TO FILE COMPLAINT AGAINST LOCAL JUDGE, PRESIDENT SAYS

By Steve McGonigle
Staff Writer of The News

The president of the Dallas County chapter of Mothers Against Drunk Driving said Thursday that her group will file a complaint with the state Commission on Judicial Conduct against County Criminal Court Judge Harold Entz in connection with Entz's handling of a recent drunken driving case.

Milo Kirk said Entz acted without authority when he allowed Martin Vargas Rivera of Dallas to plead guilty on Jan. 16 to a misdemeanor charge that did not reflect the fact that Rivera had seriously injured four people in a car accident.

Entz initially granted Rivera probation but later re-sentenced Rivera to a maximum two-year jail term after Rivera's attorney requested that the guilty plea be voided and that Rivera be given a new trial.

Entz said he granted Rivera probation by mistake after reading an incomplete probation report and after the defendant assured him that there were no injuries in the accident. He has maintained he did nothing improper.

Mrs. Kirk said her group will file the complaint against Entz after a court hearing Thursday to determine whether Entz should be disqualified from hearing a request by Rivera's new attorney for a third trial.

Chief misdemeanor prosecutor Mike Gillett requested the disqualification because he contended that Entz has shown he cannot be fair to the prosecution.

Retired state District Judge R. C. Vaughan of Sherman ruled at the conclusion of the hearing that prosecutors had not proved Entz was biased, though Vaughan said he was bothered by the handling of the case.

ATTENTION CIVIL ATTORNEYS!! EFFECT OF BANKRUPTCY ON DWI JUDGMENTS

The U.S. Constitution and Federal Statutes allow liberal protection of debtors through relief in the Bankruptcy Courts. A debtor is allowed to have certain liabilities discharged by operation of law, rendering the creditor's claim valueless. In bankruptcy, the holder of a civil judgment obtained in a lawsuit against a drunk driver is considered a *Creditor*, and the drunk driver a *Debtor*.

CHAPTER 7

An individual debtor has two options in bankruptcy. The most commonly used is liquidation under Chapter 7 of the Bankruptcy Code. The debtor has most obligations forgiven and keeps a portion of his or her assets to facilitate a "fresh start" after Bankruptcy. The debtor keeps such things as a homestead, clothing, household furnishings, personal effects, tools of trade and, generally, an automobile.

These are typical of the assets exempted by law from execution to satisfy judgments. The rest of the assets are returned to secured creditors or liquidated (sold) to pay the creditors on a pro-rata basis. *Certain debts are not discharged and forgiven, such as taxes, child support, alimony, and DWI judgments.* The DWI judgment holder should carefully follow the bankruptcy case, and might consider retaining counsel to be sure the origin of the claim is brought to the attention of the Bankruptcy Court, and the non-dischargeable nature of the debt is noted and even confirmed.

It should be remembered that holding a non-dischargeable debt is still no guarantee of collecting any money since the debtor, immediately after bankruptcy, holds only property which cannot be taken to satisfy a judgment. The creditor holding the DWI judgment, unlike those creditors whose claims are discharged, will be able to wait and attempt to collect as the debtor rebuilds assets following bankruptcy.

CHAPTER 13

An individual debtor could seek relief under Chapter 13 of the Bankruptcy Code and effect an adjustment of his or her debts. The debtor typically pays a portion of the debts, and has a portion discharged through a court supervised plan of three to five years. Some debts that would be non-dischargeable in a Chapter 7 liquidation are dischargeable in a Chapter 13 Debt Adjustment plan. *A DWI judgment could be discharged after a partial payment under such a plan.* The DWI judgment holder should retain counsel if the debtor attempts a Chapter 13 plan. *The entire plan can be rejected if the Bankruptcy Court finds it has been proposed in "bad faith."* The timing of the bankruptcy, the amount of the DWI judgment compared to the entire amount of debt, the effect on the holder of the judgment compared to other creditors, and many other factors will be considered by the court in evaluating a plan with an objecting creditor.

Defeating the entire plan may be the only way to prevent the discharge of the DWI judgment. If unsuccessful, the holder of the DWI judgment should still follow the Chapter 13 plan very closely, because many debtors do not follow through with their plan to completion and the discharge of the debts. Some Chapter 13 plans are converted to Chapter 7 liquidations where the DWI judgment is not discharged.

It is not uncommon for attorneys representing defendants in lawsuits to threaten that their client will resort to bankruptcy relief if the suit is pursued to judgment. However, this threat has much less impact on victims of drunk drivers because of the preferential treatment of such judgments in the Bankruptcy Code.

MILK: ALSO KIDS A PROTECTION FOR VEHICLE LEIMFOBERERS

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

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

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034. (§ 21 ch 117 SLA 1982; am § 22 ch 77 SLA 1983)

Effect of amendments. — The 1983 amendment in subsection (a) substituted "an offense . . . driving a motor vehicle" for "the crime of driving" and in subsection (b) revised the internal reference in the present first sentence and added the present second sentence.

NOTES TO DECISIONS

Stated in Copelin v. State, Sup. Ct. Op. No. 245 (File No. 6174), 664 P.2d 169 No. 2617 (File Nos. 5453, 5708), 259 P.2d (1983). 1206 (1983); Pena v. State, Ct. App. Op.

Sec. 28.35.036. Forfeiture of motor vehicle. (a) After conviction of an offense under AS 28.35.030 or AS 28.35.032 involving a motor vehicle of a type for which a driver's license is required, the state may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted 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 AS 28.35.030 or another law or ordinance with substantially similar elements; or
(2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(b) 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.

