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FISCAL NOTE

No. 3

REQUEST:

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

Agency Affected: Department of Corrections  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

See Attached.

*Susan E. Knighton*

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

Distribution (by preparer):

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

CONTINUATION  
CSHB 354 (JUD)

ANALYSIS

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

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

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

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

Current Law

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

CSHB 354 (Judiciary)

	Estimated # persons	DOC Proposal	Less GT	Days Served	Total Man Days
1st DWI	1680	3 days	0	3 days	5040
2nd DWI	744	20 days	-7	13 days	9672
3rd DWI	144	90 days	-30	60 days	8640
4th DWI	30	120 days	-40	80 days	2400
5th DWI	12	180 days	-60	120 days	1440
6th & ...	6	365 days	-120	245 days	1470
					----- 28662
DWLS A	354	3 days	0	3 days	1062
DWLS B	78	20 days	-7	13 days	1014
DWLS C	168	30 days	-10	20 days	3360
					----- 5436 ----- 34098

Summary

Man Days to Serve

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

# Alaska State Legislature

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Senator Mitch Abood  
CHAIRMAN

## Senate Committee on State Affairs

### MEMORANDUM

DATE: May 4, 1988

TO: Senate State Affairs Committee Members

FROM: Senator Abood, Chairman  
Senate State Affairs Committee *M.A.*

SUBJECT: Mandatory Insurance Provisions

Out of 34 states that have mandatory insurance provisions, Alaska is the only state with a mandatory minimum jail sentence (currently ten days) for driving while a license is suspended or revoked due to failure to obtain automobile insurance. New Jersey is the only other state which has the option of sending the offender to jail. However, "stiffer fines and longer suspensions are the most likely penalties". (New Jersey Division of Motor Vehicles)

The rest of the states either suspend the license for a longer period of time or assess fines from \$100 to \$1500, or both.

I have enclosed additional background material obtained from the Council of State Governments for your review.

Enclosure



**The  
Council of  
State  
Governments**

**Chairman**  
Senate President Pro Tem Mary McClure, South Dakota

**President**  
Governor James G. Martin, North Carolina

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Executive Director  
Carl W. Stenberg

May 4, 1988

Paula Scavera  
Senate Advisory Council  
Alaska Legislature  
Juneau, AL

Dear Ms. Scavera:

Thank you for your interest in the Council of State Governments. You asked us what are state penalties for second offenders who drive with a license which has been revoked for lack of insurance. We contacted the American Automobile Association and American Association of Motor Vehicle Administrators. They did not have the information, so we contacted the following eight states:

New York -- For the first offense, either ticketed or through notification of termination of insurance by the insurer, the offender must provide proof of insurance. If there was a lapse in insurance of more than 15 days but fewer than 90 days, there is a choice of penalties including a \$4.00 per day fine for the number of days of the lapse. Over 90 days, the offender must surrender his/her plates and driver's license for the number of days he/she was without insurance. No automatic provision for jailing the offender; judges set the penalties for more serious offenses such as driving on a suspended license, generally fines and suspensions. (New York Department of Motor Vehicles)

New Jersey -- When a summons is issued for a first offense, there can be a 6 month loss of license and/or a fine of \$250.00 per year for each of three years. The judge on subsequent offenses does have the option of sending the offender to jail; stiffer fines and longer suspensions are the most likely penalties. (New Jersey Division of Motor Vehicles)

Connecticut -- Random checks of insurance or accident involvement can lead to a ticket for lack of insurance. In the case of a random check, the offender has 20 days to prove he/she had insurance at the time of the ticket or his/her license will be suspended; in the case of an accident, suspension of the license is automatic, with 20 days to prove insurance. For conviction, fines of \$100-1000 can be assessed, along with suspension of license for 30 days for the first offense, 6 months for the second. There is no highway statute providing for jail terms; judges of course have that option for repeat offenders. (Connecticut Motor Vehicles Department)

Florida -- State only requires personal injury coverage. First offense, suspension of license; suspensions get longer with subsequent offenses. If the driver is involved in a chargeable accident, convicted of driving while intoxicated, or has his/her license suspended for multiple driving offenses of any kind (too many "points"), then he/she can be required to carry general liability insurance. (Florida Highway Safety & Motor Vehicles Department)

Indiana -- If an uninsured motorist is involved in an accident, he/she must post bond or have his/her license suspended. Informal hearings are held for the offender to prove insurance or have his/her license revoked. Multiple offenses generally invoke longer suspensions from an official court. (Indiana Bureau of Motor Vehicles)

Kentucky -- First offense, \$500-1000 fine and/or revocation of license plates for one year and/or suspension of license for 6 months. Second and subsequent offenses result in larger fines and longer suspensions. Any jail term would be up to the court. The person at the licensing department did not remember anyone being sent to jail. (Kentucky Vehicle Regulation Department)


Kansas -- First offense, fine \$250-1000 and suspension of license until offender proves insurance. Offender must pay fees to reinstate his/her license and prove insurance for 3 years after the offense. Second and subsequent offenses generally invoke higher fines and longer suspensions; judges could theoretically send a chronic offender to jail. (Kansas Division of Vehicles)

Oklahoma -- First offense, automatic suspension, must prove 6 months of paid-up insurance and pay a \$100 fee. If the offender is caught driving on a suspended license, he/she is subject to arrest, a fine, or both. The judge has discretion, but the general penalty is increasingly larger fines and longer suspensions. (Oklahoma Department of Public Safety)

As indicated above, none of the states we contacted have a statutory provisions for jail terms for repeat offenders in this area.

We hope this information is helpful, if you have any questions, please let us know. Thank you again for contacting the Council of State Governments.

Sincerely,



Ruth E. Spencer  
States Information Center

DWI ARREST STATISTICS

STATEWIDE LICENSE REVOCATION DATA  
1984

Month	Number of Licenses Revoked					Total	30 Hard 60 Soft		Number of Revocat. Recinded					Average Day From Violation			% of Revocat. Recinded Licenses	
	1st	2nd	3rd	Ref.	Limit		1st	2nd	3rd	Ref.	Total	Arrests	1st	2nd	3rd	Ref.	Recin	Limit
Nov84	455	107	30	72	594	141	15	4	0	1	20	614	27	18	8	21	3.3%	31.0%
Dec	629	124	25	94	776	152	7	3	1	1	12	788	21	24	19	23	1.5%	24.2%
Total	1084	233	55	166	1370	293	22	7	1	2	32	1402	24	21	13	22	2.3%	27.0%

