

H B

1 3 8

Alaska State Legislature

Resources Committee

Rules Committee

Home Address:
P.O. Box 871746
Wasilla, Alaska 99687
(907) 373-2518

During Session:
State Capitol
Juneau, Alaska 99801-1182
(907) 465-2186

Representative Patrick J. Carney

MEMORANDUM

From: Rep. Patrick J. Carney
To: Rep. Brian Porter
Date: March 17, 1993
Subject: HB 138 - Limited Drivers' Licenses

I note that HB 138 is set for hearing in the Judiciary Committee on Friday. With this memo I am forwarding to you two statements which I received as co-sponsor in support of HB 138. I am uncertain whether you also received these statements.

JUDICIAL COMMITTEE, RE: HB 138 Driver's Licenses

4. USE CHILD DISCIPLINE PSYCHOLOGY: Michael Popkins, PhD, author of "Active Parenting," believes in order to help children "survive and thrive," --and I concur that this applies to DWI offenders as well-- we need to discipline them with these three goals (needs) in mind:

NEED

HOW TO SUPPORT:

To Belong: Create environment of love and acceptance -- meaningful friendships and family ties.

To Learn: * Teach skills
Encourage self-reliance
* Provide opportunities
Accept mistakes

To Contribute: Accept their offers of help
Ask them for their help and opinions
Express appreciation for their efforts
Share responsibilities
Ask for their help/cooperation
Offer them your help

I believe we can discipline our DWI offenders most effectively by using this as a guideline. Our laws cannot impact "Belonging," but your decisions can impact the "Learning" and "Contributing" aspects. Treatment programs teach skills and provide opportunities*. I have underlined the four items I believe would be impacted by the passage of this bill.

5. THEY'RE ALREADY ON THE ROAD: It is my personal opinion that a large percentage of these people are driving despite the fact that they have no licenses. In the Mat-Su Valley where we have no public transportation system, many DWIOs feel they have no choice (employment, survival). The sooner we allow them to earn back their driving privileges, the sooner they can get car insurance and become law-abiding citizens.

6. INCREASED OPPORTUNITY FOR SUCCESS: I want our roads to be as safe as possible. I also think it is important to give DWI offenders every possible chance to succeed. This bill would help these people to lead productive lives sooner than is now possible. It is my understanding that this bill would empower the courts to decide, on a case-by-case basis, who shall be trusted to drive, and to what extent. I therefore give this bill my full support.

Respectfully submitted,



Margaret Rose Carney
P.O. Box 870796
Wasilla, Alaska 99687
355-1995 (H) 376-6116 (W)

DATE: March 4, 1993
TO: MEMBERS OF THE JUDICIAL COMMITTEE
FROM: MARGARET R. CARNEY
RE: HB 138
Driver's Licenses

I am a married white female, age 34, with a 16-month-old child. I have a B.A. in Psychology from the University of Alaska. I work for a state-approved alcoholism/drug treatment program which serves clients in Wasilla, Palmer, Eagle River, and Anchorage, 90% of whom are DWI offenders sent by the courts for mandatory treatment. I have a clean driving record and I have no friends affected by the current DWI laws. I support this bill for the following reasons:

1. NONCOMPLIANCE RATE: Despite the fact that clients are attending treatment on a mandatory basis, and we have a very good program, a large number of clients go into noncompliance and have to be fed back through the system. I think this bill would help to provide added incentive for clients to complete their treatment programs in a timely manner (the proverbial "dangling carrot"). Existing penalties for DWIs are a good idea, but I assume there must be something missing in the DWI offender processing system at this time, or we wouldn't have such a high (statewide) rate of noncompliance and recidivism.
2. BEING IN ACTION COUNTERACTS DEPRESSION: My counseling experience has taught me that people tend to be a lot happier when they are "in action" towards goals they perceive to be worthwhile. If a person's treatment program is one year in duration, but his license is revoked for two years, there is currently very little he can do to better his situation. This can give way to hopelessness and is fertile ground for depression and additional DWIs. Under the current laws a person can easily be caught in a downward spiral of "no possibility." This bill has the possibility of preventing some of these occurrences.
3. REWARDS FOR GOOD BEHAVIOR/EFFORT: In my personal experience, positive reinforcement (reward for good behavior) has consistently been shown to get quicker, better results than negative reinforcement (punishment for bad). I assume this would also apply to DWI offenders.

