

HFB

102



Association for the Advancement of Automotive Medicine

An international multidisciplinary organization for crash injury control

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EXECUTIVE DIRECTOR

Elaine Petrucelli

February 11, 1991

Representative Dave Donley
Chairman
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Chairman Donley:

On behalf of the Membership of this Association (AAAM), I write to support enthusiastically H.B. 102, which proposes to reduce the level limit of blood alcohol concentration from 0.10 g/dl to 0.08 g/dl.

The AAAM, in 1987, adopted its position in support of .08 as illegal per se evidence to operate a motor vehicle, and .05 as presumptive evidence of driving impairment. This position was taken after a thorough review of both experimental and empirical data, and in recognition of the enforceability of laws reflecting this position. A copy of the position and its background statement are enclosed.

We commend you for your leadership in introducing this measure to reduce alcohol-impaired driving. If I can help your effort in any other way, please contact me.

Sincerely,

Elaine Petrucelli
Executive Director

EP/bz/enclosure

MOTHERS AGAINST DRUNK DRIVING

TO: Fairbanks Daily News-Miner
P.O. Box 70710
Fairbanks, AK 99707

FROM: Peri-Ann McIlroy
Mothers Against Drunk Driving
227 Woodridge, #12
Fairbanks, AK 99709

DATE: February 24, 1991

SUBJ: News Release - For Immediate Release

House Bill 102

The Fairbanks Chapter of Mothers Against Drunk Driving announces its support for House Bill 102 introduced by Representative Dave Donley, (D) Anchorage. This bill, designed to lower the blood alcohol standard for driving while intoxicated, is seen as a crucial link in the defense against DWI in Alaska.

Glenn Hackney, President of the Fairbanks Chapter of MADD said that passage of this bill will help deter drunken driving by making convictions easier to obtain and cases harder to lose through technicalities.

The bill would lower the per se standard for intoxicated driving from the current .10 to .08, a level at which it has been proven virtually everyone suffers dangerous driving impairment. At the current state level, law enforcement officials find it frustrating to arrest drivers with BACs of near .10 because convictions are difficult to obtain at such levels. However, experience in Oregon since passage of .08 per se there has shown that under the lower standard, both arrests and convictions have gone up, especially at .10 - .14 levels.

"Passage of this bill will make the state BAC legal limit more closely coincide with actual impairment and make Alaska highways safer," said Glenn Hackney.

SCOTT & WESLEY GERRISH
MEMORIAL

M A D D

ANCHORAGE, ALASKA
CHAPTER

MAILING ADDRESS:
733 West 4th Avenue, Box 821
Anchorage, AK 99501

(907) 258-MADD

BUSINESS ADDRESS
733 West 4th Avenue, Suite 304
Anchorage, AK 99501

February 25, 1991

Representative Dave Donley
P.O.Box V
Juneau, Alaska 99811

Dear Representative Donley:

The Anchorage Chapter of Mothers Against Drunk Driving is pleased to support HB 102. As you know, a driver with a blood alcohol level of .08 is six times more likely to have an accident than a driver with a blood alcohol level of zero.

In 1989 there were a total of twenty traffic fatalities in Anchorage; six of those were alcohol-related. That same year there were a total of 371 alcohol-related traffic accidents which did not result in fatalities. By lowering the legal blood alcohol level to .08, we hope both of these statistics could be lowered significantly.

Nationwide, the chances of being a victim of a handgun-related crime are one in five; the chances of being a victim of an alcohol-related traffic accident are one in two, according to the National Highway Traffic Safety Administration.

Every 23 minutes, someone in the United States dies because of a drunk driver. Within the last decade, over 250,000 Americans have died because of drunk drivers. This is more than five times the number of U.S. combat deaths in Vietnam. Clearly, drunk driving is one of the major causes of accidental death in this country. MADD commends you in your efforts to reduce the impact of drunk driving here in Alaska.

A major issue in conjunction with this legislative change would be to provide a monetary incentive to municipalities to change their ordinances to conform with state law by increasing municipal assistance enough to cover the increased costs of the bill. I don't believe the costs would greatly increase, but I know, for example, that the municipality of Anchorage needs additional prosecutors now, and this change would only make that need more acute.

We urge the passage of this bill with the appropriate resources to ensure its enforcement.

Sincerely,

Susan Humphrey-Barnett / by bc
Susan Humphrey-Barnett, President
Anchorage Chapter MADD

MODIFYING
ATTITUDES
TOWARDS
DRIVING AND
DRINKING

STATE OF ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX KC
JUNEAU, ALASKA 99811-0310
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 26, 1991

The Honorable Dave Donley, Chair
House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Re: HB 102 (Reducing Necessary BAC for DWI Offenses)

Dear Representative Donley:

By letter dated January 31, 1991, you have asked whether we believe there are any problems with the above-referenced bill and whether we support it or not. Please be advised that we support this legislation and are not aware of any legal problems with it.

Alcohol-related offenses continue to dominate the dockets of our state courts. Any law that restricts alcohol consumption or penalizes its abuse will help make Alaska a safer place to live.

Thank you for the opportunity to comment on this bill. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE
ATTORNEY GENERAL

By: Margot O. Knuth
Margot O. Knuth
Assistant Attorney General

MOK:mm-026



Office of the Chairman

National Transportation Safety Board

Washington, D.C. 20594

March 6, 1991

Honorable Dave Donely
Chairman, House Judiciary Committee
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Chairman Donely:

It is my understanding that the House Judiciary Committee is considering legislation to lower the blood alcohol concentration (BAC) at which a driver is presumed to be intoxicated from 0.10 percent to 0.08 percent. I would like to offer my strong support and share with you the conclusions of the National Transportation Safety Board based on its research and accident investigation experience.

Considerable research demonstrates measurable adverse effects of alcohol on performance, even at low BACs. Degradation of performance at a BAC as low as 0.035 percent was shown in a Coast Guard study completed in 1975 (CGD-134-75). This finding is supported by research completed in 1950 by K. Bjerver and L. Goldberg, documenting that the impairment threshold of expert drivers' driving ability is at BACs. of 0.035 to 0.040 percent. This study concluded that performance decrements were significant when the BAC was around 0.035 percent ("Effects of Alcohol Ingestion on Driving Ability: Results of Practical Road Tests and Laboratory Experiments," Quarterly Journal, Studies on Alcohol, Vol. 11, No. 1, 1950). In yet another study by Goldberg, "Alkohol och Trafikrisker" (published in 1970 in Sweden), it was shown that in an emergency, a BAC of 0.02 to 0.04 percent can have a critical effect. Goldberg found detrimental effects and performance impairment in subjects with BAC of 0.02 to 0.04 percent.

The 1977 study by H. Laurell, "Effects of Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," found effects on driver performance at BACs below 0.05 percent, studied in two contexts: (1) in a critical car-driving situation involving emergency braking and evasive maneuvers, and (2) in a "surprise" situation that followed the first situation and involved the sudden appearance of a human-shaped obstacle blocking the roadway. Overall, detrimental effects of alcohol at an average BAC as low as 0.042 percent were found.

Other studies substantiate performance impairment at very low BACs. For example, in an article published in 1970, "Alcohol Disturbance of Visual Acuity for Moving Objects," H. Honneger stated that the ability to distinguish close, but separated, moving objects seems to be consistently impaired at BACs sometimes as low as 0.03 percent. C. E. Billings and R. L. Wicks, in a

report prepared for the FAA ("Effects of Alcohol on Pilot Performance during Instrument Flight," FAA-AM-72-4), stated that the ability to divide attention between tasks can be impaired at very low BACs (0.02 percent). Earlier (1964) findings by O. Gruner et. al., also concluded that very low BACs impair the ability to divide attention between tasks. Further studies (H. Franks et. al., "The Relationship Between Alcohol Dosage and Performance Decrement in Humans," Journal of Studies on Alcohol, 1976) indicate that the ability to stand upright without swaying begins to decrease significantly at a BAC as low as 0.04 percent.

The American Medical Association and the National Safety Council's Committee on Tests for Intoxication, have developed a table that places the effects of a BAC of 0.03 percent in the "euphoria" range. The behavioral symptoms of this level of intoxication include increased self-confidence, decreased inhibitions, loss of efficiency in finer performance tests, and diminution of attention, judgment, and control. These symptoms were expressly characterized as not compatible with the safe operation of motor vehicles.

Further, a 1985 study by Dr. Herbert Moskowitz shows evidence of impairment on divided attention and information processing tasks beginning at a BAC as low as 0.015 percent. At a 1987 international conference, Dr. Moskowitz reported on an exhaustive review of research on low BAC effects he conducted for the National Highway Traffic Safety Administration. Based on this review of more than 200 research articles, Dr. Moskowitz stated that there is no lower limit or threshold concentration below which alcohol is not impairing to some aspect of human behavior.

Additional research completed in late 1987 by the National Academy of Sciences provided further information on the effects of low levels of alcohol. In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress requested the Academy to study the effect of various alcohol levels on the performance of truck drivers. The Academy's Transportation Research Board brought together a group of nationally recognized experts on the effects of alcohol, who concluded that "performance of driving related tasks decreases at any BAC above zero and crash risk increases sharply as BAC rises." The National Academy of Sciences recommended, and Federal Highway Administration regulations established, 0.04 BAC as the level at which commercial drivers would have an illegal alcohol level. Any alcohol ingestion can result in the commercial driver being put out of service for 24 hours. The Safety Board has recommended that States enact legislation setting 0.01 percent as the functional equivalent of a zero BAC for commercial drivers.

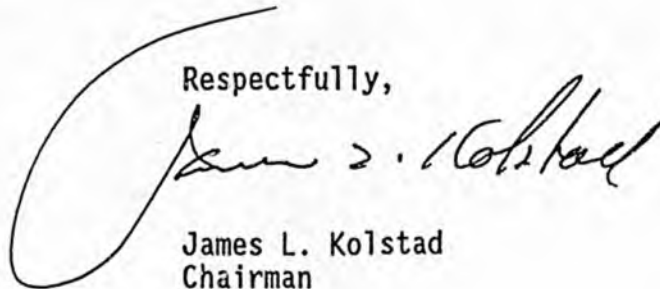
Similarly, Federal regulations prohibit aircraft crews from ingesting alcohol in the eight hours prior to flight operations and they may not have an alcohol level of 0.04 percent or above. The Safety Board has recommended that the alcohol level for air crews be the lowest level that can be reliably measured.

Honorable Dave Donely
page 3

When combined with the impairing effects of other potential stressors found in highway operations, such as complex traffic response demands, fatigue, vibration and noise, the presence of alcohol even at very low blood alcohol concentrations must be considered a clear and definite risk to safe highway operations. Therefore, legislation to lower the definition of intoxication to 0.08 percent would be a most moderate step.

Please let us know if there is any way we can be of additional assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "James L. Kolstad". The signature is written in a cursive style with a large, sweeping initial "J".

James L. Kolstad
Chairman

RECEIVED

1991

Michael T. Propst, M.D.

ANCHORAGE, ALASKA 99508 CORPORATION
10077 4335 LAUREL
ANCHORAGE, ALASKA 99508
(907) 563-8899


March 7, 1991

Representative Dave Donley
Chairman, House Judiciary Committee
P.O. Box V
Juneau, Alaska, 99811

Dear Representative Donley:

I write in strong support of House Bill 102 regarding the lowering of the legal blood alcohol or breath alcohol to .08%. There is strong scientific documentation of impairment for operating a motor vehicle at this concentration and above. I have testified in many cases to the effect that in my expert medical opinion Alaska's drunk driving law should reflect this concentration.

Sincerely,


Michael T. Propst, M.D.

enc.

MTP:sp

RECEIVED MAR 21 1991



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

March 18, 1991

Honorable Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

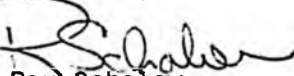
Dear Representative Donley:

The Alaska State Medical Association strongly supports your efforts in addressing the serious matter of alcohol-related accidents and fatalities through House Bill 102.

It is our belief that imposing a more restrictive legal limit on alcohol consumption for drivers does reduce the number accidents and fatalities. We applaud your efforts in reducing the amount of blood alcohol to 0.08 percent by weight of alcohol in the blood. The Alaska State Medical Association had drafted legislation to reduce the percentage to 0.05 and was prepared to introduce this legislation when your bill appeared.

If we can be a resource or assist you in any manner, please do not hesitate to call.

Sincerely,



Ray Schalow
Executive Director

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

WALTER J. HICKEL, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

March 19, 1991

Honorable Dave Donley
Chairman, House Judiciary Committee
Alaska House of Representatives
P. O. Box V
Juneau, Alaska 99811

Dear Representative Donley;

Re: HB 102
Blood Alcohol Concentration

You have asked for our opinion concerning the proposal to revise the blood alcohol concentration measure of impairment from the current 0.10% to 0.08%. We have reviewed comments by John Krizay, author of the book "The Fifty Million Dollar Drain," in which he notes that with the current BAC level of 0.10%, an average driver is six to seven times more likely to have an accident if driving. He also notes that at 0.15% the ratio is .5 to 1. He further notes that the American Medical Association recommends a much lower level contending that even professional drivers display signs of impairment at levels of 0.05% and 0.06%. The evidence suggests that the 0.10% level is an inadequate measure of impairment. Your efforts to address a more appropriate level of impairment has our support.