STATEWIDE LICENSE REVOCATION DATA  
1983

Month	Number of Licenses Revoked					Total	30 Hard 60 Soft		Number of Revocat. Recinded					Average Day From Violation			% of Revocat. Recinded Licenses	
	1st	2nd	3rd	Ref.	Limit		1st	2nd	3rd	Ref.	Total	Arrests	1st	2nd	3rd	Ref.	Recin	Limit
Jan83	596	117	37	81	660	230	20	1	0	0	21	691	21	19	18	12	3.1%	47.0%
Feb	333	87	21	53	446	151	13	4	0	0	17	469	19	23	13	14	3.7%	44.7%
Mar	494	110	24	65	628	125	17	6	0	5	28	656	23	16	16	11	4.3%	25.3%
Apr	580	89	21	65	690	199	11	2	1	2	16	706	15	16	8	15	2.3%	32.4%
May	419	110	23	78	555	111	12	3	3	1	19	574	18	15	16	11	3.3%	26.5%
Jun	439	110	31	59	500	121	24	7	2	4	37	617	23	28	18	10	6.0%	27.6%
Jul	399	97	21	81	500	143	8	2	1	1	12	520	17	15	19	12	2.3%	36.7%
Aug	386	121	43	73	550	109	2	3	1	0	12	562	22	19	13	8	2.1%	28.2%
Sep	364	92	40	38	516	111	11	6	0	2	19	555	20	22	27	6	3.6%	29.9%
Oct	368	91	36	33	510	101	12	2	0	2	16	521	20	24	27	8	3.0%	26.0%
Nov	296	84	28	60	418	93	5	4	0	1	10	428	19	20	26	8	2.5%	31.4%
Dec	343	121	40	72	504	56	9	1	0	1	5	507	16	20	9	3	1.0%	16.3%
Total	4965	1242	385	798	6570	1547	144	41	8	19	218	6702	19.58	17.3	17.9	10.4	3.1%	31.2%

STATEWIDE LICENSE REVOCATION DATA  
1986

Month	Number of Licenses Revoked					Total	30 Hard 60 Soft		Number of Revocat. Recinded					Average Day From Violation			% of Revocat. Recinded Licenses	
	1st	2nd	3rd	Ref.	Limit		1st	2nd	3rd	Ref.	Total	Arrests	1st	2nd	3rd	Ref.	Recin	Limit
Jan86	350	116	42	45	516	113	10	2	0	1	13	527	25	27	21	16	2.3%	31.6%
Feb	292	105	46	49	443	114	5	2	3	2	13	456	17	22	22	15	2.9%	29.4%
Mar	171	86	27	55	289	73	9	0	0	0	5	291	31	17	12	16	1.0%	54.4%
Apr	255	72	36	63	350	95	2	1	1	1	5	363	21	22	20	17	1.4%	37.3%
May	267	82	36	62	331	75	9	1	0	1	7	360	17	18	15	15	1.6%	35.3%
Jun	215	105	41	54	457	125	3	1	0	0	4	461	13	16	7	15	0.9%	39.9%
Jul	296	70	42	64	405	70	3	0	0	0	3	408	17	16	14	15	0.71	24.5%
Aug	327	85	34	56	451	55	2	1	2	1	10	451	17	20	15	16	2.21	16.7%
Sep	315	74	43	62	432	65	4	1	0	1	6	430	13	13	14	7	1.4%	21.0%
Oct	311	102	49	62	453	83	5	0	1	2	6	459	10	17	16	15	1.3%	23.3%
Nov	264	87	30	56	391	35	5	2	0	1	8	389	20	16	22	16	2.11	13.3%
Dec	382	107	37	63	548	83	4	1	1	0	5	554	15	17	12	22	1.1%	21.7%
Total	3545	1077	471	733	5113	1032	52	15	8	9	84	5197	17.25	18.6	16.1	15.5	1.6%	29.1%

Submitted by the Senate Committee on State Affairs

Prepared by the Highway Safety Planning Agency

DWI ARREST STATISTICS

STATEWIDE LICENSE REVOCATION DATA  
1987

Month	Number of Licenses Revoked				30 Hard 60 Soft		Number of Revocat. Recinded				Total Arrests	Average Day From Violation				% of Revocat. Recinded Licenses	% of Limited Licenses			
	1st	2nd	3rd	Ref.	Total	Limit	1st	2nd	3rd	Ref.		Total	1st	2nd	3rd			Ref.		
Jan 87	275	75	32	41	292	44	1	0	0	0	1	383	20	16	13	15	0.3%	16.0%		
Feb	231	81	35	49	347	101	2	1	1	4	8	355	23	29	25	24	2.2%	43.7%		
Mar	254	82	39	62	375	73	4	2	1	0	7	392	19	17	23	16	1.8%	28.7%		
Apr	238	94	32	62	364	54	5	2	0	0	7	371	19	15	15	0	1.9%	22.7%		
May	290	87	34	57	411	80	10	2	1	0	13	424	20	12	14	11	3.1%	27.6%		
Jun	267	109	49	71	425	62	7	2	0	1	10	435	23	22	27	17	2.3%	23.2%		
Jul	250	97	42	55	371	59	1	1	0	0	2	373	17	17	9	13	0.5%	23.2%		
Aug	273	59	38	49	405	77	0	1	0	0	1	406	23	21	18	17	0.2%	27.7%		
Sep	196	77	50	57	343	33	5	0	1	0	6	347	20	17	12	15	1.7%	16.8%		
Oct	207	92	50	54	351	54	2	0	0	0	2	353	16	20	12	15	3.6%	25.8%		
Nov	175	67	59	29	261	73	2	0	0	0	2	283	17	19	13	16	0.7%	41.7%		
Dec	177	82	59	52	318	65	0	2	0	2	7	325	17	21	14	15	2.2%	33.0%		
Total	2260	1054	479	660	4379	774	42	13	4	7	66	4457	17	53	18	3	16.2	15.3	1.5%	27.1%

# Alaska State Legislature

## Committees:

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



P.O. Box V  
Juneau, Alaska 99801  
(907) 465-4947

## REPRESENTATIVE FRAN ULMER

### M E M O R A N D U M

May 2, 1988

TO: Senator Mitch Abood, Chair  
Senate State Affairs Committee

FROM: Representative Fran Ulmer

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

CS for HB 354(Jud) corrects several problems with Alaska's present driving laws. Specifically, the bill:

- Makes the sixth and subsequent DWI's a felony and increases jail sentences for repeat drunk drivers.
- Allows those convicted of DWI to earn back a limited license through their good conduct after their release from prison.
- Makes the penalties for someone who never gets a driver's license and then commits crimes the same as the penalties for someone who has a driver's license and commits crimes--this eliminates the incentive created by current law to never get a driver's license.
- Brings the penalties for the major driving crimes into balance by treating driving while intoxicated as a more serious offense than driving while license suspended.

The major thrust of this proposed legislation is to target the worst drunk drivers. HB 354 increases penalties for repeat DWI offenses to reflect the seriousness of the crime. The proposal raises the mandatory minimum jail sentence for a third DWI from 30 to 100 days; for fourth DWI to 120 days; and a fifth DWI would result in a minimum sentence of 180 days. A sixth conviction within 10 years would be a Class C felony.

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

Alaska law already makes felonies out of conduct which is less dangerous than driving while intoxicated.

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

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

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

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

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

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

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

1) If someone is caught driving after his or her license has been suspended for being caught driving without insurance, the mandatory minimum jail sentence is 10 days and the mandatory minimum license revocation is one year. HB 354 changes these mandatory minimum penalties to three days in jail and a 90-day license revocation (which would be the same as DWI penalty for first time offense). For a second offense within 10 years, the court shall impose a sentence of not less than 10 consecutive days, and for a third, not less than 20 consecutive days.

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

3) If a person is caught driving while his or her license is suspended by a court for a second or subsequent DWI conviction, the mandatory minimum penalty is 90 days in jail and a one-year loss of license. HB 354 proposes to change this to 30 days in jail and a 90-day loss of license.