FROM: ANDY BRENNAN, ADMINISTRATOR
STARTING POINT, INC:

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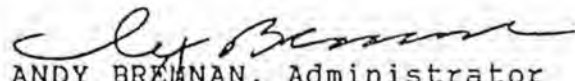
As a group, we wish to have your records reflect that we support House Bill 138.

We care a great deal about the welfare of our clients and want what is best for them. Our business is to give people the tools they need to lead more productive lives. It is our view that the added incentive this bill would provide might help clients to "get back on their feet" that much quicker. At the same time, we know it is imperative that we keep drunk drivers off our highways.

The ability to make a living is very important to the self-esteem of our clients. Self-esteem, in turn, can have a big impact on a client's willingness, and ability, to stay sober.

We feel that this bill would provide added incentive for DWI offenders to complete their court-mandated treatment programs in a timely manner and to regain their status as productive citizens. We believe approval of this bill is therefore in the best interests of the State of Alaska.

Respectfully submitted,


ANDY BRENNAN, Administrator
(On behalf of Starting Point, Inc.)
1075 Check Street, Suite 102
Wasilla, AK 99654
376-6116

HOUSE Judiciary Committee

I am speaking in support of House Bill 138.

As a substance abuse counselor I know the negative impact on individuals, families and society that long term denial of a driver's license can cause.

By providing limited driving privileges to those who have achieved and maintain continuous abstinence from all mind altering chemicals we can support and encourage their return to society as contributing, productive members.

I have seen that many people continue to drive without a license, it is a law that may be too hard to enforce, there by negating it's deterrent effect. The public could be better served by monitoring continued sobriety of those that receive limited driving privileges.

Those who flaunt the law, and drive without a license, drive uninsured. By providing a means to license those with DWI citations sooner we will also enforce mandatory insurance laws, and provide better protection for society.

I strongly encourage the legislature to pass House Bill 138.



Ann Franklyn, CAC IA
Substance Abuse Counselor

HC 34 Box 2115
Wasilla 99653
326-4000



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
 committee on HB 138, dated 3/19/1993
 bill/subject

Since refusing the breathalyzer carries the same penalties as a D.W.I I believe the refusal needs to be included in HB 138.

We need working responsible citizens in our state. Why tie the hands of many of our people by not letting them work, because of no drivers license? Let revenge take a back seat and let recovery step forward to show others that there is a better life than drinking affords.

Signed: Marcia B. Hopkins
 Testifier

Representing (Optional)
1500 W. Lake Lucille Dr.
 Address
Wasilla, Alaska, 99654
376-8608
 Phone No.

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ANDREW M. WILSON

HC 34 Box 2115
Wasilla 99653
376-4000

FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 138

1993 LEGISLATIVE SESSION

Revision Date: _____

Department Affected: Administration

Title: "An Act relating to limitations on a driver's license . . ."

BRU: Public Defender Agency

Sponsor: Representatives Porter, Ulmer

Component: Public Defender Agency

Requestor: _____

COMPONENT SERIAL NO. 1631

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	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	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year (FY93) impact: _____

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 279-7541
 Date: _____

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 3/10/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 138

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to limitations on a driver's license..." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representatives Porter, Ulmer
 Requestor: _____ COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	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	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

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

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usera *NBC* Date: 3/16/93
 Agency: Department of Administration

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STATE OF ALASKA

LEGISLATIVE AFFAIRS AGENCY

DIVISION OF PUBLIC SERVICES

DATE:

3/3/93

Please accept the enclosed original(s) of written testimony
for the unscheduled teleconference hearing that was
scheduled on re HB 138

A copy of this testimony was transmitted to your committee via
fax on 3/3/93.

Thank you,

Mary Kuskeem



Alaska State Legislature

Please enter into the record my testimony to the Judiciary
committee name

committee on H.B. 138, dated March 4, 1993.
bill/subject

I urge passage of H.B. 138. I believe the previous 10+20+30 year license revocations are causing undue hardships on people who committed a misdemeanor and have since gotten treatment and changed their lives.

The state of Alaska has created another type of criminal. There aren't any buses from Wasilla to Anchorage, Red Dog mine, or the north slope so how are they expected to get to job sites. Many people do drive without a license, in so doing they also drive without insurance hence another type of criminal.

I believe we need to address this problem now in order to make our bus fair to all citizens in our state.