Very truly yours,



David J. Walsh
Director

910319 06 DD1

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR
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JUDICIARY COMMITTEE

VICE CHAIRMAN
REGULATION REVIEW COMMITTEE

MEMBER
RULES COMMITTEE
LABOR AND COMMERCE COMMITTEE

M E M O R A N D U M

TO: All Members
Judiciary Committee

FROM: Representative Dave Donley *DD*

RE: HB 102 - Lowering Blood Alcohol Level for DWI

DATE: April 1, 1991

As you can see by reviewing the materials in your packet, lowering the blood alcohol level for drunk driving as proposed in HB 102 is supported by:

National Transportation Safety Board
Department of Law
Division of Insurance
Department of Public Safety
Alaska State Medical Association
Surgeon General of the United States
American College of Emergency Physicians
American Medical Association
Alaska State Medical Examiner (Dr. Michael Propst)
Association for the Advancement of Automotive Medicine
Anchorage Daily News
Fairbanks Daily News Minor
Alaska Council on Prevention of Alcohol and Drug Abuse
Fairbanks Chapter, Mothers Against Drunk Drivers
Anchorage Chapter Mothers Against Drunk Drivers
National Committee on Uniform Traffic Laws and Ordinances
National Conference of Insurance Legislators

During the House Transportation Committee hearing, representatives of the State Office of Alcoholism and Drug Abuse in the Department of Health and Social Services, several different insurance companies, and the National Association of Independent Insurers testified in support of the legislation. Finally, I have received numerous public opinion messages from Alaskans who support HB 102.

DD:lc

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



* 722C



Association for the Advancement of Automotive Medicine

An International multidisciplinary organization for crash injury control

BLOOD ALCOHOL CONCENTRATION AND DRIVING

POSITION STATEMENT

Epidemiologic and experimental data persuasively establish that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases, that measurable impairment to operate a motor vehicle begins in most drivers at or below .05g/dl, and that all drivers are impaired at a blood alcohol concentration of .08g/dl.

It is therefore the position of the Association for the Advancement of Automotive Medicine that a BAC of .05g/dl be considered as presumptive evidence of driving impairment, and that a BAC of .08g/dl be considered illegal per se to operate a motor vehicle.

The Association for the Advancement of Automotive Medicine urges the enactment of legislation prohibiting alcohol-impaired driving that reflects these statements.

Adopted 23 November 1987

REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE
DISTRICT ELEVEN • SPENARD
SEAT A

3111 "C" STREET, SUITE 450
ANCHORAGE, ALASKA 99503
(907) 561-7629 (FAX) 562-4376

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SPONSOR STATEMENT

House Bill 102 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means that it would be illegal for a person to be in control of a motor vehicle with a blood alcohol level of .08% or greater.

Four states have already lowered their legal definition of intoxication to .08%: California, Oregon, Utah, and Maine. All of Canada has a .08% blood alcohol threshold. All European nations prohibit driving with a .08% or lower blood alcohol level. (.08% results from 4 drinks in an hour's time for the average-size adult.)

Scientific evidence persuasively establishes that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases. Many studies have shown that measurable impairment to operate a motor vehicle begins in most drivers at or below .05% percent blood alcohol level, and that all drivers are impaired at a blood alcohol level of .08%.

Setting the allowable blood alcohol level at .08% will greatly increase the probability of obtaining convictions for drunk driving. Because the law will increase the certainty of conviction, it will also be more effective than current law in deterring drunk driving and in reducing the number of alcohol-related crashes. In fact, after Maine reduced its legal blood alcohol level to .08%, the percentage of alcohol-related motor vehicle fatalities decreased significantly.



JUNEAU OFFICE
(During Legislative Session January through May)
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



HOUSE BILL 102

BACKGROUND

HB 102 lowers the blood alcohol content from 0.10 to 0.08 for a charge of driving while intoxicated.

California lowered the BAC standard for 0.10 to 0.08 in 1990. The Highway Patrol showed a 13.6% increase in DWI arrests with the lower BAC, and accident investigations decreased .71%. The lower BACs seemed to have the effect of lowering the accident rate.

Alaska may or may not experience a similar increase in DWI arrests. The impact on the Alcohol Safety Action Programs (ASAP) in the states which have lowered their DWI levels has varied. For planning purposes, we estimate the impact on the current ASAPs would be approximately 10 percent. This is a significant increase. The Anchorage ASAP would realize an increase of approximately 250 cases.

We know that ASAP programs are one of the most effective ways of intervening with problem drinkers early in the disease process.

Numerous studies have found that behavior change is more likely to occur if there is some consequence to the individual for modifying the behavior. The force of court intervention provides that incentive. Maine, California, Utah, Oregon and Vermont have already passed similar legislation; and Arkansas, Arizona, Florida, Indiana, Texas and Washington are some of the other states currently considering similar legislation.

Lowering the BAC to 0.08 would allow more drivers to be charged with DWI, and consequently more individuals would be screened for alcohol problems.

POSITION

The Department of Health and Social Services, Division of Alcoholism and Drug Abuse is very supportive of HB 102. We believe lowering the legal limit to 0.08 will allow more problem drinkers to access the treatment system earlier and treatment will be more cost effective as these individuals may not require costly residential care.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: _____ Department Affected: Health & Social Services
 Title: "An Act relating to offense of operating a motor vehicle...while intoxicated." BRU: ASAP
 Sponsor: _____ Component: Alcohol & Drug Abuse Grants
 Requestor: Donley COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	24,987	51,848	53,792	55,809	57,901	60,072
TRAVEL						
CONTRACTUAL						
SUPPLIES	1,000	1,040	1,082	1,125	1,170	1,217
EQUIPMENT	7,500					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	33,487	52,888	54,874	56,934	59,071	61,289

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND	33,487	52,888	54,874	56,934	59,071	61,289
FEDERAL FUNDS						
OTHER						
TOTAL	33,487	52,888	54,874	56,934	59,071	61,289

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact:

<p>ANALYSIS: (Attach a separate page if necessary.) It is anticipated no office furniture would be purchased. 3.75% increase in personnel anticipated.</p>	<p>1 FTE Range 16A, Probation Officer III @ 12 mos. \$49,974 (FY 92). Supplies - general office \$1,000. Equipment - computer only \$7,500.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Prepared By: Suzanne W. Perry Phone: 586-6201
 Division: Alcoholism and Drug Abuse Date: 3/27/91

Approved by Commissioner: Theodore A. Mala, MD, MPH
 Agency: Department of Health & Social Services Date: 2 April 91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis
HB 102

The Anchorage ASAP office has a caseload of approximately 275 clients per probation officer. At a minimum, one full time probation officer would be needed to accommodate the expected increase due to passage of this bill. This estimate is based on an anticipated increase of 10% for the Anchorage ASAP Office. The Anchorage caseload significantly increased this past year (331 clients more than were seen in 1989) and this increase was absorbed by current staff, further increases of similar size cannot be absorbed.

Treatment agencies would also be significantly impacted as approximately 65% of clients seen at ASAPs are referred into treatment. In 1990, approximately 4,438 ASAP clients were referred into treatment. If the total number of ASAP clients increases by 10%, due to lowering the BAC to 0.08, an additional 443 clients would impact the system. It is anticipated that the Anchorage ASAP would see a significant increase, with ASAPs in other communities would see less of an increase and would therefore be able to absorb the additional clients with current staff. Of these, an additional 287 clients would be seen by treatment programs (the 65% referred to treatment). There is no fiscal impact from this anticipated increase.

BILL NO: HB 102

DATE: 3/20/91

TITLE: An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated. . .

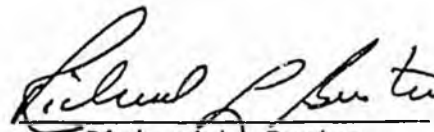
CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

DEPARTMENT OF PUBLIC SAFETY
POLICE / PUBLIC SAFETY

This bill would amend Alaska's DWI law to lower the prohibited breath or blood alcohol level from .10 to .08. The Alaska State Troopers and local police agencies would enforce the law through enhanced detection and arrest efforts. The bill also requires the Department of Public Safety, Division of Motor Vehicles (DMV), and the courts to revoke the driver's license or driving privileges of individuals arrested or convicted of DWI at an alcohol concentration level of .08 percent.

The effect of the adoption of a .08 alcohol level is difficult to predict, and will depend to a great extent upon the level of enforcement of the new law. The State of California adopted such a change effective January 1, 1990; the number of DWI arrests in that state increased 13.6 percent in the first year of enforcement. Maine adopted a similar law in 1988; the number of DWI arrests increased 20 percent in 1989, the first full year the law was in effect. Oregon adopted a .08 law in 1983. The arrest rate went up slightly in 1984, then declined for several years. As of 1989 (the latest year for which we have statistics), the number of DWI arrests is about two percent higher in Oregon than it was in 1983. In the first year of enforcement of Utah's .08 law, there was a 30% increase in the number of DWI arrests. For purposes of estimating fiscal, administrative, and enforcement impact, the Department of Public Safety estimates that there will be approximately 10 percent more DWI arrests statewide after the .08 law takes effect.

The department supports HB 102. This bill has the potential to reduce alcohol-related traffic accidents in general, and particularly alcohol-related traffic deaths. It also promotes the safety of the motoring public. In order to be effective, however, the new law must be accompanied by concerted enforcement and public education efforts. Adequate funding for these efforts is essential.


Richard L. Burton
Commissioner

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

March 29, 1991

The Honorable Dave Donley
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Re: House Bill 102

Dear Representative Donley:

In reference to your letter dated March 23, 1991, asking that I reanalyze the fiscal impact of HB 102, the following is my response.

I agree that just the actual changing of the law from .10 to .08 percent would have no direct bearing on the cost of enforcing drunk driving laws in the State of Alaska. I also agree that the extent to which our DWI laws are enforced is a policy issue that must be addressed and debated separately is correct; however, any increased effort in enforcement at all is going to cost money whether it is attached to the fiscal note to this bill or whether it shows up in the budget.

The very fact that the Department of Corrections has submitted a zero fiscal note based on the extremely small number of people who are stopped by police for driving with blood alcohol level below .10 percent is proof that we are not arresting the drunk drivers in that percentage range which poses a threat to public safety. This can be attributed to the fact that we do not have enough manpower resources to effectively mount preventive patrols as we should to protect the public's safety on the highways. When Corrections talks about their knowledge of the number of people stopped by the police, I question this since their figures could only be derived from those people actually booked in the correctional facilities as opposed to the number stopped.

To be more specific and to address HB 102, I would have to agree with you at this point and say that there is no direct

March 29, 1991

fiscal impact related to lowering the alcohol level from .10 to .08 percent. Therefore, I withdraw my fiscal impact note as pertains directly to HB 102.

I do want to state here, however, that you will probably not see a lot of arrests made in the near future for driving at .08 since our level of enforcement ability will not increase any time in the foreseeable future.

It is too late this year but I think a role for our Department would be to have specialized traffic units to work statewide in combatting DWI and other major traffic offenses on the state highway system. That, of course, is going to take additional manpower, equipment, and training. I know I can look forward to your support for this kind of program.

Thank you for your past and present support not only for the Department of Public Safety but for all law enforcement statewide. I look forward to working with you on matters of mutual interest in the future.

Sincerely,

A handwritten signature in cursive script that reads "Dick".

Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 3
BILL Bill Version: HB 102
(H) Publish Date: 3/22/91

Revision Date: _____
Title: Operating a motor vehicle
while intoxicated.
Sponsor: Representative Donley
Requestor: House Transportation

Department Affected: Public Safety
BRU: Motor Vehicles
Component: Driver Services

COMPONENT SERIAL NO.

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	7.6	15.3	15.3	15.3	15.3	15.3
TRAVEL	1.2	2.4	2.4	2.4	2.4	2.4
CONTRACTUAL	.6	.6	.6	.6	.6	.6
SUPPLIES	.1	.1	.1	.1	.1	.1
EQUIPMENT	1.6	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	11.1	18.4	18.4	18.4	18.4	18.4

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	11.1	18.4	18.4	18.4	18.4	18.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER/PROG RCPT	0	0	0	0	0	0
TOTAL	11.1	18.4	18.4	18.4	18.4	18.4

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact _____

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: JML Juanita M. Hensley Phone: 465-4335
Division: Motor Vehicles Date: 3/20/91
Approved by Commissioner: Richard L. Burton Richard L. Burton
Agency: Department of Public Safety Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

Page 1 of 4

The State of California adopted a .08 percent alcohol level effective January 1, 1990. Statistics from California show a 13% increase in arrests for the first year.

In 1990, the Department revoked approximately 5,000 drivers licensed as a result of .10 alcohol concentration or refusal to submit to a chemical test. If the number of arrests increased by 10% as a result of lowering the alcohol concentration to .08 percent, the Division of Motor Vehicles would be required to revoke approximately 500 additional driver's licenses, thus increasing the number of administrative hearings and requests for limited licenses.