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

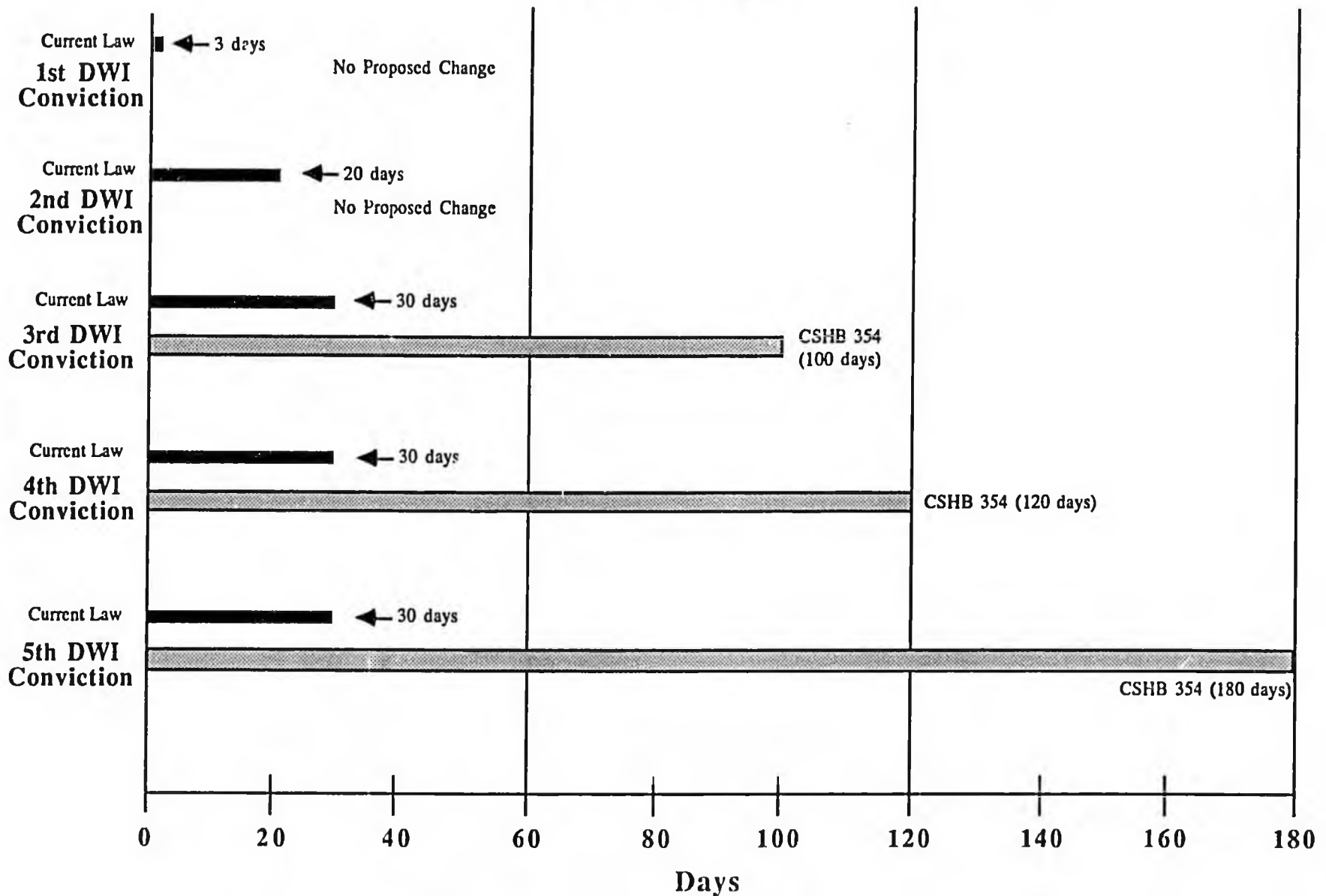
How To Increase Penalties For the Worst Drunk Drivers

<u>Crime</u>	<u>Current Law</u> Jail Time/Driver's License Revocation (Mandatory Minimum)	<u>CS for HB 354 (Jud)</u> Jail Time/Driver's License Revocation (Mandatory Minimum)
1st DWI	3 days in jail/90-day loss of license (possible to earn back limited license for last 60 days)	3 days in jail/90-day loss of license (possible to earn back limited license for last 60 days)
	--no change	
2nd DWI	20 days in jail/1-year loss of license	20 days in jail/1-year loss of license (possible to earn back limited license for last 60 days)
3rd DWI	30 days in jail/10-year loss of license	100 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
4th DWI	30 days in jail/10-year loss of license	120 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
5th DWI	30 days in jail/10-year loss of license	180 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
6th and subsequent DWI	30 days in jail/10-year loss of license	Class C Felony/10-year loss of license (possible to earn back limited license after 5 years)
DWLR/DWLS based on insurance suspension	10 days in jail/1-year loss of license	1st--3 days in jail/90-day loss of license 2nd--10 days in jail/90- day loss of license 3rd--20 days in jail/90- day loss of license
DWLR/DWLS based on court ordered revocation for 1st DWI	30 days in jail/1-year loss of license	10 days in jail/90-day loss of license
DWLR/DWLS based on court ordered revocation after 2nd or subsequent DWI	90 days in jail/1-year loss of license	20 days in jail/90-day loss of license

# Jail Sentences for Drunk Drivers

(Mandatory Minimum)