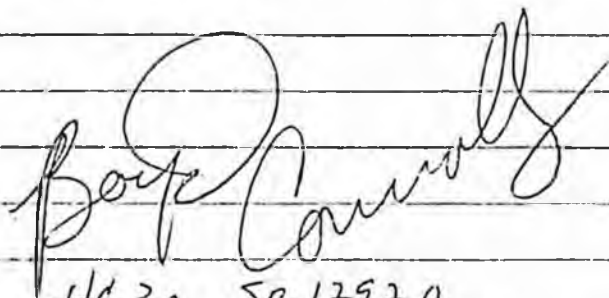
Signed: Marcia B. Hopkins
Testifier

Representing (Optional)
1500 W. Lake Lucille Dr. Wasilla
Address
376-8608
Phone No.

House Judiciary (House State Affairs)

THE REASON I'M INTERESTED IN SEEING BILL 138 PASSED IS THAT I'M IN RECOVERY MYSELF AND I AM CONCERNED ABOUT THE DRUNK DRIVERS ON THE HIGHWAYS, AS IT IS NOW THERE IS NO INCENTIVE FOR THOSE WHO HAVE TWO OR MORE D.W.I.'S TO STAY SOBER, THEREFORE GOING BACK OUT AND DRIVING AGAIN.

SO I FEEL WITH THIS BILL PASSED AND VOLUNTARY URINE TESTING, A BOARD OF PEOPLE WHO ARE KNOWLEDGEABLE ABOUT THIS DISEASE TO INTERVIEW THOSE WISHING TO REOBTAIN THEIR LICENSE AFTER 5 YEARS OF SOBRIETY + PROOF OF TREATMENT AND OR A.A.



HC 30 SR 12920

WASH DC ALA 99654

376-5089



Alaska State Legislature

House Judiciary

Please enter into the record my testimony to the H. St. A.C.
committee name

committee on HR 138, dated 2/4/93
bill/subject

I support HR 138. Due to the lack of public transportation in the Mat-lu Valley, it limits anyone under such driving restrictions a means of financial support. Therefore it creates another burden to the community and that is either driving without a license and insurance or to live on public assistance. I believe that if a person has proven proper recovery they should be allowed to support themselves.

Signed: Dave A. Bolander
Testifier

Representing (Optional)
HC RD Box 6655-F2 Umanilla AK 99654
Address
273-5443
Phone No.



Alaska State Legislature

Please enter into the record my testimony to the H Jud
committee name

committee on HB 138, dated 3/4/93
bill/subject

*Please accept my encouragement
for your support of HB 138.*

Signed: Paul Metzner, CAC II
Testifier

Representing (Optional)
P.O. Box 8929, Wasilla, AK 99687
Address
892-9067
Phone No.

DATE: March 4, 1993
TO: MEMBERS OF THE JUDICIAL COMMITTEE
FROM: MARGARET R. CARNEY
RE: HB 138
Driver's Licenses

I am a married white female, age 34, with a 16-month-old child. I have a B.A. in Psychology from the University of Alaska. I work for a state-approved alcoholism/drug treatment program which serves clients in Wasilla, Palmer, Eagle River, and Anchorage, 90% of whom are DWI offenders sent by the courts for mandatory treatment. I have a clean driving record and I have no friends affected by the current DWI laws. I support this bill for the following reasons:

1. NONCOMPLIANCE RATE: Despite the fact that clients are attending treatment on a mandatory basis, and we have a very good program, a large number of clients go into noncompliance and have to be fed back through the system. I think this bill would help to provide added incentive for clients to complete their treatment programs in a timely manner (the proverbial "dangling carrot"). Existing penalties for DWIs are a good idea, but I assume there must be something missing in the DWI offender processing system at this time, or we wouldn't have such a high (statewide) rate of noncompliance and recidivism.

2. BEING IN ACTION COUNTERACTS DEPRESSION: My counseling experience has taught me that people tend to be a lot happier when they are "in action" towards goals they perceive to be worthwhile. If a person's treatment program is one year in duration, but his license is revoked for two years, there is currently very little he can do to better his situation. This can give way to hopelessness and is fertile ground for depression and additional DWIs. Under the current laws a person can easily be caught in a downward spiral of "no possibility." This bill has the possibility of preventing some of these occurrences.

3. REWARDS FOR GOOD BEHAVIOR/EFFORT: In my personal experience, positive reinforcement (reward for good behavior) has consistently been shown to get quicker, better results than negative reinforcement (punishment for bad). I assume this would also apply to DWI offenders.