A permanent part-time Clerk Typist III will be required to handle the clerical duties, relieving the hearing officers to handle the additional hearings. At the present time, the hearing officers are required to perform clerical duties such as setting up files, verifying records, copying records, typing correspondence. The estimated increase in arrests under this bill will increase the number of requests for administrative hearing and the number of limited licenses requested.

Travel expenses are based on two trips for FY92 and four trips per year for FY93 through FY97. Hearing Officers travel to Kodiak, Juneau, and Fairbanks when individuals request an administrative review hearing to contest the revocation of their driver's license or to request a limited license. Travel is only done when the individual requests an in-person hearing; otherwise hearings are conducted telephonically.

DETAIL

		FY92	FY93+
100	PERSONAL SERVICES		
	One Clerk Typist III Part-time	7.6	15.3
200	TRAVEL		
	4 additional trips per year 2 to Juneau, 2 to Fairbanks	1.2 2 trips	2.4 4 trips
300	CONTRACTUAL		
	Postage and Toils	.6	.6
400	COMMODITIES		
	Normal office supplies	.1	.1
500	EQUIPMENT		
	1 Desk	1.0	
	1 Chair	.3	
	1 File Cabinet	.3	
	TOTAL:	11.1	18.4

COMMITTEE COPY

Position Title Clerk Typist III			No. of Positions 1	Range/Step BA	Barg. Unit GGU	
Time Status PPT	Staff Months 6 months		Location Anchorage		Election District	
Type of Expenditure			Justification			
			<p>This legislation will require action against the driving privileges of an estimated additional 500 individuals arrested for DWI. This position will prepare files for administrative hearings; verify prior DWI convictions by obtaining certified records from other states; enter license actions on the individual's driving record; send notice of time and location of the administrative hearing; assist in the correspondence concerning license actions; prepare and send a temporary license to the individual pending the administrative hearing.</p>			
1		2				3
Salary*		5.3				////////////////////
Benefits*		2.3				////////////////////
Premium Pay (Included in Above)		////////////////////				////////////////////
Other		////////////////////				////////////////////
Total Personal Services		////////////////////				7.6
Travel						-0-
Contractual						.6
Commodities						.1
Equipment						1.6
Other						-0-
Total Cost						9.9
Funding Source for Total Cost						
Federal Receipts		1002				
G.F. Match		1003				
General Fund		1004				
Program Receipts/GF		1005				
I-A Receipts		1007				
IP Receipts		1061				
Other						
<p>* Personal Services Salary and Benefits Costs are from PACS calculations.</p> <p>Salary and benefits are based on six months of FY 92.</p>						

REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 BRU Division of Motor Vehicles
 COMPONENT Driver Services

Page 4 of 4
 Revised Date

FY 92

FISCAL NOTE

No. 2

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL

Bill Version: HB 102

(H) Publish Date: 3/22/91

Revision Date: _____

Department Affected: Public Safety

Title: Lowering the DWI Blood
Alcohol to .08

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Donley

Requestor: House Transportation

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	136.3	272.6	272.6	272.6	272.6	272.6
TRAVEL	21.4	42.3	42.3	42.3	42.3	42.3
CONTRACTUAL	42.4	84.7	84.7	84.7	84.7	84.7
SUPPLIES	4.5	9.0	9.0	9.0	9.0	9.0
EQUIPMENT	103.8					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	308.4	408.6	408.6	408.6	408.6	408.6

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	308.4	408.6	408.6	408.6	408.6	408.6
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	308.4	408.6	408.6	408.6	408.6	408.6

POSITIONS:

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Francis C. Allan

Phone: 269-5691

Division: Alaska State Troopers

Date: 3/20/91

Approved by Commissioner: Richard L. Burton

Richard L. Burton

Agency: Department of Public Safety

Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

COMMITTEE COPY

Page 1 of 5

This bill will have a significant impact on the Department of Public Safety. All DWI enforcement and training is now aimed at detecting, testing and convicting persons at levels of .10 or higher. New training will be prepared and annually delivered to all Public Safety Troopers.

Specific training will be aimed at detecting horizontal gaze nystagmus at the lower levels with other training aimed at detecting subtle driving clues presented by a .08 driver.

This legislation would be a message to the Department to increase enforcement activity and aim enforcement activity directly at the lower blood alcohol levels. Four additional State Troopers would be assigned DWI enforcement tasks in historically high accident areas statewide, to include Anchorage, Fairbanks, Palmer, Soldotna, and Glennallen.

Department of Public Safety needs would be as follows:

1. Annual Academy training for 24 DWI instructors (Travel and per diem)	\$12,000
2. Four-hour blocks of instruction annually for all DPS State Troopers in clue detection and upgrade horizontal gaze nystagmus	22,300
3. Four additional statewide AST Troopers for highway patrol areas	453,108
4. A continuing public information program aimed at informing the public of the new legislation for a time period before the law goes into effect and a public information program to maintain awareness and compliance.	<u>25,000</u>
Total FY 92 Cost (effective date 1/1/92)	\$308,408
Total Cost FY 93-FY 97	<u>\$408,608</u>

Average State Trooper Costs

PERSONAL SERVICES - 100

Salary - Including 120 hours OT	\$47,560	
Benefits	<u>20,594</u>	
TOTAL PERSONAL SERVICES		\$68,154

TRAVEL AND PER DIEM - 300

Average - This will vary		
TOTAL TRAVEL AND PER DIEM		2,000

CONTRACTUAL - 300

Telephone/Postage, \$85 per month x 12	1,020	
Photo processing, \$40 per month x 12	480	
PSEA Physical exam, average	300	
PSEA Uniform Cleaning Allowance	636	
HWC Vehicle - Monthly Replacement Cost \$605 per month + \$435 per month x 12	<u>12,480</u>	
TOTAL CONTRACTUAL		14,916

SUPPLIES AND MATERIALS - 400

Uniforms with all accessories, jacket, hats handcuffs, etc.	1,657	
Film supplies, office supplies	300	
Vehicle accessories - blanket, tire chains, snow tires, flares, etc.	<u>300</u>	
TOTAL SUPPLIES AND MATERIALS		2,257

EQUIPMENT - 500

Patrol vehicle - initial cost	21,000	
Car radio	1,900	
Portable radio w/ charger	2,400	
Firearms (revolver & shotgun)	650	
TOTAL EQUIPMENT		<u>25,950</u>

TOTAL TROOPER COST		<u>\$113,277</u>
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COMMITTEE COPY

Four Troopers

PERSONAL SERVICES - 100

Four Troopers		
Salary - including		
120 hours OT	\$190,240	
Benefits	<u>82,376</u>	
TOTAL PERSONAL SERVICES		\$272,616

TRAVEL AND PER DIEM - 200

Average - This will vary		
TOTAL TRAVEL AND PER DIEM	2,000 x 4 =	8,000

CONTRACTUAL - 300

Telephone/Postage, \$85 per month x 12	1,020	
Photo processing, \$40 per month x 12	480	
PSEA Physical exam, average	300	
PSEA Uniform Cleaning Allowance	636	
HWCF Vehicle - Monthly Replacement Cost		
\$605 per month + \$435 per month x 12	<u>12,480</u>	
TOTAL CONTRACTUAL	14,916 x 4 =	59,664

SUPPLIES AND MATERIALS - 400

Uniforms with all accessories, jacket, hats handcuffs, etc.	1,657	
Film supplies, office supplies	300	
Vehicle accessories - blanket, tire chains, snow tires, flares, etc.	<u>300</u>	
TOTAL SUPPLIES AND MATERIALS	2,257 x 4 =	9,028

EQUIPMENT - 500 (One-time FY 92)

Patrol vehicle - initial cost	21,000	
Car radio	1,900	
Portable radio w/ charger	2,400	
Firearms (revolver & shotgun)	<u>650</u>	
TOTAL EQUIPMENT	25,950 x 4 =	<u>103,800</u>

TOTAL TROOPER COST		<u>\$453,108</u>
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COMMITTEE COPY

Position Title State Trooper		No. of Positions 4	Range/Step 76/A	Barg. Unit PSEA
Time Status PFT	Staff Months 12	Location Statewide		Election District 99
Type of Expenditure		Justification		
1	2	3		
Salary*	190.2	Personal Services: 4 PFT Salary and Benefits \$272,616		
Benefits*	82.4	Travel and Per Diem: \$ 8,000		
Premium Pay (Included in Above)	////	Contractual:		
Other	////	Telephone \$4,080		
Total Personal Services	////	Photo 1,920		
Travel	8.0	PSEA Physical 1,200		
Contractual	59.7	PSEA Uniform 2,544		
Commodities	9.0	HWCF 49,920 \$ 59,664		
Equipment	103.8	Supplies:		
Other		Uniforms \$6,628		
Total Cost	453.1	Film, etc. 1,200		
Funding Source for Total Cost		Vehicle access 1,200 \$9,028		
Federal Receipts	1002	Equipment (one-time):		
G.F. Match	1003	Patrol vehicles (4) \$84,000		
General Fund	1004	Car Radios 7,650		
Program Receipts/GF	1005	Portable Radios 9,600		
I-A Receipts	1007	Firearms 2,600 \$103,800		
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS calculations.				

REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 BRU Alaska State Troopers
 COMPONENT Detachments

Page 5 of 5
Revised Date

FY 92

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BIL. No. 1
Bill Version: HB 102
(H) Publish Date: 3/22/91

Revision Date: _____
Title: Lowering the DWI Blood
Alcohol to .08
Sponsor: Representative Donley
Requestor: House Transportation

Department Affected: Public Safety
BRU: DPS Statewide Support
Component: Contract Jails

COMPONENT SERIAL NO.

	5	2	2
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	36.0	72.0	72.0	72.0	72.0	72.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	36.0	72.0	72.0	72.0	72.0	72.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	36.0	72.0	72.0	72.0	72.0	72.0
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	36.0	72.0	72.0	72.0	72.0	72.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Capt. Thomas T. Stearns Phone: 465-4322
Division: Office of the Commissioner Date: 3/20/91
Approved by Commissioner: *Richard L. Burton* Richard L. Burton
Agency: Department of Public Safety Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

The Department of Public Safety contracts with 19 communities for jail service for persons charged with violation of state laws. This includes housing of defendants pending arraignment or release on bail; many persons sentenced for DWI convictions also serve their jail sentences in local "contract jails".

The annual average number of persons housed in contract jails over the last four years for DWI is 1,937. Those persons spent an annual average of 6,000 prisoner days within the facility. The average FY 90 daily cost per person was \$120.00.

Assuming a 10% increase in DWI arrests upon the passage of HB 102, there will be an annual estimated increase in contract costs of \$72,000.

10% x 6,000 average annual prisoner days = 600
600 x \$120.00 average prisoner day cost = \$72,000

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 4
 Bill Version: HB 102
 (H) Publish Date: 3/22/91

Revision Date: _____ Department Affected: Department of Law
 Title: "...relating...to operating a motor vehicle...while intoxicated..." BRU: Prosecution
 Component: All
 Sponsor: Representative Donley
 Requestor: House Judiciary COMPONENT SERIAL NO.

		8	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: March 20, 1991
 Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law Date: March 20, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note **COMMITTEE COPY**

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 102

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood/alcohol limit for the crime of driving while under the influence of intoxicating liquor from 0.10 percent or more by weight alcohol in a person's blood to 0.08 percent.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska, but some increase in arrests may occur if the bill is approved.

During the last fiscal year 4,106 DWI complaints were referred to Department of Law prosecutors. If Alaska follows the California example, a ten percent increase would result in 411 new DWI cases statewide. If they occur, the largest number of new cases would be experienced in the Anchorage and Matsu Valley areas. Because the Governor's revised budget includes adding new prosecutors in Anchorage, where the current caseload has nearly overwhelmed the existing staff, the department is not going to request fiscal note funds at this time. We continue to caution, however, that adding new or increased agency responsibilities should be avoided at a time when agency resources have been stretched as thin as our's have been. Therefore, if the bill results in a heavier caseload than we have anticipated, it will be necessary to seek additional funding next year.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

No. 5
Bill Version: HB 102
(H) Publish Date: 3/22/91

Revision Date: _____ Department Affected: Corrections
Title: "An Act relating to the offense of operating a motor vehicle, while intoxicated..." BRU: Statewide Operations
Sponsor: Rep. Donley Component: All Institutions
Requestor: Rep. Donley COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: No significant impact on Department operations.

ANALYSIS: (Attach a separate page if necessary.)

See attached page.

Prepared By: Tom Sutton, Director Phone: 465-3376
Division: Administrative Services Date: 03-19-91
Approved by Commissioner: _____
Agency: Department of Corrections Date: 03-19-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Department of Corrections
Division of Administrative Services

House Bill No. 102, lowers the blood alcohol level for drunk driving from .10 percent to .08 percent.

The Department contacted three police departments, Anchorage, Fairbanks and Juneau. We asked each Department if data was available for us to determine the blood alcohol level of those who have been charged for drunk driving. Fairbanks and Anchorage police departments did not have that information readily available. However, for both cities, the staff stated it would be their best estimate that there would be few instances where the blood level would fall within the .08 to .10 percentage rate.