Current Law vs. CSHB 354

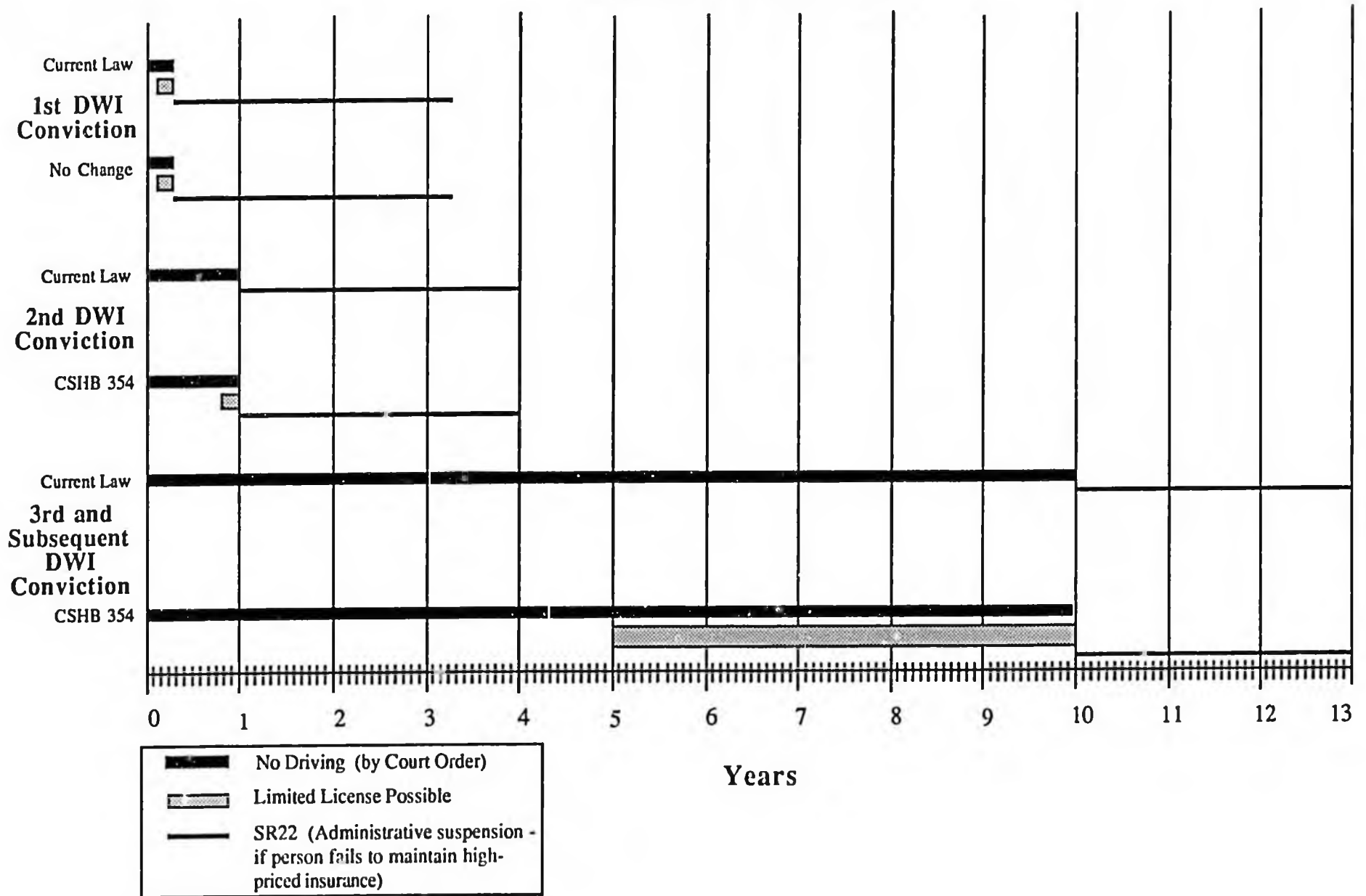


Note: 6th and subsequent DWI's are Class C felonies.

# Length of License Suspensions for Drunk Drivers

(Mandatory Minimum)