FROM: ANDY BRENNAN, ADMINISTRATOR
STARTING POINT, INC:

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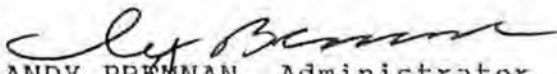
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We care a great deal about the welfare of our clients and want what is best for them. Our business is to give people the tools they need to lead more productive lives. It is our view that the added incentive this bill would provide might help clients to "get back on their feet" that much quicker. At the same time, we know it is imperative that we keep drunk drivers off our highways.

The ability to make a living is very important to the self-esteem of our clients. Self-esteem, in turn, can have a big impact on a client's willingness, and ability, to stay sober.

We feel that this bill would provide added incentive for DWI offenders to complete their court-mandated treatment programs in a timely manner and to regain their status as productive citizens. We believe approval of this bill is therefore in the best interests of the State of Alaska.

Respectfully submitted,


ANDY BRENNAN, Administrator
(On behalf of Starting Point, Inc.)
1075 Check Street, Suite 102
Wasilla, AK 99654
376-6116

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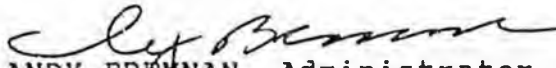
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1075 Check Street, Suite 102
Wasilla, AK 99654
376-6116



Alaska State Legislature

Please enter into the record my testimony to the Judiciary committee name

committee on H.B. 138, dated March 4, 1993
bill/subject

I have resided in Alaska for over 30 years. I am currently treasurer of the Mat-Su Alano Club, a position I've held for three years. I also serve on the Board of Directors of Mat-Su Council on the Prevention of Alcohol and Drug Abuse.

I have been clean and sober for over 6 years and I'm very active in recovery, especially through A.A. and the Alano Club. However, it gets a little tough to set around and tell the newcomer to clean up his act and things will get better when all they have to do is look at me and see that I've been without a license for 11 years and have another 14 or 15 to go before I am eligible for a license. I did not maim or kill anyone, all I did was live the way I thought a construction worker was supposed to. Through an Intensive IN-patient treatment (which was paid for by my union, not the state) and by attending out-patient treatment and A.A. regularly I have turned my life around.

There are convicted bank robbers and child molesters (whom I might add used a vehicle in the commission of their crime) driving the streets today. They have more rights than a lowly misdemeanor such as I. They can go to work on the slope, I can't, not without a drivers license. Last but not least I would ask one question of any one opposing this bill. Where does justice stop and revenge begin?

Signed: Marvin E. Goble
Testifier

Representing (Optional)

1500 W. LAKE LUCILLE DR. WASILLA, AK, 99654

Address

376-8608

Phone No.



Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
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committee on HB 138, dated 3/4/93
bill/subject

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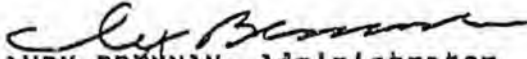
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JUDICIAL COMMITTEE, RE: HB 138 Driver's Licenses

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Margaret Rose Carney
P.O. Box 870796
Wasilla, Alaska 99687
355-1995 (H) 376-6116 (W)



Alaska State Legislature

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I have resided in Alaska for over 30 years. I am currently treasurer of the Mat-Su Alano Club, a position I've held for three years. I also serve on the Board of Directors of Mat-Su Council on the Prevention of Alcohol and Drug Abuse.

I have been clean and sober for over 6 years and I'm very active in recovery, especially through A.A. and the Alano Club. However, it gets a little tough to set around and tell the newcomer to clean up his act and things will get better when all they have to do is look at me and see that I've been without a license for 11 years and have another 14 or 15 to go before I am eligible for a license. I did not maim or kill anyone, all I did was live the way I thought a construction worker was supposed to. Through an Intensive IN-patient treatment (which was paid for by my union, not the state) and by attending out-patient treatment and A.A. regularly I have turned my life around.

There are convicted bank robbers and child molesters (whom I might add used a vehicle in the commission of their crime) driving the streets today. They have more rights than a lowly misdemeanor such as I. They can go to work on the slope, I can't, not without a drivers license. Last but not least I would ask one question of any one opposing this bill. Where does justice stop and revenge begin?

Signed: Marvin E. Goble

Testifier

Representing (Optional)

1500 W. LAKE LUCILLE DR. WASILLA, AK, 99654

Address

376-8608

Phone No.