Fortunately, the Juneau Police department was able to provide us with records for testing on the intoximeter for the entire year of 1990. Our review of 148 charged with a DWI provided us with the following information:

Average Blood Alcohol Level	=	.1998
Blood Alcohol Level below .100	=	2
Blood Alcohol Level above .100	=	146
Blood Alcohol Level between .080 - .100%	=	0
Blood Alcohol Level between .050 - .080	=	2

The Department of Corrections reviewed its own records relative to DWI offenders and found the following admission rates and sentenced offenders in our institutions:

Calendar Year	1986	1987	1988	1989	1990
Admissions for DWI (A)	3536	3686	3603	3539	4033
Sentenced for DWI	3560	3081	2603	2584	2544

(A) Admission into facilities relates to those who are in an unsentenced status.

Considering the zero frequency rate of the number of offenders whose test results fall into .08 and .10; and the declining impact of sentenced DWI offenders into our system, it is my opinion that HB 102 will not have a significant fiscal impact upon the Department.

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: _____ Department Affected: Health & Social Services
 Title: "An Act relating to offense of operating a motor vehicle...while intoxicated." BRU: Alcohol Safety Action Program
 Sponsor: _____ Component: Alcohol & Drug Abuse Grants
 Requestor: _____ COMPONENT SERIAL NO.

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	25.0	51.8	53.8	55.8	57.9	60.1
TRAVEL						
CONTRACTUAL						
SUPPLIES	1.0	1.0	1.1	1.1	1.2	1.2
EQUIPMENT	7.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	33.5	52.9	54.9	56.9	59.1	61.3

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND	33.5	52.9	54.9	56.9	59.1	61.3
FEDERAL FUNDS						
OTHER						
TOTAL	33.5	52.9	54.9	56.9	59.1	61.3

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.) It is anticipated that no office furniture would be purchased. 3.75% increase in personnel anticipated.	1 FTE Range 16A, Probation Officer III @ 12 mos. \$49,974 (FY 92). Supplies - general office \$1,000. Equipment - computer only \$7,500.
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Prepared By: Suzanne W. Perry Phone: 586-6201
 Division: Alcoholism and Drug Abuse Date: 4/4/91
 Approved by Commissioner: [Signature]
 Agency: Department of Health and Social Services Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: 4/3/91
Title: Lowering the DWI Blood Alcohol to .08
Sponsor: Representative Donley
Requestor: House Judiciary

Department Affected: Public Safety
BRU: Alaska State Troopers
Component: Detachments

COMPONENT SERIAL NO.

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	12.5	12.5	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND	12.5	12.5	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	12.5	12.5	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Gayle A. Horetski Phone: 465-4322
Division: Commissioner's Office Date: 4/3/91
Approved by Commissioner: *Richard L. Burton* Richard L. Burton
Agency: Department of Public Safety Date: 4/3/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Statistics show that "lower level" or "borderline" DWI offenders are not being apprehended now. The average breath alcohol concentration (BAC) of DWI arrestees in 1989 was .19 percent--well over the legal limit of .10. Concerted, long-term training will be needed to assist law enforcement officers to detect and apprehend DWI offenders at lower BAC levels. The need for such training, and for more effective enforcement efforts will be an issue addressed in the Department's FY 93 budget request. In the meantime, \$25,000 in contractual funding is needed to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

This education campaign would begin 7/1/91, six months before the new law is scheduled to take effect, and would continue on after 1/1/92.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 22, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-3-91

The JUDICIARY Committee considered:

HB 102

HOUSE BILL NO. 102

LOWER ALCOHOL LIMIT TO 0.08

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

RECOMMENDATIONS:

be replaced with C.S HB 102 (Jud) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(s): _____ (Dept)

APPROVES PREVIOUS: _____ (Dept/Date)

2 fiscal impact Pub. SAF 4/3/91 Hess

fiscal note(s) _____

zero fiscal note _____

2 zero fiscal note(s) Law 3/22/91; Corrections 3/22/91

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terre Martin</i>	✓				
<i>Mark Hanberg</i>	✓				
<i>Mike Miller</i>	✓				
<i>Kevin Pat Powell</i>	✓				
<i>Al Ellis</i>	✓				
<i>Wanda Donley</i>	✓				
<i>W. J. Gumbert</i>	✓				

Wanda Donley
 CHAIRMAN'S SIGNATURE

CURRICULUM VITAE

Michael T. Propst, M.D.

EDUCATION:

Preliminary: Klamath Union High School, Klamath Falls, Oregon, 1954 - 1958

University: Oregon State University, 1958 - 1961
Bachelor of Science, General Science

University of Oregon Medical School, 1961 - 1966
M.D., June, 1966
Post Sophomore Fellow in Pathology, 1963 - 1966

Post-Graduate: Mary Imogene Eassett Hospital, Cooperstown, New York
Rotating Intern, 1966 - 1967

Medical Centers Hospitals of Vermont - University of Vermont
College of Medicine.
Residency in Pathology, 1967 - 1971

MEDICAL LICENSURE: Vermont and Alaska

CERTIFICATION: American Board of Pathology:
Anatomic and Clinical Pathology, 1972
Forensic Pathology, 1977

FELLOWSHIP: College of American Pathologists, 1974
American Society of Clinical Pathologists, 1975
American Academy of Forensic Sciences, 1979

HOSPITAL APPOINTMENTS:

Humana Hospital Alaska, Anchorage, Alaska
The Alaska Hospital and Medical Center, Anchorage, Alaska
Central Peninsula General Hospital, Soldotna, Alaska
Peninsula Hospital, Homer, Alaska
Cordova Community Hospital, Cordova, Alaska
Norton Sound Regional Hospital, Nome, Alaska
Seward General Hospital, Seward, Alaska
Alaska Native Service Hospital System

TEACHING APPOINTMENTS:

Medical Director, Medical Laboratory Technician Training Program
Anchorage Community College, 1972 - 1983.
Police Instructor, State of Alaska Police Standards Council

MILITARY:

Major, U.S.A.F., 1971 - 1974 U.S.A.F. Hospital, Elmendorf AFB,
Alaska: Chief of Pathology
Awards: U.S.A.F. Commendation Medal

SOCIETIES:

College of American Pathologists
American Academy of Forensic Sciences
National Association of Medical Examiners
American Society of Clinical Pathologists
Anchorage Medical Society
Alaska State Medical Association

CURRICULUM VITAE

Michael T. Propst, M.D.

Page 2 /

PUBLICATIONS: Contributor to: "Alcohol and Highway Safety: Behavioral and Medical Aspects", Final Report to U.S. Department of Transportation, Sept., 1971

"Death on Denali" Western Journal of Medicine, 128-471, 1978. (coauthor).

PROFESSIONAL INTERESTS:

Laboratory management and administration, dermatopathology, forensic pathology, and clinical chemistry.

POSITIONS:

1974-1984

Medical Director, Clinical Laboratory, Humana Hospital Alaska
Direction of clinical laboratory including microbiology, hematology, blood bank, chemistry, special chemistry, toxicology, and specimen acquisition and distribution in this 199 bed acute care hospital, which evolved from Anchorage Community Hospital to Humana Hospital Alaska during these years.

Responsible for all laboratory work including quality assurance and control for all laboratory sections. Provided continuing education for laboratory staff.

Worked with two other pathologists and some 50 - 60 technical staff to provide full time laboratory service.

Shared anatomic pathology workload with colleagues.

1984-present

Medical Director, Alaska Operations, Physicians Medical Laboratory
Duties similar to those above for this private medical laboratory which primarily serves physician's offices and small hospital laboratories as a reference laboratory. In Alaska hematology, microbiology, chemistry, and anatomic pathology are done in house. Multi-channel screening and exotic testing are sent to the parent facility.

1984-present

Medical Examiner, State of Alaska

Performing forensic autopsies and providing forensic pathology consultation for various private and governmental agencies and individuals, including interpretation of toxicology results and drug screens.

PROFESSIONAL RECOGNITION:

Certificate of Civic Achievement, Anchorage Police Department, 1986.
Listed in Who's Who in the West and Who's Who in Emerging Leaders in the USA.



Association for the Advancement of Automotive Medicine

An International multidisciplinary organization for crash injury control

BLOOD ALCOHOL CONCENTRATION AND DRIVING

BACKGROUND PAPER

Traditionally, about one half of the total road casualties in the United States have implicated alcohol use. While there has been a downward shift between 1982-1986 in both the proportion of legally intoxicated drivers (BAC > .10g/dl*) among all drivers (from 30% to 26%) and fatally injured drivers who were legally intoxicated (from 44% to 39%), the inappropriate use of alcohol in relation to driving still remains a significant social, legal and public health problem.

A substantial scientific literature, both experimental¹⁻⁸ and epidemiologic,⁹⁻¹⁴ documents the effects of alcohol upon the body and the consequences upon driving. Laboratory studies have shown that although performance of simple tasks does not deteriorate markedly with low blood alcohol concentrations (< .05g/dl BAC), complex tasks such as driving which requires divided attention are noticeably affected at lower BACs.

In general, epidemiologic data show an increase in crash risk at BACs above .05g/dl. At .08g/dl there is about a 3 fold increase in crash risk over that with no alcohol, which rises about 6 fold at .10g/dl and 25 fold or more at .15g/dl (Figure 1).

While the results of experimental research cannot necessarily be extrapolated to the actual circumstances of each individual drinking driver, laboratory studies do provide another dimension to monitoring skills and behavior under controlled conditions and are complementary to epidemiologic research which focuses on relative crash risks at various BACs. Both types of research show that by .08g/dl BAC, all persons are significantly impaired regardless of factors such as experience with drinking.

Forty three states have enacted illegal per se laws; the remaining states rely on presumptive laws.¹⁵ Per se laws make it illegal to drive with a BAC at or above a specified level, whether or not there are observable behavioral effects. Presumptive laws, on the other hand, only "presume" guilt of impaired driving at a specified BAC which is rebuttable, with the burden of proof upon the arresting officer. Per se law assumes that all persons with a BAC exceeding the limit will have had their ability to drive impaired by alcohol and will have had an increased risk of crash involvement.

Any discussion of the alcohol and driving issue will always involve social and political considerations. It is fundamental, however, that public policy on this subject be based on documented scientific evidence.

* .10g/dl = one tenth of a gram of alcohol per one tenth of a liter of blood.

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2. Moskowitz H, and Sharma S. Effects of alcohol on peripheral vision as a function of attention. *Human Factors*, 1974, 16, 174-180.
3. Wilson G, and Mitchell R. The effect of alcohol on the visual and ocular motor systems. *Australian Journal of Ophthalmology*, 1983, 11, 315-319.
4. Gruner O. Alkohol und aufmerksamkeit. *Deutsche Zeitschrift fuer die Gesamte Gerichliche Medizin*, 1955, 44, 187-195.
5. Franks HM, Hensley VR, Hensley WJ, Starmer GA, and Teo RKC. The relationship between alcohol dosage and performance decrement in humans. *Journal of Studies on Alcohol*, 1976, 37, 284-297.
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8. Mortimer RG. Effect of low blood-alcohol concentrations in simulated day and night driving. *Perceptual and Motor Skills*, 1963, 17, 399-408.
9. Goldberg. Tolerance to alcohol in moderate and heavy drinkers and its significance to alcohol and traffic. Proceedings First International Conference on Alcohol and Road Traffic, Stockholm, 1950. Stockholm: Kugelbergs Boktryckeri, 1951, 85-106.
10. McCarroll JR, Haddon W, Jr. A controlled study of fatal automobile accidents - New York City. *Journal of Chronic Diseases* 15: 811-826, 1962.
11. Borkenstein RF, Crowther RF, Shumate RP, Ziel WB, Zylman R. The Role of the Drinking Driver in Traffic Accidents. Bloomington, IN: Department of Police Administration, Indiana University, 1964.
12. Perrine MW, Waller JA, Harris LF. Alcohol and highway safety: Behavioral and medical aspects. National Highway Traffic Safety Administration Technical Report. DOT HS 800 599, 1971.
13. Farris R, Malone TB, Lilliefors H. A comparison of alcohol involvement in exposed and injured drivers, Phases I and II. National Highway Traffic Safety Administration Technical Report, DOT-HS-801-826, 1976.
14. Alcohol and Highway Safety 1984: A Review of the State of Knowledge. National Highway Traffic Safety Administration Technical Report. DOT HS 806-569, February 1985.
15. Definition of Impairment Essential to Prosecuting "Drunken Drivers," *Medical News, JAMA* 1985. 253:3509-3515.