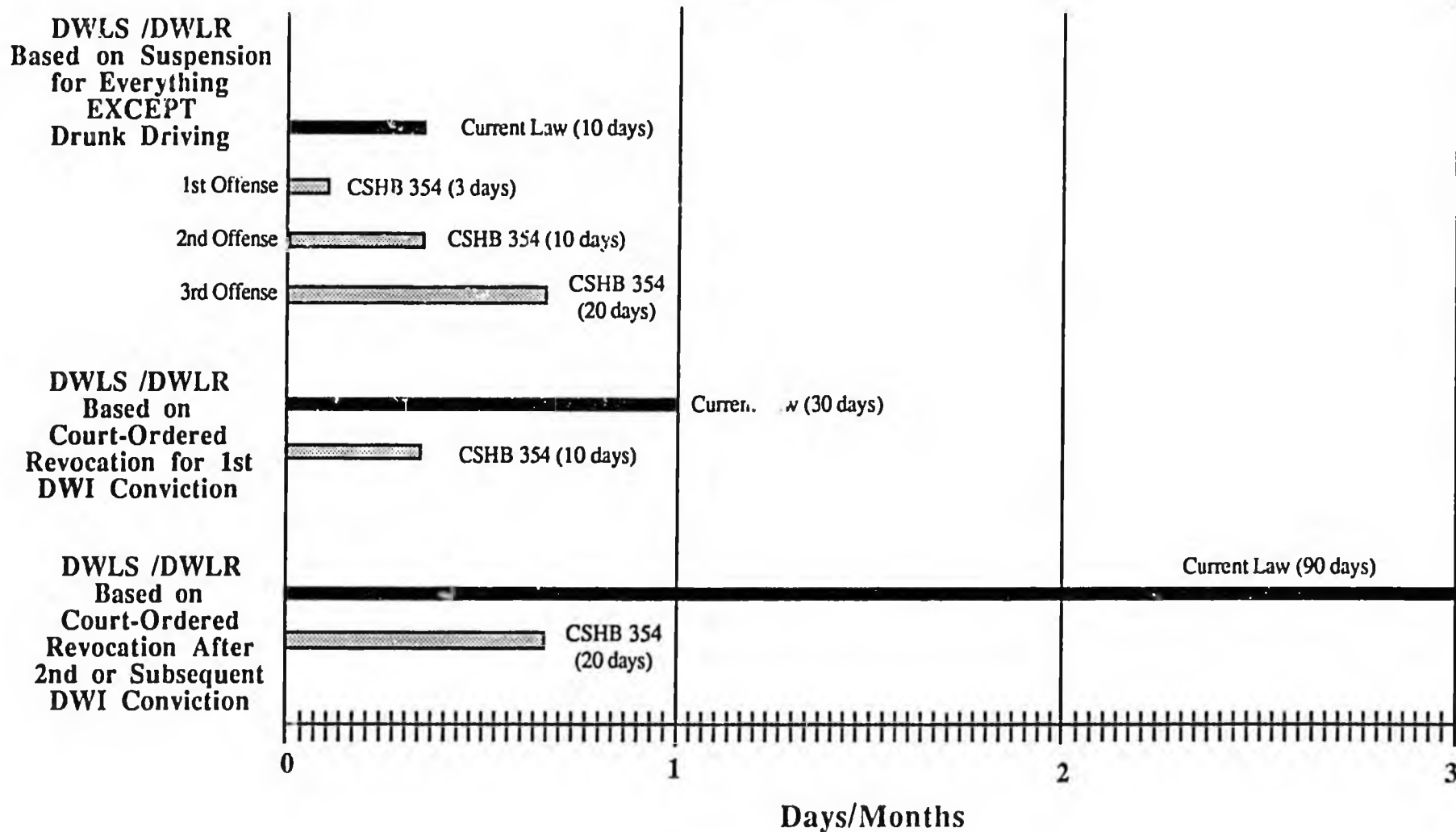
Current Law vs. CSHB 354



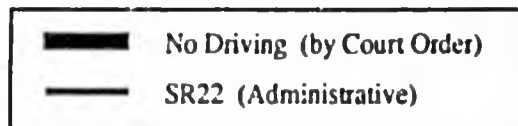
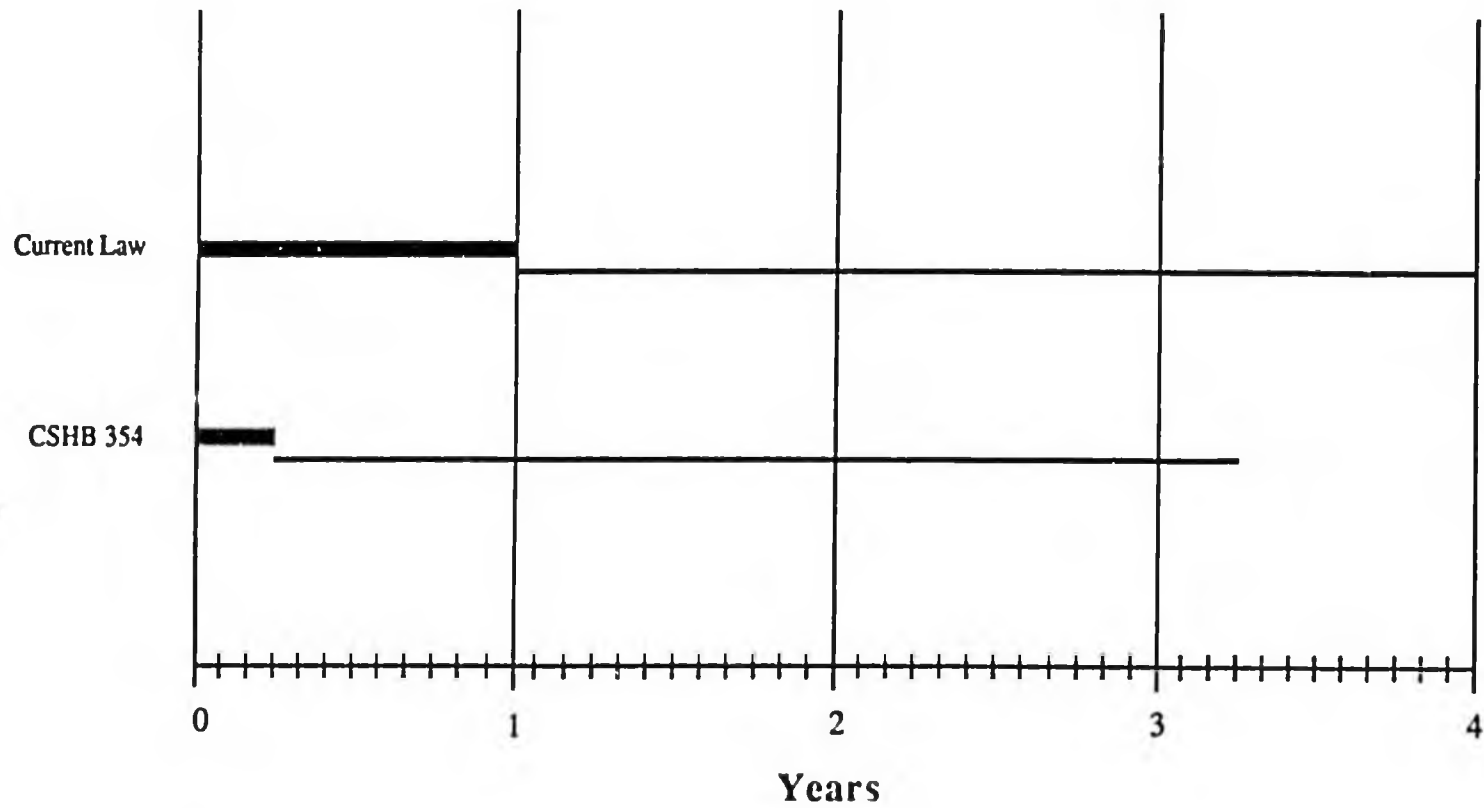
# Jail Sentences for People Convicted of Driving with a Suspended License

(Mandatory Minimum)

Current Law vs. CSHB 354



# Length of License Suspensions for Anyone Convicted of Driving with a Suspended License (Mandatory Minimum)



M E M O R A N D U M

TO: John Sund, Chairman  
House Judiciary Committee

Date: April 21, 1988

FROM: Dana Pabe  
Public Defender

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

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

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

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

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

## Stiff DWI laws do save lives

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

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

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

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

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

— Veoletta Hayward

2/16/88 News

QUALITY SERVICES

*File DWI Unit*

Date FEB 12 1988

Anchorage Times

Client No. 0615

## Stay tough on DWI

Dear Editor: *0150 0590 255 0615*

How shortsighted! How illogical! To weaken the present DWI program which has been so effective would cost lives, maybe yours or mine.

Let us support the improved legislation obtained through the efforts of Mothers Against Drunk Driving (MADD), our legislators, and concerned citizens, and continue to enforce the penalties for DWI.

We can cut the budget on less vital programs. For this cause I would even be willing to tap the Permanent Fund.

Pauline V. Burkher  
341 W. 11th Ave.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

M E M O R A N D U M

TO: John Sund, Chairman  
House Judiciary Committee

Date: April 21, 1988

FROM: Dana Fabe  
Public Defender

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

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

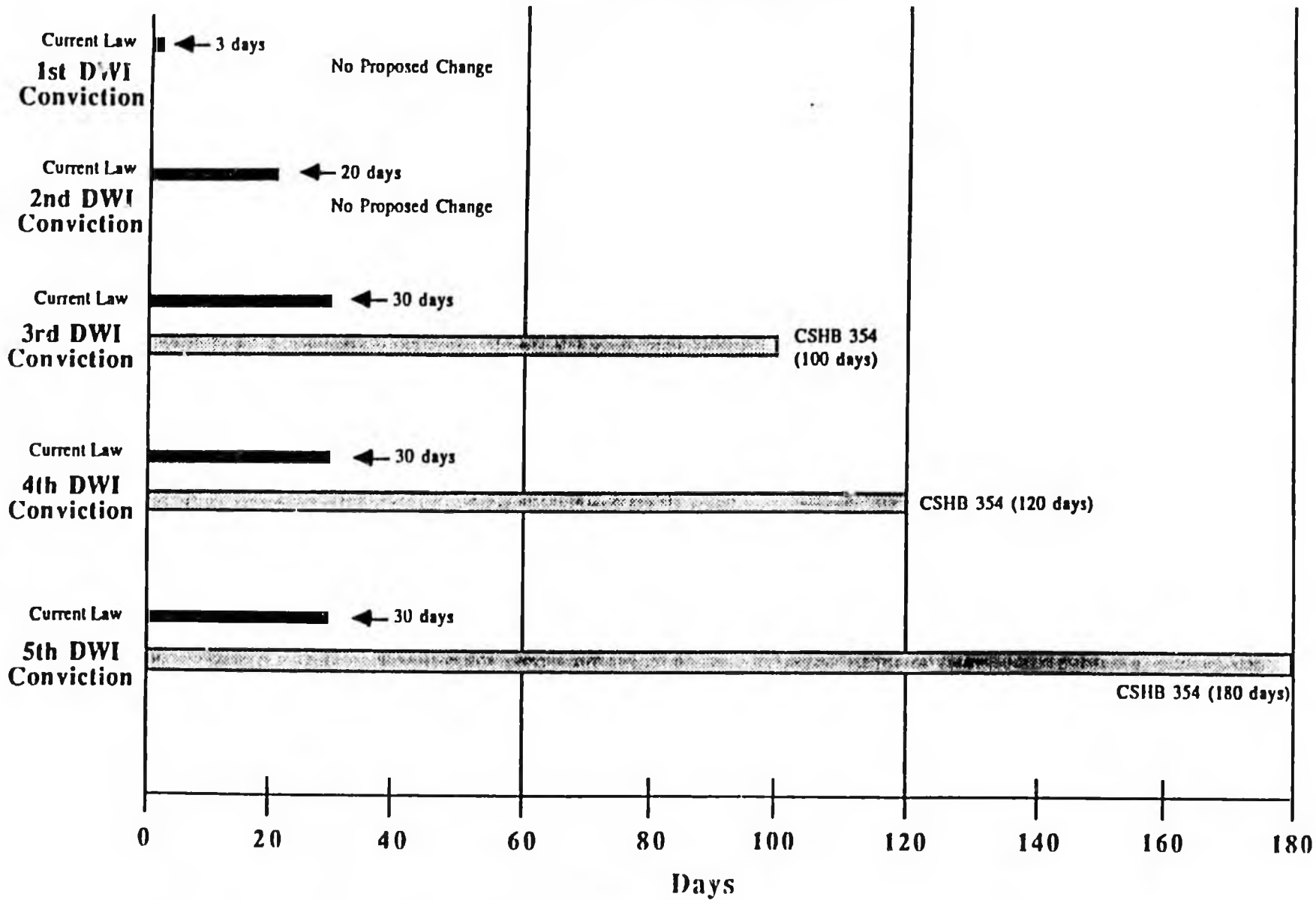
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Thank you for requesting my input on this bill. As noted above, with the exception of the mandatory jail term for a first felony, I have no other problem with the bill.