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 8, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

The STATE AFFAIRS Committee considered:

HB 138

HOUSE BILL NO. 138

LIMITED DRIVERS' LICENSES

"An Act relating to limitations on a drivers' license; imposing a limited license fee; and providing for an effective date."

RECOMMENDATIONS: _____ | the same title
be replaced with _____ | 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)

fiscal impact _____

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO-PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Pete East</i>	<input checked="" type="checkbox"/>				
<i>B. Davis</i>	<input checked="" type="checkbox"/>				
<i>Stanley Olberg</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				
<i>[Signature]</i>	<input checked="" type="checkbox"/>				

[Signature]
CHAIRMAN'S SIGNATURE

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 3, 1993

SUBJECT: Sectional Summary of HB 138.

TO: Representative Brian Porter

FROM: Michael F. Ford *M. F.*
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Inserts the Department of Public Safety in place of existing language allowing only a hearing officer to grant limited license privileges. Requires an offender to have paid the cost of an alcoholism and rehabilitation treatment program before being eligible for a limited driver's license.

Section 2. Allows a court or the Department of Public Safety to grant limited driver's licenses to a person who has been previously convicted, if the previous conviction occurred before January 1, 1991, and the person meets the other conditions listed in this section.

Section 3. Sets out the periods during which a person could receive limited license privileges. Requires that if a person is eligible for more than one period of limited license privileges, the limited license eligibility periods shall be combined. Specifies that a combined limited license eligibility period may not commence until all periods of license revocation have been completed.

Section 4. Requires a person who applies for a limited driver's license to pay a fee of \$100.

Representative Brian Porter
March 3, 1993
Page 2

Section 5. Amends the applicability section of SCS CSHB 53(Jud), that was enacted in 1990, to allow the limited license provisions in sec. 18 of that bill to apply to all offenses related to limited driver's licenses, no matter when the offense occurred.

Section 6. Provides that the limited license provisions in sec. 1 and 2 of this Act apply to offenses, no matter when the offense occurs.

Section 7. Provides that secs. 1-3, and 5 are retroactive to January 1, 1991.

Section 8. Effective date.

MFF:pl
93-151.plm



Alaska State Legislature

HOUSE OF REPRESENTATIVES

Official Business

Representative Brian Porter

State Capitol
Juneau, AK 99801-1182

Date: March 1, 1993

From: Representative Brian Porter

To: Representative Al Vezey
Chairman, House State Affairs Committee

Re: SPONSOR'S STATEMENT for HB 138 - An Act relating to limitations on a driver's license; imposing a limited license fee; and providing for an effective date

=====

HB 138 is a technical bill which corrects certain drafting errors made in the revision of DWI statutes passed in 1990 as HB 53. That legislation established the opportunity for persons whose licenses have been revoked as a result of their second, third, fourth or fifth convictions to be eligible for a limited license and thus "earn back" a portion of the revocation period. The limited license option received overwhelming legislative support and was adopted as a means of encouraging and rewarding persons who have proved themselves to be responsible in effectively addressing their alcohol problems.

Unfortunately, the earn back provisions of the prior legislation were interpreted as applying only to convictions occurring after January 1, 1991 and to third convictions occurring prior to January 1, 1991. The intent of the legislature was that limited license earn back provisions should apply equitably to all convictions occurring both before and after the effective date of the bill (January 1, 1991). Because the original legislative intent was not clear, the clarification's contained in HB 138 are necessary.

HB 138 clarifies the prior legislation regarding DWI statutes in the following ways:

1. Clarifies that limited licenses may be granted for second, third, fourth, and fifth convictions that occurred prior to January 1, 1991;
2. Specifies the allowable limited license periods for which a person may qualify;
3. Clarifies that a person who has two or more revocations running consecutively may be eligible for more than one limited license period and that those periods shall be combined;
4. Establishes a limited license application period during the last 180 days of the combined, adjusted minimum revocation periods;

A. LIMITED LICENSE AVAILABILITY

Prior to the new DWI law, only first-time DWI offenders could be granted limited licenses. Under the new law (effective January 1, 1991) AS 28.15.201(d) authorizes limited licenses through the sixth DWI offense as follows:

<u>Offense</u>	<u>License Revocation</u>		<u>Limited License Availability (New Law)</u>
	<u>New Law</u>	<u>Old Law</u>	
1st	90 days	90 days	Final 60 days
2nd	1 year	1 year	Final 60 days
3rd	5 years	10 years	Final 2 years
4th	10 years	10 years	Final 5 years
5th	10 years	10 years	Final 5 years
6th	10 years	10 years	Final 5 years
7th or more	10 years	10 years	No limited license

It was the intent of the legislature that DWI/Refusal offenders whose convictions occurred under the old law would have the same opportunity to request a limited license as those convicted under the new law. (See Part D of this handout for additional information about the intent of the legislature.) The periods of limited license availability provided at AS 28.15.210(d) (shown above) are intended to be applicable to all DWI/Refusal revocations.