DRIVERS WITH A BAC OF .15% ARE
25 TIMES AS LIKELY TO BE INVOLVED IN A CRASH
AS DRIVERS WITH A .00% BAC

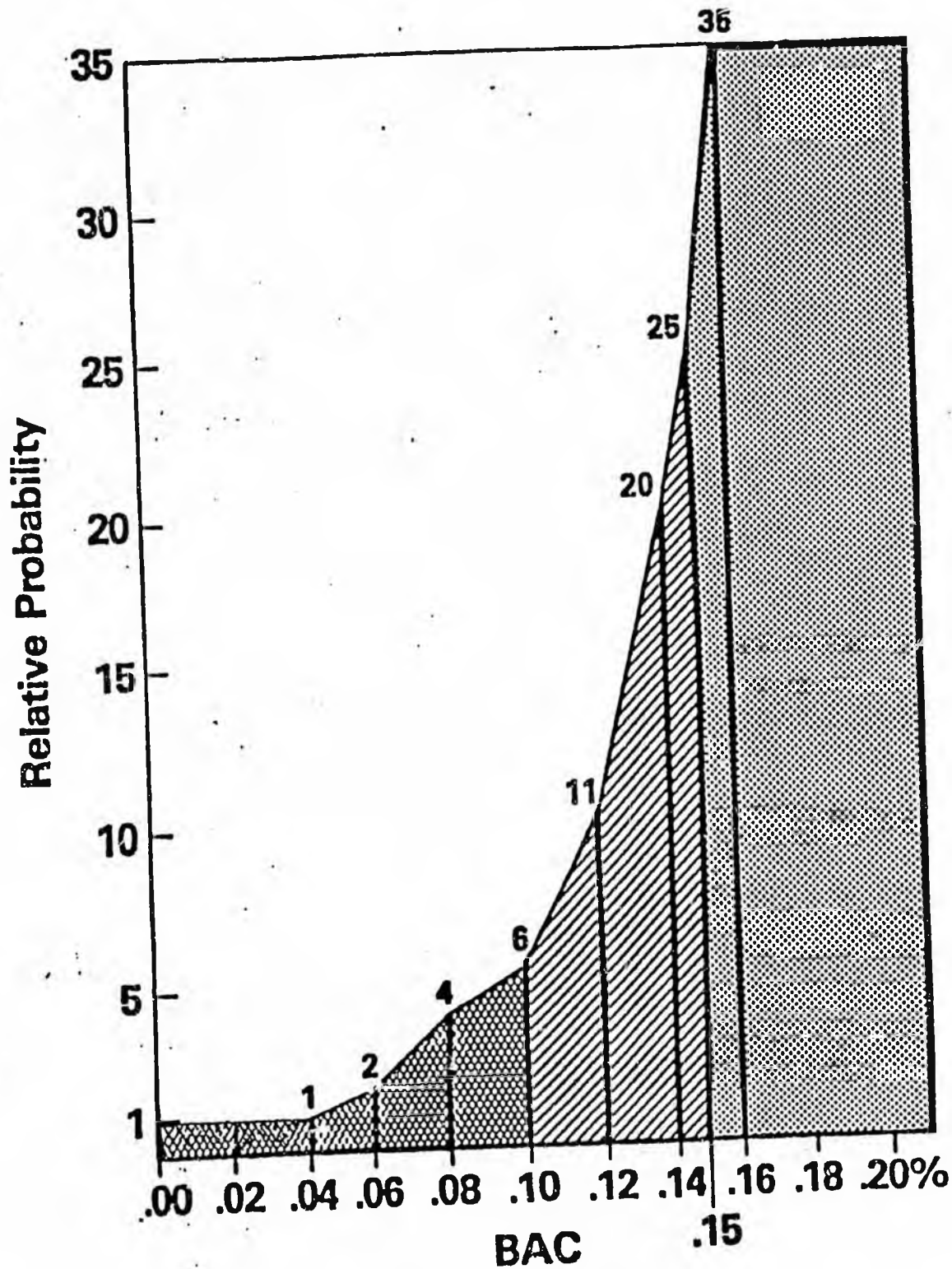


Figure 1. Aggregated probability of crash involvement by driver BAC levels

Opinion

Tuesday, February 26, 1985

State should increase drunk driving limits

Most people who drink and drive are aware that it is illegal to drive with a blood alcohol content of .10 or higher. What they may not know is that a driver with a BAC of .10 is six times more likely to have a crash than a sober driver.

Setting the legal limit for intoxication so high deceives drivers into thinking that they can drive safely with a BAC of just under .10 when, in fact, they are dangerously impaired.

Research shows that measurable impairment of vital driving skills occurs in most people at .05 and that virtually all drivers are impaired at .08. With a BAC of .04, some drivers experience impairment in judgment, simple reaction time and emergency response. They may also experience a false sense of confidence.

Important driving skills such as concentrated attention, comprehension and coordination are impaired in most drivers in .05. Driver performance tests at a BAC of .08 show impaired accuracy of steering, braking, speed control, lane

Guest Opinion



By
PERI-ANN
MCILROY

tracking and judgment of speed and distance. These impaired drivers are driving legally and are, therefore, misled into believing that they are capable of driving safely.

For a typical 150 pound person, five drinks (a drink being a shot of 80 proof liquor, a 12 oz. can of beer, or a 6 oz. glass of wine) consumed in one hour would reach the .10 threshold of legal intoxication. Consuming approximately one additional drink each hour thereafter would maintain that level of intoxication.

DWI arrest statistics for Alaska

indicate that the average BAC at arrest is .19. This is almost two times the legal limit. These drivers, by the way, would have consumed more than 12 drinks. At .15 the likelihood of involvement in a crash is 25 times greater than if the driver was sober. While at .20 the chance of a crash soars to 100 times greater.

Alaska drunk driving laws should be changed to .08 per se with a BAC of .05 presumptive evidence of intoxication. HB 102, introduced by Rep. Dave Donley and eight cosponsors, would make this change. It is in the House Transportation Committee.

The legal term ".08 BAC per se" means that the offense is not driving while intoxicated; it is driving while having an illegally high BAC and constitutes the violation in and of itself. This places significantly less burden on the prosecutor to establish evidence such as slurred speech, unsteady gait, etc., to prove that a driver was intoxicated.

The legal meaning of ".05 pre-

sumptive" is that a BAC between .05 and .08 per se level may be considered along with other additional evidence, such as behavioral signs of intoxication, in determining whether a person was under the influence of alcohol.

Lower the BAC from ".10 per se" to ".08 per se and .05 presumptive" is more than a slight reduction; it is, rather, a crossing of the threshold from measurably impaired to measurably unimpaired.

In addition to making Alaska highways safer, it would:

- Increase the certainty of conviction of drunk drivers;
- Reduce litigation time and costs;
- Increase public awareness as to how little alcohol it takes to be dangerously impaired; and
- Make the state BAC legal limit more closely coincide with actual impairment.

Because of the increase in certainty of a conviction and therefore the certainty of punishment, illegal

per se laws are an effective deterrent to drunk driving and in reducing alcohol-related crashes.

The National Safety Council Committee on Alcohol and Drug and the American Medical Association and the Surgeon General all recommend lowering the BAC. Five states have already lowered the limit for intoxication to .08 as most foreign nations have alcohol concentrations at .080 or lower.

During 1989, 46 Alaskans were killed and 652 more were injured: alcohol related crashes at a cost of over \$21 million. The cost of human suffering is immeasurable. Adopting a ".08 per se and .05 presumptive" BAC limit would mean more effective law enforcement and safer roads.

It is a limit that is reasonable and necessary for the safety of all Alaskans.

Peri-Ann McIlroy's two children were killed by a drunk driver in 1985. They were both students at UAF. She closely follows decisions regarding drunk driving issues.

Peter Butteri, Tok, AK.	2:44 a.m. Tuesday	9
Signed Into Carmacks		
Roger Hocking, Ester, AK.	7:53 p.m. Monday	12
Jeninne Cathers, Whitehorse, YT.	7:56 p.m. Monday	12
Gene Mahler, Fort Yukon, AK.	8:58 p.m. Monday	11
Ruedi Indermuhle, Switzerland	9:01 p.m. Monday	12
Daniel Bourassa, Lanoraie, Quebec	12:01 a.m. Tuesday	12
Tonya Schlentner, Manley Hot Springs, AK.	1:28 a.m. Tuesday	12

RECEIVED MAR 20 1991



March 18, 1991

Representative Dave Donley
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Donley:

On behalf of the Alaska Council on Prevention of Alcohol and Drug Abuse, I would like to offer our support of House Bill 102 relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated. The Alaska Council wholeheartedly supports your proposal to lower the legal blood alcohol content (BAC) from .10 to .08. As the prime sponsor of this legislation, you are to be commended for proposing changes to our current law which would result in a decrease in injuries and loss of lives in our state.

As you are undoubtedly aware, many studies have been conducted in recent years with common results showing that the risk of being involved in an alcohol-related crash or fatality increases after about 0.08 BAC. The effects of alcohol on a driver's mental and physical processes increase dramatically with each incremental change in blood alcohol. While many states have set .10 percent as the definition of drunk driving, much lower blood alcohol levels have been found to severely affect performance including factors such as judgment, concentration, reaction time and vision.

With the passage of HB 102, Alaska would join progressive states such as Oregon, California, Utah, Maine and Vermont which have lowered their legal BAC to .08 and reduced the risk of tragedies which can result from drinking and driving. Thank you for working to save the lives of Alaskans by proposing this necessary change to the laws of our state.

Sincerely,

Bette O'Moor
Executive Director

Editorial Opinion and Comment of



Daily News - Miner

"Independent in All Things . . . Neutral in None"

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Voice of experience

Most of the time, talk is cheap when it comes to discussing social issues. You don't have to have an abortion to express an opinion on them. Most Americans don't eat caribou, but they have an opinion on oil development near calving grounds.

But when Peri-Ann McIlroy talks about drunk driving, as she does in a guest opinion on this page, you're hearing from a direct participant.

Six years ago, she and her husband, Carl, left for a trip around the world on their 41-foot sailboat. The timing was perfect: They could lease out their home in Glennallen because their two children were enrolled at the University of Alaska Fairbanks.

William Kurt McIlroy, 22, had been an active high school student: sophomore class president, student council president, a thesplan, a runner, a hockey player, a wrestler, especially a wrestler. He was regional champion for four years and team captain his senior year.

Kara Ann McIlroy, 19, had been just as active in high school. Classmates twice elected her class vice president. She won the region cross country championship. She participated in cross-country skiing and track and was named to the National Honor Society.

In mid-1985, Kurt had completed four years of a six-year engineering program at UAF. Kara had completed one year. She made the dean's list. Both took jobs at UAF that summer.

On Aug. 15, Peri and Carl called their children from Vancouver Island, Wash., just before setting sail for San Francisco. The trip would take nine days.

On Aug. 17, Kurt and Kara drove down the Parks Highway, intending to visit friends in Anchorage. They passed through Wasilla and turned onto the Glenn Highway. Just after crossing the Matanuska River, just before the highway turns into four lanes, their trip ended.

A drunk driver crossed the centerline into their lane. He was driving a three-quarter-ton pickup truck loaded with sheetrock.

The man first struck a small compact pickup truck, basically rolling over it.

Kurt and Kara's Subaru station wagon was next in line. Smashed head-on, the little car offered little protection.

Kurt died instantly. Kara, brain-dead, lingered for eight days. She died the morning of Aug. 25. Her parents reached San Francisco that night. They called their children's apartment, but got no answer. The next day, they called Peri's mother and received word that their only two children were dead.

The McIlroys buried Kurt and Kara in Glennallen. The crash permanently disabled the driver of the small pickup truck.

The drunk driver's blood alcohol content was .155. He pleaded no contest to two counts of manslaughter and was sentenced to eight years in jail. He's serving the final days of his term at a half-way house. He leaves for work each day and returns at night, an imprisonment Peri calls little more than an inconvenience.

The McIlroys stayed near Alaska through the trial. With their home leased out, they decided to stay on their boat in California, eventually resuming their trip. They moved to Fairbanks last month. Carl is pursuing a teaching certificate at UAF. Peri works at an X-ray technician at Fairbanks Memorial Hospital.

When Peri-Ann McIlroy talks about changing Alaska law to keep alcohol-impaired drivers off the road, you listen. You listen and you pray to God that you never experience what she has.

"It's almost as though my whole life has been a waste . . . They represented my achievement, everything, almost my identity. I was Kurt and Kara's mom. It's almost like finding yourself obsolete and useless.

"It's been almost six years now. It seems like it just happened the other day.

"They say time heals things, but I don't know."

Preparing to speak to Monroe Catholic High School students, Peri searches for words that can communicate her experience. She says those words have not been invented.

"If I could just find the right words, they would never drink and drive."

Please read Peri-Ann McIlroy's guest opinion. Then write your legislators and tell them to support House Bill 102.

3/26/91

Editorial Opinion and Comment of

FAIRBANKS

Daily News - Miner

Independent in All Things; Neutral in None

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

Tighten the limits

Three cheers for the state House Transportation Committee, which last week approved a bill that would lower the blood alcohol limit for determining if an Alaska driver is legally drunk.

House Bill 102, sponsored by Rep. Dave Donley, D-Anchorage, would lower the limit from .10 percent to .08 percent. Similar laws are credited with saving lives in California, Oregon and Utah.

Donley's bill died last year in the House Judiciary Committee. This time around, he's finding little criticism, except from legislators who say the limit should be even lower.

The bill has official endorsement from the state departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General. The bill has unofficial support from any Alaskan who has lost a loved one at the hands of a drunk driver.

Donley said a .08 limit has worked as a deterrent in other states because it has educated people about how quickly they can become impaired if they drink alcohol and then drive.