# Jail Sentences for Drunk Drivers (Mandatory Minimum)

Current Law vs. CSHB 354



Note: 6th and subsequent DWI's are Class C felonies.

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2/16/88 News

QUALITY SERVICES

*File # 242. 1000*

Date FEB 12 1988

Anchorage Times

Client No. 0615

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How shortsighted! How illogical! To weaken the present DWI program which has been so effective would cost lives, maybe yours or mine.

Let us support the improved legislation obtained through the efforts of Mothers Against Drunk Driving (MADD), our legislators, and concerned citizens, and continue to enforce the penalties for DWI.

We can cut the budget on less vital programs. For this cause I would even be willing to tap the Permanent Fund.

Pauline V. Burkher  
341 W. 11th Ave.

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

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

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

# My Friend

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thomas J. Poulton, MD  
Omaha

# Drunk Driving: The Highway Killer is Back

By Barbara Bellomo

After steadily declining since 1982, deaths caused by drunk drivers are on the rise again.

A dramatic increase in alcohol-related traffic fatalities in 1986 could force states to consider once again passage of even stricter laws to get drunks off the road.

In the early '80s, the states rushed to pass more than 900 laws aimed at reducing what had become an alarming and continuous increase in alcohol-related deaths on the country's streets and highways.

The result of this increased public awareness of the national menace of drunks behind the wheel—spawned in large part by such groups as Mothers Against Drunk Driving (MADD)—was a decline in alcohol-related traffic deaths from 1982 to 1985.

But in 1986, fatalities related to drinking and driving rose by 7 percent, causing concern among traffic safety experts and anti-drunk-driving groups, some of which urge wider enactment of laws that have proven effective and others who call for stricter law enforcement and tougher sentencing.

"We've made inroads in reducing drunk driving, but now we're slipping back," says Barry Sweedler of the National Transportation Safety Board (NTSB). "The issue has lost the glamour it had in the early '80s."

Dr. Ralph Hingson of Boston University's School of Public Health believes that public pressure is essential in keeping the issue alive in legis-

latures in light of the sharp increase in drunk-driving-related deaths.

"There's no doubt that there was tremendous progress in the early '80s. It was unprecedented," he said. "The drunk driving laws and all the public discussion surrounding them were great, but it's almost like we found the key and now we're throwing it out. We have to stay on top of it."

How effective have those tough drunk driving laws been?

The American Bar Association and the National Transportation Safety Board recently evaluated state laws to determine what works most effectively to keep drunk drivers off the road. Successful initiatives include:

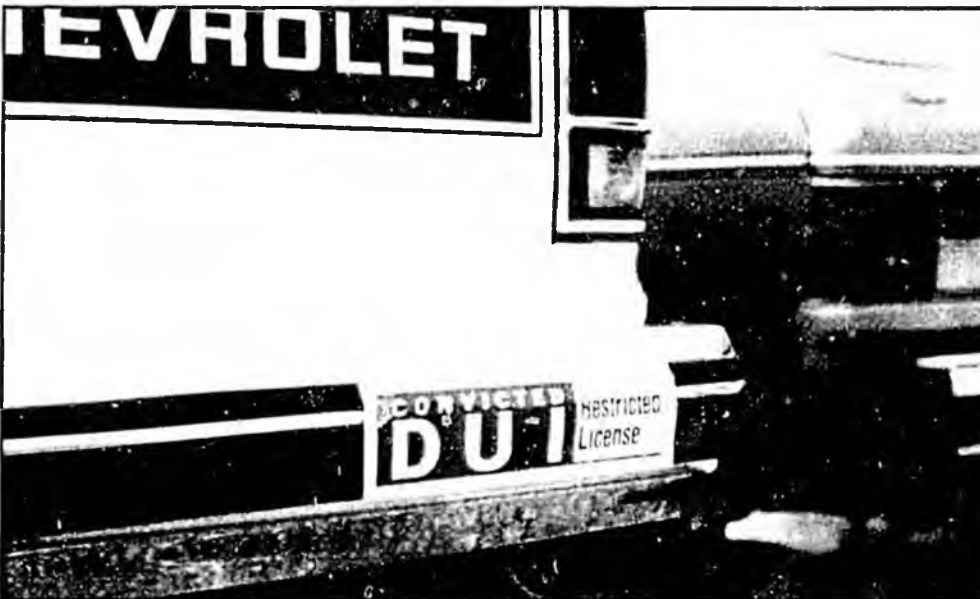
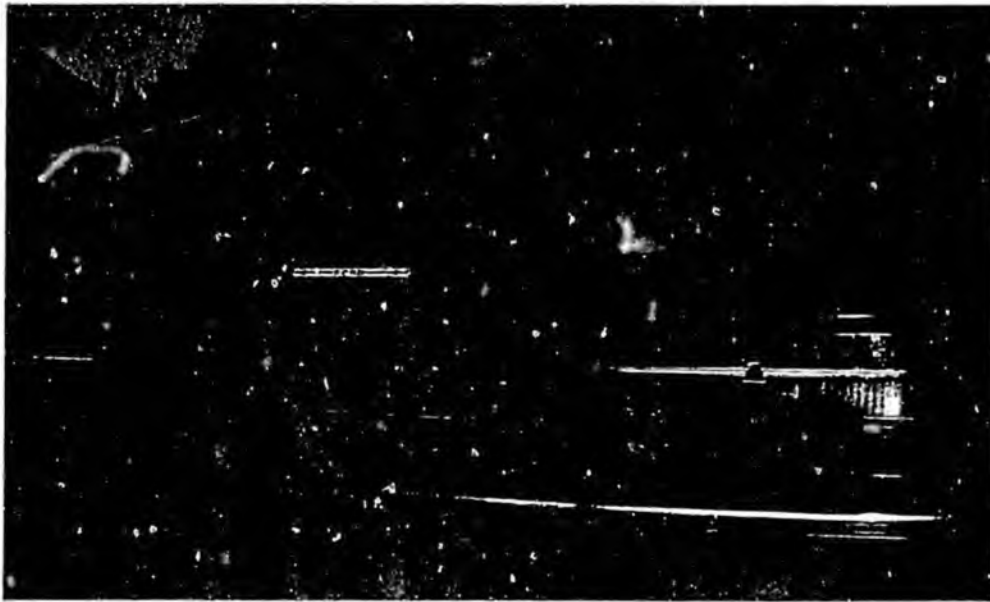
- Allowing police officers to confiscate drunk drivers' licenses at the time of arrest;
- Requiring judges to impose mandatory sentences for first and multiple offenders;
- Restricting or eliminating plea bargaining;
- Sobriety checkpoints;
- Raising the minimum drinking age to 21; and
- Enacting dram shop laws.