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted

person of the time an court may order the it without a jury, determ forfeiture of the moto purposes:

- (1) deterrence of th offenses under AS 28
(2) protection of th
(3) deterrence of ot 28.35.030; or
(4) expression of p nature of the convict
(d) Upon forfeiturrender of the regi cle. The registration department.

(e) If not releasee under this section rr ment. (§ 23 ch 77 S

Sec. 28.35.037. F notice from the cour 28.35.036, the state tainable ownership notice that includes

- (1) a description
(2) the time and
(3) the legal au: forfeited;
(4) notice of the r vehicle.

(b) At the hearin interest in the mot evidence that

- (1) the petitione good faith;
(2) a person oth that resulted in tr
(3) before parti know or have reas commission of an

(c) If a person court shall order interest in the mo order that the mo title to the motor

person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

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

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department. (§ 23 ch 77 SLA 1983)

Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without prejudice to the rights, and does not extinguish the claims of a creditor with an interest in the motor vehicle. (§ 23 ch 77 SLA 1983)

Sec. 28.35.038. Municipal impoundment and forfeiture. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title. (§ 23 ch 77 SLA 1983)

Article 3. Reckless and Negligent Driving.

Section

- 40. Reckless driving
- 45. Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner which creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. *Bailey v. Lenord*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehi-

cle in a manner which creates an unjustifiable risk. *Bailey v. Lenord*, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. *Calder v. State*, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dan-

gerous weapon or
misdemeanor charge
already been adjudicated
because, although the
the same general
based on different
incident. *Calder v. State*,
2224 (File No. 4293)

Trooper arriving
cannot arrest for
without warrant. —
ture has classified
and operating or
under the influence
as misdemeanors. *T*
who arrived at an accident
arrest a driver who
either reckless driving
since neither of
committed or attempted
Lavland v. State, Sup.
File No. 2264), 535 P.
Sup. Ct. Op. No. 2
(1976), overruled on
Anchorage v. Geber,
File Nos. 3327, 40
P.2d 1192 (1979)

Sentencing consistent.
it was undisputed at
three people in the
pickup who were ext
case of any accident
properly consider the
evaluating the ex

Collateral reference.
2d, Automobiles §§
§§ 312 to 320.
61A C.J.S., Motor
624.

What amounts to
negligence in driving an
the defense of contributory
ALR 1424, 72 ALR
119 ALR 654.

Sec. 28.35.045.
vehicle in the state
harm to a person or
the risk, actual
driving. An unjustifiable
a failure to avoid
that a reasonable
defendant actually
showing that a

BILL NO:

HB 52

DATE:

January 22, 1987

TITLE:

An Act relating to motor vehicle forfeiture

CONTACT:

Tim
T. Michael Lewis
465-4374

DEPARTMENT OF
PUBLIC SAFETY

This bill would provide a strong deterrent to the act of drinking and driving in that it increases the possibility of forfeiture of the motor vehicle for repeat offenses. As the public became more aware of this added sanction, there would be an increased inclination to seek alternative modes of transportation when drinking. Although mandatory jail terms, fines and license revocation are effective for first time offenders, these sanctions do not seem to deter the multiple offender to any great extent.

It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid. In the case of the individual that continues to drink and drive in spite of several alcohol related offenses, the loss of the offenders vehicle would virtually remove this hazardous driver from our highways.

The department supports this bill.

POSTED OFFER



William R. Nix
Acting Commissioner

RECEIVED JAN 26 1987

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO

- CRIMINAL DIVISION CENTRAL OFFICE
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JUNEAU, ALASKA 99P11
PHONE: (907) 465-3428
- OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
1031 WEST 4TH AVENUE, SUITE 318
ANCHORAGE, ALASKA 99501-5993
PHONE: (907) 279-7424

February 10, 1987

The Honorable John Sund
Chairman, Judiciary Committee
Alaska State House
P.O. Box V
Juneau, Alaska 99811

Re: HB 52

Dear Chairman Sund:

This letter is in response to a request from the Judiciary Committee for the department's position on HB 52, an act relating to motor vehicle forfeiture. HB 52 requires the state to move for forfeiture of a motor vehicle upon a third conviction for DWI or refusal to take a breath test. The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (a departmental fiscal note has been prepared showing the costs) and because the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests.

The department believes that, while the primary effect of HB 52 will be to shift the discretion in forfeiture cases from prosecutors to judges, it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. It must be recognized that a forfeiture order is not mandatory, and that the grounds for forfeiture in AS 28.35.036(c) are very similar to the grounds for imposition of a sentence in AS 12.55.005. Under the class A misdemeanor penalties permitted for DWI, a court can impose a jail term of up to one year and fine of up to \$5,000, therefore many judges may feel that the statutory criteria in AS 28.35.036(c) will have already been satisfied by the criminal sentence and no additional purpose will be served by the forfeiture, especially where loss of the car would work a financial hardship.

The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety. The department believes that the present statutory scheme is

adequate and could conceivably be used more frequently by the state without a great deal of additional expense, therefore additional consideration will be given to these cases depending upon subsequent budgetary restraints.

Very truly yours,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By: 

Dean J. Guaneli
Assistant Attorney General

DJG:so-74

cc: Bob Evans
Legislative Liaison
Office of the Governor

Nadine Winters
Director of Constituent Relations
Office of the Governor

The Honorable Niilo Koponen
Alaska State House

B.J. Lewis
Legislative Liaison
Department of Law