Donley said it's clear that alcohol affects people's judgment when their blood alcohol content reaches .05 percent. Federal commercial standards for truck and bus drivers is .04 percent.

It's impossible to say with certainty how much a person could drink without exceeding the .08 percent limit because of varying body weights and varying abilities to wear off alcohol. However, the difference between .10 and .08 is roughly one beer less per hour, Donley said.

A hang-up to the bill could be the fiscal note attached by the Department of Public Safety. The department wants \$500,000 to hire four new state troopers for enforcement of the law. Donley said Monday he likes the idea of added troopers, but they are not necessary to enforce his bill.

The House Judiciary Committee will hear HB 102 on March 27. Donley chairs the committee and the bill should breeze through. The next stop is the Finance Committee and then the House floor.

We urge legislators to act quickly on HB 102 so that it can move to the Senate and begin saving lives this summer.

Anchorage Daily News

Gerald E. Grilly
Publisher



Howard Weaver
Editor

Michael Carey, Editorial Page Editor
Patrick Dougherty, Managing Editor

Katherine Fanning, Editor and Publisher 1971 to 1983
Lawrence Fanning, Editor and Publisher 1967 to 1971

Founded in 1946 by Norman C. Brown

Anchorage
Daily
News
3-7-91

Too lenient

Law lets many drinkers drive legally

Despite a decade of heightened concern about drunken driving, Alaska is surprisingly tolerant of the practice. The problem is not that police don't take the crime seriously, or that prosecutors fail to pursue cases vigorously, or that offenders get off easy.

The problem is that the definition of drunken driving in state law is too lenient. Drivers are not legally presumed drunk until their blood alcohol level reaches 0.10. To reach that level, the average person must do a substantial amount of drinking.

A 160-pound person would have to drink five beers, or five shots of 80-proof liquor, or an entire standard-sized bottle of wine — all in one hour.

After that much drinking, a driver's abilities are considerably impaired. Research cited by the National Highway Traffic Safety Administration shows drivers with blood alcohol levels of 0.10 are 12 times more likely than non-drinkers to have a fatal accident.

Anti-drunken driving activists in Alaska would like to see state law tightened. One proposal would drop the legal blood alcohol level by 20 percent, to 0.08. Between 0.05 and 0.08, drivers would be presumed drunk, but they could rebut that presumption by showing other evidence that their driving was not actually impaired by alcohol.

Lower blood alcohol limits have drawn wide support. Among the groups pushing for a change are the National Safety Council's Committee on Alcohol and Drugs, the American Medical Association, and Mothers Against Drunk Driving.

At least four states have lowered their legal limit to 0.08. Alaska should join them.

Gulf casualties



Israel

BOSTON — On Jan. 28, the Secretary of State James Baker announced his Middle East peace plan. In his words, "to begin a dialogue for Israel and the Palestinians." One who thinks that where there is a story to tell is an illusion.

Taher Shriteh is a Palestinian activist in Gaza, a writer who reports on the situation in that part of the West Bank occupied by Israel. He does part-time work for a number of Western news organizations, including The New York Times, the BBC, and the Voice of America.

On Jan. 28, Israeli authorities arrested him. He was held without explanation and without explanation of the reasons for his arrest.

All his employment questions to the Israeli government about the result, a military hearing Feb. 18. He should be allowed bail. The hearing is an official response.

214

Blood Alcohol Concentration and Driving

American College of
Emergency Physicians
Dallas, Texas

Address for reprints: American College of
Emergency Physicians, PO Box 619911,
Dallas, Texas 75261-9911

[This position statement was approved by the Board of Directors on June 6, 1988. American College of Emergency Physicians: Blood alcohol concentration and driving. Ann Emerg Med November 1988;17:1252.]

BLOOD ALCOHOL CONCENTRATION AND DRIVING

Epidemiologic and experimental data persuasively establish that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases, that measurable impairment to operate a motor vehicle begins in most drivers at or below .05 g/dL, and that all drivers are impaired at a blood alcohol concentration (BAC) of .08 g/dL.

It is therefore the position of the American College of Emergency Physicians that a BAC of .05 g/dL be considered as presumptive evidence of driving impairment and that a BAC of .08 g/dL be considered illegal *per se* to operate a motor vehicle.

ACEP urges the enactment of state legislation prohibiting alcohol-impaired driving that reflects these statements where such do not exist.

group. Some suggestive research indicates that drinking/driving populations contain drinking/driving/crash-prone subpopulations in whom the influence of alcohol on emotions and attitudes may be an important causative factor. The influence of alcohol on an emotionally charged driving style may be as important as its influence on driving skill.

Social and cultural factors that influence the magnitude, characteristics and persistence of the drinking/driving problem are not yet defined. Whether sustained shifts in social norms related to drinking and driving can be brought about - as they were in relation to littering, smoking and diet/fitness/heart disease - is a question yet to be answered.

CONCLUSIONS

1. Alcohol causes deterioration of driving skills beginning at 0.05 percent BAC (50 mg ethanol/100 ml blood). Deterioration progresses rapidly with rising BAC to serious impairment of driving skills at BACs of 0.10 percent and above, according to scientific consensus.
2. Drivers with BACs of 0.05 percent to 0.10 percent are significantly represented in road-crash statistics.
3. Drivers aged 16 to 21 have the highest rate of alcohol-involved fatal crashes per mile, with lower average BACs than older drivers.

The Council on Scientific Affairs recommends that the AMA:

1. Direct public information and education against any drinking by drivers, and encourage other organizations to do the same.
2. Adopt a position supporting 0.05 percent BAC as per se illegal for driving, and urge incorporation of that position in all state drunk driving laws.
3. Reaffirm the position supporting 21 as the legal drinking age, support strong penalties for providing alcohol to persons younger than 21, and stronger penalties for providing alcohol to drivers younger than 21.
4. Urge adoption by all states of an administrative suspension or revocation of driver licenses, after Driving Under the Influence (DUI) conviction, and mandatory revocation after a specified number of repeat offenses.
5. Encourage automobile industry efforts to develop a safety module that thwarts operation of a car by an intoxicated person.
6. Adopt this report in lieu of Resolutions 18, 64 and 83 (A-84).

(References pertaining to Report A of the Council on Scientific Affairs are available from the Office of the Assistant Vice President for Science.)

Surgeon General Issues "Top 10" Initiatives on Drunk Driving

At his final press conference before leaving office, Surgeon General C. Everett Koop released the formal proceedings from his December 1988 Workshop on Drunk Driving and urged Congress to act on 10 key recommendations designed to curb alcohol-impaired driving and related deaths. SB405

Leading the list was a proposal that Congress encourage the states to immediately reduce the legal blood alcohol concentration (BAC) from its present level of 0.10 percent to 0.08 percent, and to further reduce it to a level of 0.04 percent by the Year 2000. Additionally, Koop advocated establishing a BAC level of 0.00 percent for drivers under 21 years of age.

The broad-based plan includes initiatives ranging from injury control to law enforcement to alcohol advertising and marketing practices. States are

.08 Per Se .05 Presumptive Legal Blood Alcohol Content Limit

POSITION

MADD supports setting the legal Blood Alcohol Content (BAC) limits for drivers at .08 per se and .05 presumptive.

BACKGROUND

The "illegal per se" concept is that operation of a vehicle by a person with a BAC at or above a legally defined numerical threshold (e.g. 0.08) constitutes an offense per se of drunk driving. Illegal per se is not rebuttable, except on grounds such as illegal arrest procedure or breath analysis machine error.

The "presumptive" concept states that a BAC between the numerical threshold and the per se level may be considered with other competent facts in determining whether a person was under the influence of alcohol. It is rebuttable.

Even though impairment theoretically begins with the first bit of alcohol, research has clearly shown measurable impairment occurs in most people at .05 BAC.¹ A recent study by the Transportation Research Board supported lowering the BAC limit for commercial drivers to .04 or lower.²

Reliable studies show that for all people, important driving skills are impaired at .08 BAC.³

Because measurable impairment in most people occurs at .05 BAC and because everyone is impaired at .08, MADD believes that states should enact drunk driving laws making a BAC of .05 presumptive evidence of intoxication and a .08 BAC per se evidence of intoxication.

In most industrialized nations, the legal BAC is lower than the 0.10 level which prevails in the United States. MADD believes that lowering the BAC to .05 presumptive and .08 per se will reduce drunk driving by:

- Increasing the likelihood of convicting suspected drunk drivers.
- Increasing a person's perceptions that he or she will get caught for driving after drinking, and
- Expanding the universe of arrestable impaired drivers.

1. Moscowitz and Robinson, "Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence," July 1987.

2. Zero Alcohol and Other Options: Limits for Truck and Bus Drivers, Special Report 216, Transportation Research Board, National Research Council, Washington, DC, August 1987.

3. Moskowitz et al.

MADD

.08 Illegal Per Se Laws

What is an illegal per se law?

An "illegal per se" law makes it illegal to drive or to be in control of a motor vehicle with an illegal alcohol concentration, as prescribed by State law. Unlike most driving while intoxicated (DWI) statutes wherein alcohol concentration, along with other factors such as slurred speech, unsteady gait, etc., are used as evidence to prove that a driver was intoxicated, with an "illegal per se" law, driving while at or above a specified alcohol concentration constitutes the violation in and of itself.

"Illegal per se" laws are similar to (but should not be confused with) administrative license suspension laws which are frequently called "administrative per se" laws. An "illegal per se" law specifies the violation of driving or being in control of a vehicle while at or above a specified alcohol concentration. This charge is a criminal charge which would normally be adjudicated in a court of law and a conviction would be followed by a number of appropriate sanctions or combinations of sanctions.

An "administrative per se" license suspension law provides that if a person drives or is in control of a vehicle while at or above a prescribed alcohol concentration, an administrative (as opposed to a judicial) license suspension or revocation will result. Such a law is similar to an "illegal per se" law in that it is based solely on the alcohol concentration of the driver. It differs from an "illegal per se" law in that it invokes an "administrative," rather than a "judicial" process and prescribes specifically what the administrative penalty (e.g. a 90-day license suspension) will be.

Why is an "illegal per se" law needed?

Illegal per se laws greatly increase the probability of conviction for an alcohol-related offense. They increase the certainty of conviction and reduce litigation time and costs. Because they increase the certainty of conviction (and therefore the certainty of punishment), illegal per se laws are more effective in deterring drunk driving and in reducing alcohol-related crashes.

This is because under an "illegal per se" law, the definition of the offense is not driving while intoxicated (a less than precise term). Rather, it is driving (or being in physical control of a vehicle) while having an illegal alcohol concentration which the law defines. In such case, the prosecutor is significantly less burdened to establish additional evidence (usually behavioral) which demonstrates intoxication or impairment. Therefore, the "burden of proof" for a conviction is less for the prosecutor under a "per se" law than under a "presumptive" law where alcohol concentration is only one of several factors used to establish guilt.

It should be noted that often the police officer must collect the same type of evidence (e.g. behavioral signs of intoxication) required under a "presumptive" law in order to show the "articulable suspicion" necessary for making the stop and the "probable cause" necessary for making the arrest. Still, however, the "illegal per se" law increases the probability of a conviction and decreases the prosecutor's requirement to provide additional, less objective evidence.

How do we know that intoxication or impairment is directly related to alcohol concentration? At what level is a person impaired?

Scores of laboratory studies have been conducted over the past three decades to determine the extent to which alcohol impairs the skills and/or judgment which are related to driving (e.g. reaction time, vision, risk taking behavior, etc.).

Such studies have indicated that impairment effects are seen in some persons at alcohol concentrations below .04 and that all persons are impaired to some extent at .08 percent (Moskowitz and Robinson, 1987). Complex tracking tasks, complex reaction time and divided attention tasks, where subjects must attend to multiple stimuli at the same time, appear to show the most degradation and onset appears to begin at very low alcohol concentrations.

More importantly, a number of "real world" (epidemiological) studies have been conducted

which have attempted to relate involvement in (and causation of) alcohol-related crashes to factors such as alcohol concentration. All such studies have shown an increased risk of involvement and causation of such crashes which is directly correlated with alcohol concentration. Most of such studies (Perrine, 1976, Borkenstein, 1968) have indicated that the risk of crash involvement begins to rise after .04 alcohol concentration and rises rapidly after .08 alcohol concentration.

What is the current status of "illegal per se" laws in the U.S.?

As of January 1, 1988, 44 States had passed "illegal per se" laws. Most such laws have been enacted since 1980 and most (41) have established .10 as the illegal alcohol concentration. Two States, Idaho and Oregon, established .08 as the illegal concentration. Two States established a higher level (i.e. Colorado @ .15 and Georgia @ .12).

During the 1988 legislative session, several States have already changed their "per se" laws. Maryland passed such a law for the first time and established the illegal concentration at .10 and Maine lowered its illegal concentration from .10 to .08.

Thus, as of July 1, 1988, there were 45 states plus D.C. with illegal per se laws, 41 States with a .10 limit; 3 states with a .08 limit and two states with a limit greater than .10.

Five states remain without a per se law. They are: Wyoming, Kentucky, Tennessee, Massachusetts and South Carolina. Colorado and Georgia have illegal per se laws but an alcohol concentration greater than 0.10.