The most effective deterrent, according to the studies, is "roadside administrative revocation," which allows law enforcement officers to take away a drunk driver's license on the spot. Nearly half the states have such laws.

The NTSB acknowledges that while some people will continue to drive even without their license, most will

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*Barbara Bellomo is a staff writer for State Legislatures.*



Some judges are using public humiliation as a tactic for reducing drunk driving. In Tuscarawas County, Ohio, Judge Edward O'Farrell issues special-colored license plates to first-time DUI offenders. And in Sarasota County, Fla., Judge Becky Titus requires offenders to place bright red and gray bumper stickers on their cars, so that other drivers know that they have been convicted of driving drunk.

drive less, or at least sober, until their court date. Many DUI offenders, before they even get to court, are arrested a second time for the same offense. Yet in states that don't have automatic revocation laws the second arrest will often show up as the driver's first offense.

License revocation in all 50 states continues to be one of MADD's national goals. Norma Phillips, national president, says, "Most citizens value their drivers' licenses. [Revocation] also has a psychological effect on people. It hits home that what they've done is unacceptable behavior."

John Grant, executive director of the National Commission on Drunk Driving, believes that tougher drunk-driving legislation—including automatic revocation—has had the greatest impact on social drinkers, who understand the consequences of drinking and driving. And Senator Rod Monroe of Oregon says that while repeat offenders in his state sometimes continue to drive under suspension, the new laws have had an effect on social drinkers. "It has produced an awareness. Even at political functions you see lots of non-alcoholic drinks being served now."

Most criminal justice specialists agree that automatic revocation is a tool in fighting drunk driving, but they argue that it does little to deter hardcore repeat offenders who often are alcoholics. They believe that the emphasis of the anti-drunk-driving campaign should focus on problem drinkers instead of the social and moderate imbibers who may get in a scrape only once, if ever.

Sweedler believes that repeat offenders pose the biggest challenge to law enforcement. Revocation legislation is important because "it still reduces their driving if not their drink-

ing problem." But he adds that the Safety Board urges states to require an evaluation of an offender's drinking problem before sentencing.

"If he's an alcoholic, sending him to an alcohol education program isn't going to work, and committing someone who went out one night and had a little too much fun to a six-month program is inappropriate as well. We must match treatment with the problem," he says.

**W**hile evaluation is key to handing down an appropriate sentence, both the bar association and the National Transportation Safety Board agree that mandatory sentencing of repeat offenders is critical in getting drunk drivers off the roads.

MADD members regularly monitor courtroom proceedings in drunk driving cases, because, according to Phillips. "When we are present in court to offer the victim support, you see judges handing down stricter sentences."

Ohio Judge Edward O'Farrell, who recently appeared on ABC's Nightline with Ted Koppel, is one judge who consistently is hard on drunk drivers.

O'Farrell achieved notoriety for his practice of ordering first-time offenders to sport canary yellow plates on their cars that help to alert police that they are DUI offenders. In addition, he imposes a mandatory 15-day sentence, six-month license suspension and a \$750 fine. If the offense involves an accident or injury the penalty goes up considerably. O'Farrell says his intent in the beginning was "to shock the hell out of people."

"The number of people dying in my county has plummeted because of my intractable position that no matter who you are, you're going to jail if you drink and drive," he says. Last year, there was one alcohol-related traffic fatality among the 85,000 residents of Tuscarawas County, O'Farrell's jurisdiction.

Phillips believes "the laws on the books aren't worth the ink they're

written in if they are not enforced. Judges still have discretion (with mandatory sentences). But they must hand down more swift and sure penalties because only the threat of jail will deter drunk driving."

Senator Monroe says his primary focus is to see that the drunk driving legislation he has sponsored in the past "is properly enforced." He attributes the leniency of many judges to their view that "DUI cases are minor offenses" that clog already overburdened courts.

"Drinking is part of the macho West—a test of manhood in some people's eyes. When judges grew up, everyone drank and drove," he said. "Some are very strict, but others don't feel it is that serious. They have a tendency to wink at it and impose minimal fines."

Monroe charges that judges in his district routinely refer teen-agers arrested for drunken driving to a two-hour alcohol education program, even though a law he authored gives them the latitude to confiscate the licenses of drunken drivers under 18.

Mandatory sentencing can get drunks off the road and into treatment or behind bars, but only when states restrict or eliminate plea bargaining in drunk-driving cases, the NTSB and bar association studies state. When plea bargaining is allowed, the association argues, there is often no record of a driver's first DUI offense, allowing repeat offenders to continually receive lighter sentences.

In addition, the ABA's report found that, "It (plea bargaining) eliminates many options for appropriate action by the justice system to reduce future risk. By failing to charge an offender with drunk driving, the system is prevented from accurately identifying the risk that individual presents if he commits a subsequent offense."

While some critics believe the criminal justice system is slacking off on drunk drivers, in many states there simply is not enough room in jails to hold them.

"Judges are frustrated because there

are very few meaningful sanctions for second offenders—jail space is very precious in this state," says Oregon Representative Dick Springer.

A number of criminal experts believe that incarceration can be an effective deterrent, but alcohol treatment must be provided to effectively reduce drunk driving. Jailing drunk drivers with criminals is inappropriate, they argue.

Arizona and Massachusetts are among a few states where lawmakers have appropriated funds to their corrections departments to build minimum security facilities strictly for DUI offenders. Other states are looking at alternative punishments to relieve overcrowded prisons and jails and to respond to the concern that jail is a place for criminals, not alcoholics.

**O**ne of the tougher alternative punishments for repeat offenders is automobile forfeiture, already on the books in Alaska and New York. Alaska Representative Niilo Koponen has sponsored legislation that would make forfeiture mandatory. Although New York also has a forfeiture law, judges there rarely invoke it. But the state has generated \$22 million through a statewide program that collects county fines from DUI offenders. The revenue is used to provide funding for the state's anti-drunk-driving campaign.

Five states have enacted legislation allowing judges to require repeat offenders to install a breathalyzer device in their cars that locks the ignition if the driver's alcohol level is over a specified limit. Oregon is the most recent. Its one-year experiment, the Ignition Interlock Pilot Program, requires judges in 11 counties to order the device for repeat offenders who need to drive. To obtain an occupational or hardship license, the driver must have previously received alcohol treatment, carry insurance and have the breath tester.

"It's an electronic probation officer," Representative Springer, the law's sponsor, says of the device.



Another effective deterrent, according to the NTSB and the ABA, are sobriety checkpoints. Twenty-five states have established them, and a number have landed in court as a result. Civil liberties groups, arguing that checkpoints are unconstitutional, have successfully brought suit against them in California, Oregon and Pennsylvania. The California Supreme Court later reversed its ruling, stipulating that law enforcement agencies must give the public advance notice of the checkpoint's location and must use systematic selection criteria.

The Pennsylvania Supreme Court recently outlawed random sobriety roadblocks, saying they were set up at

"such unlikely times and places" that citizens were being stopped unjustifiably by police. But like California, the court upheld their legality, imposing similar restrictions on law enforcement departments. Last September, Oregon banned the use of checkpoints.

Despite constitutional challenges, the NTSB maintains that roadblocks are cost effective and a strong deterrent to drinking and driving.

Alcohol-related fatalities among teen-agers 15 to 19 are a real concern. Deaths in this age group were significantly higher in 1986 than in 1985, according to John Grant of the National Commission on Drunk Driving. He attributes the increase to the fact that

automobiles are more accessible, fuel is cheaper and "kids drive with more abandon and less responsibility."