How effective have "illegal per se" laws been?

Illegal per se laws are only part of a total system of laws, enforcement, license actions, prosecution, adjudication, sanctioning, education and treatment that contribute to significant reductions in alcohol-related crashes. Very often such laws have been passed and enacted as a part of comprehensive legislative packages. This has made it difficult to evaluate the effectiveness of such laws, in and of themselves.

In 1988, however, the Insurance Institute for Highway Safety (IIHS) released the results of a study which evaluated the effectiveness of "illegal per se" laws, "administrative per se" laws and mandatory jail/community service laws. The study revealed that il-

legal per se laws significantly reduced fatal crashes. Since more States had enacted "illegal per se" laws, more lives had been saved due to such laws than by either of the other types of laws.

Why use .08 rather than .10 as the illegal alcohol concentration for "illegal per se" laws?

As has already been pointed out, laboratory research has indicated that virtually all drivers are impaired to some extent at an alcohol concentration of .08. Most persons show impairment in some critical tasks such as divided attention at much lower levels. Furthermore, epidemiological studies have shown that the risk of crash involvement begins to rise significantly after an alcohol concentration of .05.

A summary of both laboratory and epidemiological research can be found in the resource materials. The report entitled *Alcohol and Highway Safety 1984: A Review of the State of Knowledge*, and the report entitled *Low BAC Impairment* (Moskowitz and Robinson, 1987) should be reviewed for a thorough understanding of the effects of alcohol at low alcohol concentrations.

Most foreign nations have alcohol concentrations at .08 or lower. These include Canada, Great Britain, the Scandinavian countries, Australia and New Zealand.

Who supports lowering the alcohol concentration limit below .10?

The National Safety Council's (NSC) Committee on Alcohol and Drugs has thoroughly reviewed the evidence regarding driving impairment and the epidemiology of crashes relative to alcohol concentration. It has resolved that all persons are impaired at an alcohol concentration of .08 and supports the lowering of "per se" limits to that level.

The American Medical Association (AMA) advocates an even lower .05 alcohol concentration limit.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) advocates an illegal per se limit of .08 in its most recent edition of the Uniform Vehicle Code (UVC).

Other organizations which advocate illegal per se laws at levels below .10 include: The American Spinal Injury Association (ASIA) and the States of Utah, Maine and Oregon, which have .08 per se limits.

What provisions of an illegal per se law are desirable?

Immediately following this section is a copy of the provisions of the new Uniform Vehicle Code (UVC) which relate to an "illegal per se" law.

As is apparent, the primary provision in Section 11-902 is that:

"(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.08 or more..."

Note that the (new) term "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. This definition of alcohol concentration replaces the (old) term of blood alcohol concentration (BAC) which was expressed in terms of a percent (e.g. .08% BAC). The new term is simply "an alcohol concentration of 0.08." This definition is appropriate whether blood or breath tests are taken with no need to convert one to the other (i.e. no need to convert breath alcohol concentration [BAC] to blood alcohol concentration [BAC]).

Are illegal per se laws constitutional?

Yes, they are constitutional. Although the U.S. Supreme Court has consistently refused to hear "illegal per se" cases, every State appellate or high court which has ruled on illegal per se laws has found such laws to be constitutional so long as adequate notice is given as to what constitutes the illegal behavior.

In order to be clearer as to what constitutes illegal behavior, some states have written in their legislation requirements for providing alcohol concentration information to the public.

Are there any other changes that should be made to illegal per se laws?

Besides lowering the alcohol concentration limits of existing per se laws, it is important to review the "presumptive" laws which may also exist within the State which, in some cases, state that a person is "presumed not to be under the influence of alcohol at an alcohol concentration of .05 or less." Such a provision should be removed. Given recent research findings, it is clear that there is no positive (non-zero) alcohol concentration level where it can be presumed that a person is not under the influence of alcohol.

Points Often Raised

How many lives will be saved by lowering the limit from 0.10 to 0.08?

There are no scientific research studies which show the impact of reducing an illegal per se limit from 0.10 to 0.08. However, Scandinavian countries which have lower alcohol concentration limits also have fewer drivers on the road at high alcohol concentrations and a lower portion of their fatally-injured drivers have high alcohol concentrations. These lower levels are likely due to a combination of factors such as enhanced enforcement, use of roadside sobriety checkpoints, swift and sure license and jail penalties, as well as lower alcohol concentration limits. Such a (lower) limit must be viewed as an element of a total package aimed at reducing impaired driving.

In addition to the foreign experience, those states which have had lower alcohol concentration limits in the U.S. are among the states with the lowest nighttime proportion of fatal crashes and the lowest alcohol-related proportion of fatal crashes. Again, there are many factors in operation in such states. However, the lower illegal per se limits are considered to be an important such factor.

One researcher (Hurst) re-analyzed the data from the classic Grand Rapids, Michigan, study (Borkenstein, 19). Hurst developed a procedure for estimating what the impact of a complete enforcement of various alcohol concentration limits would be (i.e. the effect of keeping all persons above a specified alcohol concentration off the road). He estimated that a complete enforcement of a 0.08 limit would be significantly more effective in reducing serious alcohol-related crashes than a complete enforcement of a 0.10 limit. Although a complete enforcement effort may not be realistic, Hurst's analysis indicated that significant potential gains are available by reducing the alcohol concentration limit from 0.10 to 0.08.

Will reducing the limit from 0.10 to 0.08 likely make a difference?

If the police and the courts actually carry out the intent of the law, such a reduction can make an im-

portant difference. Currently, many drivers apprehended at borderline alcohol concentrations (e.g., 0.11) are not vigorously prosecuted and may be allowed to plead to a reduced charge. Lowering the limit to .08 should increase the frequency of prosecution of this group. It should also result in the more frequent arrest and conviction of persons at .08 and .09 who are at least 2 to 3 times as likely to be involved in a serious crash as someone at .00.

Isn't it fairer and more accurate to use appearance and behavior as an indicator of impairment or intoxication than to use an alcohol concentration?

No, it is not. Alcohol concentration is the most scientific and objective measure we can use to determine impairment or increased probability of involvement in a serious or fatal crash. That is because nearly all impairment which has been measured in laboratory situations and all risk estimates from "real world" epidemiological studies have been established relative to alcohol concentration levels.

Appearance is often misleading. Individuals who show little evidence of intoxication may still be significantly impaired in their ability to react to complex situations on the roadway.

We must rely on what we have learned from laboratory and real world studies to estimate what impact alcohol is likely to have in driving situations. Furthermore, studies have shown that both physicians and police fail to identify up to half of the drivers who are above 0.10 alcohol concentrations (NSC, 1970; NHTSA, 1984). Yet, research demonstrates that at these alcohol concentrations the ability of all drivers to react to complex situations is significantly impaired and evidence from epidemiological studies indicates that the probability of involvement in a serious injury or fatal crash is 5-6 times that of a person with a 0.00 alcohol concentration.

The most accurate and objective indicator of increased crash risk is a measure of alcohol concentration.

If a State enacts an "illegal per se" law, should the old law(s), which are based on behavioral evidence, as well as on alcohol concentration, be discarded?

No, the older driving while intoxicated (DWI) or driving under the influence (DUI) laws should be retained for those cases in which no chemical test is available. This can occur either when an offender refuses to take a chemical test or when some problem develops with the test result. Often, an offender is charged under both the "per se" and "presumptive" laws and one of the charges is dropped at a later date.

With all the current emphasis being placed on alcohol concentration as measured by breath testing devices, how accurate are such devices in measuring alcohol concentration?

Modern breath test devices are extremely accurate and reliable when maintained and operated according to State guidelines. All States have detailed requirements for

- (1) the qualifications of breath testing equipment.
- (2) the training of breath test operators and
- (3) the procedures to be used in conducting breath tests.

Only when all of these requirements are met are tests admitted as evidence.

Most of the errors which can be made in collecting breath tests provide a result which is favorable to the accused (e.g., the devices are calibrated to read lower, rather than higher).

The principal risk in administering a breath test is failure to wait 15-20 minutes before administering the test. This must be done to ensure that any alcohol residue in the mouth from the person's last drink is gone. Such "mouth alcohol" could result in an erroneously high alcohol concentration reading. All States require at least a 15-20 minute wait before an evidential breath test can be conducted.

Isn't blood alcohol, rather than breath alcohol, a more accurate measure on which to base impairment?

No. Most of the laboratory research which has measured impairment relative to alcohol concentrations has employed the use of breath test devices to measure alcohol concentration. In addition, most of

the evidence gathered from roadside surveys (a critical element of epidemiological studies) has been based on the administration of breath tests.

Since it is alcohol in the brain which presumably causes impairment, perhaps the best measure of alcohol impairment would be the alcohol concentration of the brain. Such a measure, however, is not practical to collect.

There is no evidence that blood alcohol concentration provides any better measure of impairment than does breath alcohol concentration. Defense lawyers would like to make a judge and jury believe that blood is a better measure, but it is not.

The dependence on blood alcohol concentration (BAC) began decades ago when blood provided the primary means for determining alcohol concentration. When breath test devices were first developed, they were based on a conversion factor (i.e. 2100:1) to convert the breath alcohol readings to blood alcohol equivalents. That was unfortunate and defense lawyers began to challenge the 2100:1 conversion ratio. Newer State legislation is progressing beyond that stage by defining violations in terms of the more general term "alcohol concentration" (not blood alcohol concentration) which means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

Isn't it unfair to define an alcohol-related (per se) offense in terms of alcohol concentration when an individual has no direct way of determining what his or her alcohol concentration is?

It is true that a precise measure of one's alcohol concentration is difficult to obtain unless the person has his or her own breath test device. However, a person can use simple guidelines such as no more than a drink in an hour or "know your limit" cards to estimate his or her alcohol concentration. Furthermore, the legal limit of .08 is sufficiently high that more than just a moderate amount of drinking is necessary to reach the legal limit.

A person would have to drink more than just a drink an hour to reach such a limit. An average 160 lb. male would have to drink more than 3 drinks in the first hour to reach that limit and could have nearly one additional drink for each additional hour of drinking without exceeding the limit.

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Illegal Per Se at .08% Law

Uniform Vehicle Code

I. Criminal offenses

§ 11-902--Driving while under the influence of alcohol or drugs

- (a) A person shall not drive or be in actual physical control of any vehicle while:
1. The alcohol concentration in his blood or breath is 0.08 or more based on the definition of blood and breath units in § 11-903(a)(5); (New, 1971; Revised, 1979, 1984.)
 2. Under the influence of alcohol; (Revised, 1971.)
 3. Under the influence of any other drug or combination of other drugs to a degree which renders him incapable of safely driving; or (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)
 4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving. (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)
- (b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section. (Formerly § 11-902.1; Revised, 1971, 1984.)
- (c) In addition to the provisions of § 11-904, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days or more than one year, or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment and on a second or subsequent conviction, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than \$1,000. (Formerly § 11-902.2; Revised, 1971, 1984.)

II. Admissibility of chemical tests for intoxication

§ 11-903--Chemical and other tests

- (a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply; (New, 1971; Revised, 1979, 1984.)
1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (Formerly § 11-902 (c).)
 2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of § 6-207 or § 6-209, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens. (Formerly § 11-902 (d).)
 3. The person tested may have a physician, or a qualified technician, chemist, registered nurse,

or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (Formerly §112-902(c).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (Formerly §11-902 (f).)

III. Definition of alcohol concentration

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (Formerly §11-902(b)(4); Revised, 1979.)

IV. Presumptions for under the influence alcohol offense

- (b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine,

breath, or other bodily substance shall give rise to the following presumptions: (Revised, 1979.)

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol. (Revised, 1979.)
 2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol. (Revised, 1979, 1984.)
 3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol. (Revised, 1979, 1984.)
 4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol. (Formerly § 11-902(b).)
- (c) If a person under the arrest refuses to submit to a chemical test under the provisions of §6-207, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs. (Formerly §11-902 (g), Revised, 1984; Section Renumbered, 1986.)

.08 Per Se

In Rapid City, South Dakota, a young resident was engaged to be married when he was struck by a car whose driver had been drinking, but whose blood alcohol test was below the legal intoxication limit.

Even though Ricky was hospitalized five months and in a coma more than a month, no charges were filed. Because of this paralysis, he will live in a nursing home for the rest of his life.

Arlene Feuerback had just celebrated her 40th wedding anniversary in August, 1987, reflecting on her years of happiness. She had recently been named one of five "Master Homemakers" in Iowa. She was a hospital volunteer, a leader in her church, an active Farm Bureau woman, and coordinator of a food pantry for the needy.

As she rode her bicycle along the highway she was hit and killed by an offender who fell asleep at the wheel. Because his blood alcohol level tested at .053, he was charged only with reckless driving and fined \$30 plus court costs.

A study was made of 388 drunk driving cases dropped by the State Attorney's office in West Palm Beach, Florida revealed that 75 (19%) were dropped because of blood alcohol levels of less than .10. Officers say they continue to file charges against offenders who register below .10 because they fear the offenders will have fatal crashes if let go.