However, Boston University's Hingson theorizes that the anti-drinking movement had little impact on this group because "it was before their time. The number of new laws geared toward drunk driving reached its zenith in 1985 and evidence shows it may be tapering off. That's a bad sign for a high risk group such as teen-agers who are just entering the driving pool."

Preventing alcohol-related fatalities among teen-agers has spurred many states to enact legislation targeted specifically to those under 21. With the exception of Wyoming, every state has



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raised the drinking age to 21 (some with a nudge from Congress, which threatened a loss of federal highway funds without it). State troopers across the country say the laws have already saved many lives.

Maine recently lowered its maximum permissible blood alcohol content to .02 percent for drivers under 21. The new law deals a double blow—a fine is imposed for drinking under age and driving privileges are suspended for one year. Rhode Island has introduced legislation that would lower its legal blood alcohol limit to .04 percent for teen-agers.

As part of its national lobbying effort, MADD is urging all states to lower their maximum blood alcohol limit to .10 percent. But the American Medical Society says that even at .05 percent a person is too impaired to drive. Forty-two states have .10 percent maximum levels and Oregon and Utah have lowered their limits to .08 percent. Colorado recently introduced a bill that would lower the legal limit from .15 percent to .10 percent.

To date, half the states have enacted strong liability legislation—which the studies consider to be effective—aimed at bars and restaurants that serve drinks to intoxicated patrons, and Maine, Oklahoma and Texas are among several states that require or encourage training programs for bartenders to learn how to identify customers who have had too much to drink.

Grant says that drunk-driving legislation in and of itself is not a panacea. He theorizes that the key to getting drunk drivers off the streets and highways lies in a coordinated approach by states.

"Enforcement and implementation of the laws has been the biggest challenge. We don't need any new laws. We need to implement the ones we have.

"Everyone must do their part from judges to more active police enforcement to better court interpretation of what the law says. Education and prevention in the work place and the schools are a big part of it, too. And it's vital that the media keep the issue alive," he says.

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5573 SSTA HB 354 - HB 481

145

**WHY WE NEED CS HB 354  
EXAMPLE**

**JAMES E. JOHNSON**

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

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

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

JAMES E. JOHNSON'S CONVICTIONS

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

SSN: 517-46-9517;

517-48-9513;

517-46-9515

(All cases in Anchorage District Court unless otherwise noted)

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

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

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

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

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

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

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

STATE OF ALASKA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 JAMES JOHNSON, )  
 DOB. 9/12/42 )  
 )  
 Defendant. )

Court No. 3AN-S85-3592 Cr.  
3AN-S85-3329 Cr.

STATE'S MEMORANDUM IN AID OF SENTENCING  
PROBATION VIOLATIONS

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

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

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

DISTRICT ATTORNEY, STATE OF ALASKA  
1031 WEST FOURTH AVENUE, SUITE 520  
ANCHORAGE, ALASKA 99501  
(907) 277-8622

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DISTRICT ATTORNEY, STATE OF ALASKA  
1031 WEST FOURTH AVENUE, SUITE 520  
ANCHORAGE, ALASKA 99501  
(907) 277-8622

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

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

14 Given the defendant's extensive criminal record,  
15 his pattern of pathological alcohol abuse, and his propensity  
16 to drive without a license, he is clearly a worst offender.  
17 See Sandahl v. Anchorage, 670 P.2d 715, 718 (Alaska App.  
18 1983). Given the large number of convictions in a short  
19 time, the consistently high breath-alcohol concentrations,  
20 the repeatedly bad driving leading to accidents, and the  
21 repeated flagrant rejections of court ordered alcohol  
22 treatment, the defendant is probably the worst offender.  
23

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

DISTRICT ATTORNEY, STATE OF ALASKA  
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1  
2 The defendant's record of repeated aggravated  
3 crimes and consistent flouting of court orders shows that  
4 rehabilitation must take a backseat to specific and general  
5 deterrence, reaffirmation of societal norms, and isolation.

6  
7 The court has repeatedly offered opportunities for  
8 rehabilitation to this defendant. He not only rejects  
9 treatment, but immediately re-offends upon release from  
10 custody.

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

18  
19 The defendant's repeated decisions to endanger the  
20 lives of so many Alaskans so seriously so many times requires  
21 a heavy emphasis on deterrence of others and the  
22 reaffirmation of societal condemnation for driving while  
23 intoxicated. See Huckaby v. State, 632 P.2d 975, 977 (Alaska  
24 App. 1981). Finally, isolation also takes on a special  
25 importance unusual in misdemeanor cases. This defendant is a  
26

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

DATED this 2<sup>nd</sup> day of September, 1987, at  
Anchorage, Alaska.

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

DWAYNE W. McCONNELL  
DISTRICT ATTORNEY

By: CJ Groh  
Clifford John Groh  
Assistant District Attorney

CJG: lhr

(corrected 2-29-88)

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# ALASKA LAW REVIEW



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

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

### I. INTRODUCTION

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

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

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

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

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

4. *Id.* at 911.

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

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

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

Alaska has, however, expressly rejected the common law definition of murder.<sup>92</sup>

A comparison of Alaska's DWI statute with those of other states offers another indication that the Alaska legislature did not intend for Intoxicated Motorists to receive murder convictions. In several other states, either the second<sup>93</sup> or third<sup>94</sup> DWI conviction is a felony. In Alaska, to the contrary, DWI remains a misdemeanor regardless of the number of prior convictions.<sup>95</sup> Furthermore, among the states that will convict an intoxicated driver of murder, Alaska has the shortest period of incarceration for repeat DWI offenders.<sup>96</sup> The Alaska DWI statute provides for a minimum sentence of only twenty days in jail for someone with one prior DWI conviction, and a minimum punishment of thirty days in prison for someone with two or more prior DWI convictions.<sup>97</sup> In comparison, Tennessee has a 45-day minimum sentence for the second offense and a 120-day minimum for the third offense,<sup>98</sup> and South Carolina has a 3-year minimum for the third offense and a five-year minimum for the fifth offense.<sup>99</sup> In light of the Alaska legislature's lenient treatment of DWI offenders,

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

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

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

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

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

96. Until 1980, California's penalties for repeat offenders were more lenient than Alaska's penalties, see CAL. VEH. CODE § 23102(a) (West 1971) (repealed 1980), but now the California minimum sentence for repeat DWI offenders is much longer than that of Alaska. Compare CAL. VEH. CODE § 23165 (West Cum. Supp. 1985) (90-day minimum for second offense) with ALASKA STAT. § 28.35.030(b) (1984). Four years after the Criminal Code revision, the Alaska legislature added some harsh penalties not involving incarceration for repeat DWI offenders. These involve revoking defendants' licenses for long periods of time. See ALASKA STAT. § 28.15.151(c) (1984). Nevertheless, a legislature's willingness to impose harsh non-jail penalties on DWI offenders does not prove that it is willing to impose severe jail sentences on Intoxicated Motorists.

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

98. TENN. CODE ANN. § 55-10-403(a)(1) (Supp. 1984).

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

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

E. Summary

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

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

IV. THE PEARS CASE

A. The Facts

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

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

101. *Pears v. State*, n72 P.2d 903, 909-10 (Alaska Ct. App. 1983).