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Agencies

National Transportation Safety Board
Washington, DC 20594
(202) 382-6572

National Highway Traffic Safety
Administration
Office of Alcohol and State Programs
400 - 7th Street, S.W., Suite 5130
Washington, DC 20590
(202) 366-9550

National Safety Council
Committee on Alcohol and Drugs
444 N. Michigan Ave.
Chicago, IL 60616
(312) 527-4800

National Committee on Uniform Traffic
Laws and Ordinances
The Traffic Institute -
Northwestern University
405 Church Street
Evanston, IL 60201
(312) 491-5280

Mothers Against Drunk Driving
National Office
669 Airport Freeway, Suite 310
Hurst, TX 76053
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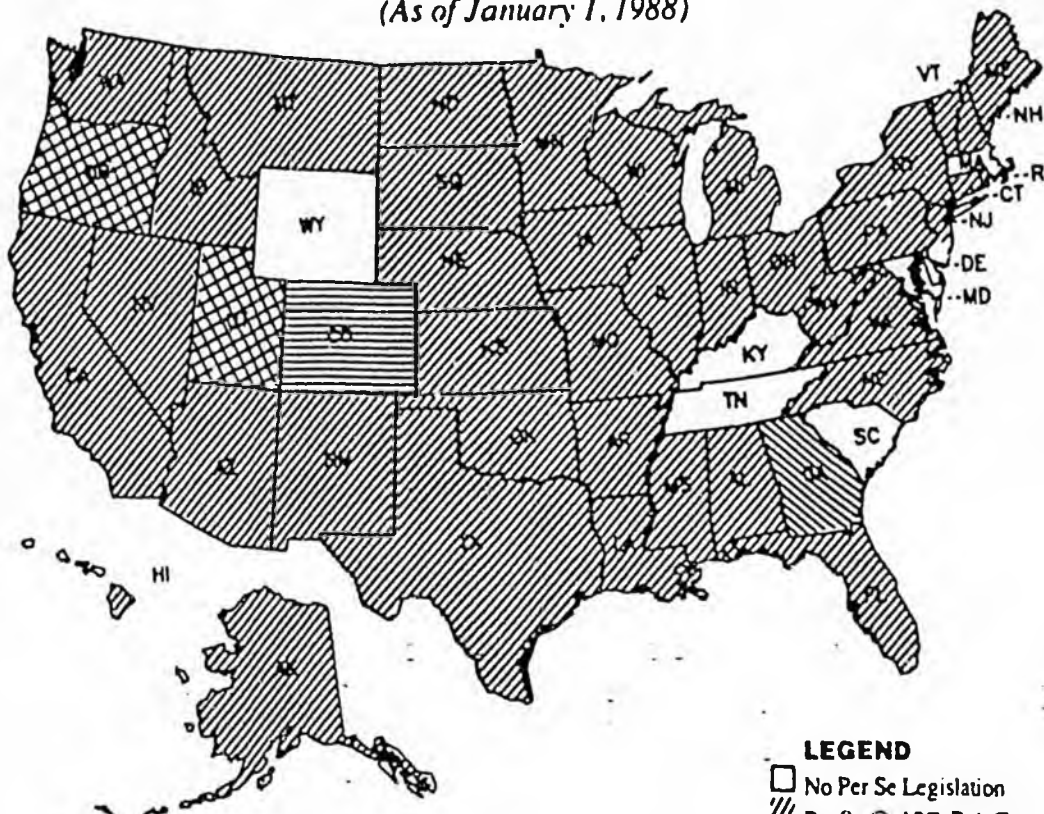
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States With Illegal PerSe Laws

44 States and Washington, D.C.

(As of January 1, 1988)



LEGEND

- No Per Se Legislation
- ▨ Per Se @ .10% B.A.C.
- ▩ Per Se @ .12% B.A.C.
- ▬ Per Se @ .15% B.A.C.
- ▧ Per Se @ .08% B.A.C.

Source: NHTSA Legislative Digest

Alabama
Alaska
Arizona
California
Colorado*
Connecticut
Delaware
District of Columbia
Florida
Georgia**
Hawaii
Idaho

Illinois
Indiana
Iowa
Kansas
Louisiana
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Michigan
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Mississippi
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Nevada

New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon***
Pennsylvania
Rhode Island
South Dakota

Texas
Utah***
Vermont
Virginia
Washington
West Virginia
Wisconsin

Total = 44
*BAC = 0.15
**BAC = 0.12
***BAC = 0.08

More rights for victims

On Oct. 5, 1989, the lives of both my family and myself drastically and irreparably changed. That was the day my father, my brother-in-law and I found my murdered brother's body in a closet in his south Anchorage home. Since that time, we have had one agonizing lesson after another regarding our judicial and legislative systems. The man (and I refuse to use the word "boy") who murdered my brother was a juvenile. He was 16 years old when he forced his way into my brother's house to steal his car keys. He ended up shooting Duane three times with a .357 Magnum.

Current laws say that the prosecution (the DA) must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the DA cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the DA won the case, and the murderer should have to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals by saying that when the young man confessed to police, his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The accused criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and



less to the criminals.

Please send a Public Opinion Message (POM) to the legislators from your district and to the Health and Social Services committee. To send a POM, call the Legislative Information Office at 561-7007. Tell the committees that you support House Bills ~~102, 101 and 103~~. These bills all deal with victims' rights and work on giving more rights to the victims. Please call; you can make a difference.

: — Ralph Samuels

HB 100
101
103

Advocate victims' rights

Dear Editor:

My life and the lives of my family members were drastically and irreparably changed on Oct. 5, 1989 — the day my father, my brother-in-law and I found my murdered brother's body in a closet in his South Anchorage home. Duane had been shot three times with a .357-caliber magnum.

Since that time, we have had one agonizing lesson after another on our judicial and legislative systems. The man — and I refuse to use the word "boy" — who is accused of murdering my brother was 16 years old at the time of the murder.

Current laws say the prosecution — the district attorney — must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the district attorney cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the district attorney won the case and the accused should have had to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals, saying that when the young man confessed to police his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and less to the criminals.

If anyone has ever said to a crime victim, "If there is anything I can do, just call" — I am calling. Please send a "public opinion message" to the legislators from your district and to the Health and Social Services Committee. To send a message, you need only call the Legislative Information Office at 561-7007 for further instructions. In the message, tell the committee that you support House Bills 100, 101 and 103. These bills all deal with victims' rights and work on giving more rights to the victims. Please call. You can make a difference.

Ralph Samuels
Anchorage

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MEMBER
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HB 102: Lowering BAC for DWI to .08%

EXCERPT FROM:

Laws to Stop Rising Car Insurance Costs: A Comprehensive Study, Report of the National Conference of Insurance Legislators' Subcommittee on Automobile Insurance at pg. 2:

"Recommendation 17: Reduce BAC standard to .08%."



**UNIFORM VEHICLE CODE
AND
MODEL TRAFFIC ORDINANCE**

**Cumulative
SUPPLEMENT IV, 1984**

to 1968 Edition

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NATIONAL COMMITTEE

ON

UNIFORM TRAFFIC LAWS AND ORDINANCES

ARTICLE IX—SERIOUS TRAFFIC OFFENSES

§ 11-901—Reckless driving

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five days nor more than 90 days, or by a fine of not less than \$25 nor more than (\$500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than six months, or by a fine of not less than \$50 nor more than (\$500) or by both such fine and imprisonment. (REVISED, 1971.)

§ 11-902—Driving while under the influence of alcohol or drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.08 or more based on the definition of blood and breath units in § 11-902.1(a)(5); (New, 1971; Revised, 1979, 1984.)
2. Under the influence of alcohol; (Revised, 1971.)
3. Under the influence of any other drug or combination of other drugs to a degree which renders him incapable of safely driving; or (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)
4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving. (New, 1971; Revised, 1979, 1984.)

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section. (Formerly § 11-902.1; Revised, 1971, 1984.)

(c) In addition to the provisions of § 11-902.2, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment and on a second or subsequent conviction, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than \$1,000. (Formerly § 11-902.2; Revised, 1971, 1984.)

Former subsection, (b), (c), (d), (e), (f); and (g) have been moved to § 11-902.1 on chemical tests, below.

§ 11-902.1—Persons under the influence of drugs

Contents of section moved to § 11-902, above.

SERIOUS TRAFFIC OFFENSES

... driving shall be punished upon a first conviction by ...
 ... than five days nor more than 90 days, or by a fine of ...
 ... or by both such fine and imprisonment, and on a second ...
 ... conviction shall be punished by imprisonment for not less than 10 days nor more ...
 ... than \$50 nor more than (\$500) or by both such fine

Influence of alcohol or drugs

... in actual physical control of any vehicle while:
 ... blood or breath is 0.08 or more based on the definition of ...
 ... (5); (New, 1971; Revised, 1979, 1984.)
 ... Revised, 1971.)
 ... drug or combination of other drugs to a degree which renders ...
 ... (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)
 ... alcohol and any other drug or drugs to a degree which renders ...
 ... (1971; Revised, 1979, 1984.)
 ... and with violating this section is or has been legally entitled ...
 ... to constitute a defense against any charge of violating this sec- ...
 ... tion, 1971, 1984.)

§ 11-902.2, every person convicted of violating this section ...
 ... shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine ...
 ... of not less than \$100, or by both such fine and imprisonment and on a second ...
 ... conviction shall be punished by imprisonment for not less than 90 days nor more ...
 ... than one year, or by both such fine and imprisonment and on a second ...
 ... conviction, a fine of not more than \$1,000. (Formerly § 11-902.2; ...
 ... Revised, 1971, 1979, & 1984.)

and (g) have been moved to § 11-902.1 on chemical tests, below.

Influence of drugs

... 902, above.

§ 11-902.1—Chemical and other tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply. (New, 1971, Revised, 1979, 1984.)

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (Formerly § 11-902(c).)

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of § 6-205.1, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens. (Formerly § 11-902(d).)

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (Formerly § 11-902(e).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (Formerly § 11-902(f).)

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (Formerly § 11-902(b)4; Revised, 1979.)

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions: (Revised, 1979.)

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol. (Revised, 1979.)

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol. (Revised, 1979, 1984.)

3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol. (Revised, 1979, 1984.)

4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol. (Formerly § 11-902(b).)

Optional (c) If a person under arrest refuses to submit to a chemical test under the provisions of § 6-205.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs. (Formerly § 11-902(g). Revised 1984.)

Alaska State Legislature
Representative Niilo Koponen


House District 21

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M E M O R A N D U M

TO: Representative Dave Donley
Representative Richard Foster

FROM: Representative Niilo Koponen 

DATE: February 21, 1991

RE: Constituent support of HB 102

At 7:00 am this morning I received a telephone call from a constituent strongly supportive of HB 102. She requested that the bill be heard within the next few weeks. There is, as I am sure you know, strong support for the bill in my community.

#B 102

Committee, said he thinks the Senate will accept the changes Monday.

The House Finance Committee, meanwhile, planned to work through the weekend to complete a proposed

such as

Gov. Wally Hickel requested quick action on the budget, but Democrats also want to ensure time at the end of the session to consider possible overrides of any

closely watching the bill, Pourchot said.

"There will be differences, but I think they will be select and minor," he said. The differences are expected to be worked out in a

Arch Donley 3-23-91

Bill to lower drivers' alcohol limit to 0.08 passes first legislative test

The Associated Press

JUNEAU — A bill that would lower the blood alcohol limit for determining if a driver is drunk has passed its first test in the legislature.

The House Transportation Committee on Thursday unanimously approved the measure, which would lower the limit from 0.10 percent to 0.08 percent.

Supporters say other states, including California, Oregon and Utah, have lowered alcohol-related traffic deaths by reducing the blood alcohol limit.

House Bill 102 is sponsored by Rep. Dave Donley, D-Anchorage, who saw a similar measure die last year. This time around, Donley said, he knows of no opposition to the bill.

"It's just something that's basically overdue," Donley

said. "It's phenomenal the amount of public support for it."

The measure is supported by the state departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General.

Donley said a highly publicized drop to 0.08 percent would serve as a strong deterrent to drunken driving. He said drunken-driving arrests in Oregon declined steadily after an initial surge when the lower limit took effect.

The only debate Thursday's hearing focused on the \$500,000 price tag that the Department of Public Safety placed on the bill. The departments of Law and Corrections said the bill would not raise their costs.

Gayle Horetski, Public Safety deputy commissioner,

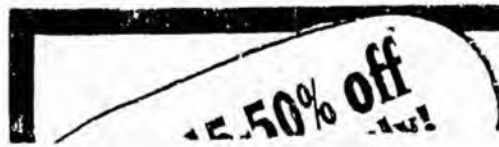
said the lower limit would require the department to increase its staff and training.

The Public Safety fiscal note proposes spending money to add four state troopers to start a new program in southcentral Alaska. Horetski said the troopers would be trained to spot and arrest drunken drivers.

"It would be a roving drunk-busters team," she said.

Rep. Jerry Mackie, D-Craig, said he supports the troopers' new program, but it should not be pinned to Donley's bill because it might reduce the measure's chance of passage.

Rep. Loren Leman, R-Anchorage, said the measure doesn't go far enough. He said it should be against the law for people to drive with any alcohol in their system.



HARE