However, applying the limited license availability periods of AS 28.15.201(d) does not provide all offenders the same opportunity to request a limited license. This is because three-time offenders under the old law were revoked for ten years, so eight years of revocation must elapse before they can request a limited license for the "final two years". Three-time offenders under the new law are revoked for only five years, so only three years of revocation must elapse before they can request a limited license for the "final two years".

To equalize this difference, the legislature created a special provision at AS 28.15.201(e) to allow persons with three convictions prior to January 1, 1991 to request limited licenses for the final seven years of the 10 year revocation. This equalizes the mandatory period of revocation for all three-time offenders.

From	MAAG	Phone #	Fax #
To	Fig. Mrs. J. C.		
Dept.	Rep. Rofsky		

5. Establishes a \$100 application fee to cover the cost of processing the application.

In addition, HB 138 includes a provision that the cost of an alcoholism education and rehabilitation treatment program must be paid for prior to receiving a limited license. This provision was included at the request of the Substance Abuse Directors Association in an effort to sustain on-going programs for alcohol rehabilitation. Although this provision is not a clarification of prior legislation, it is consonant with the underlying purpose of that legislation to advance the state's efforts to support sobriety, safe driving practices and employment.

The \$100 application fee more than covers the administrative costs associated with this legislation and results in a net gain to the state.

If you have any questions, please give me a call.

/em



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Representative Brian Porter

State Capitol
Juneau, AK 99801-1182

HB 138 - Limitations on a Drivers' License Sectional Analysis

Section 1: AS 28.15.201(d)

Requires that, in addition to other criteria for granting limited license privileges, the cost of an alcoholism education and rehabilitation treatment program must be paid for prior to receiving a limited license.

Section 2: AS 28.15.201(e)

Clarifies that limited licenses may be granted for convictions occurring before 1/1/91.

Section 3: AS 28.15.201(g)

Sets out the allowable limited license periods for which a person may qualify:*

2nd conviction:	Last 60 days (1 year minimum revocation)
3rd conviction:	(a) Last 7 years for convictions occurring before 1/1/91 (10 year minimum revocation)
	(b) Last 2 years for convictions occurring after 1/1/91 (5 year minimum revocation)
4th conviction:	Last 5 years (10 year minimum revocation)
5th conviction:	Last 5 years (10 year minimum revocation)
6th conviction:	Last 5 years (10 year minimum revocation)
7th conviction:	No limited license available

*Current law establishes the minimum mandatory revocation periods. The court may impose longer revocation periods.

AS 28.15.201(h)

Clarifies that, if a person is eligible for more than one period of limited license privileges, those periods shall be combined. The limited license period shall begin after the completion of any license revocation

period for which a limited license is not allowed, and after completion of the adjusted minimum revocation periods for each offense for which a limited license is allowed.

AS 28.15.201(i)

Establishes a limited license application period during the last 180 days of the combined, adjusted minimum revocation periods.

Section 4: AS 28.15.271(b)

Establishes an application fee of \$100 for persons applying for limited licenses.

Section 5: Section 36, ch. 119, SLA 1990

Clarifies that limited license provisions apply to offenses committed before, on, or after December 31, 1990.

Section 6: Clarifies that the act applies to offenses committed before, on, or after the effective date of the act.

Section 7: Makes this act retroactive to January 1, 1991.

Section 8: This act takes effect immediately.

MEMORANDUM

State of Alaska

Department of Law

TO: All Attorneys
Criminal Division

DATE: January 2, 1991

FILE NO.:

TEL. NO.:

465-3428

SUBJECT:

Policy Memorandum on
Limited Driver's Licenses

FROM:

Margot O. Knuth *mk*
Assistant Attorney General
Criminal Division, Central Office

As you know, the legislature this past year substantially changed the statutes governing the issuance of limited licenses to drivers whose privileges have been revoked by the court or by the division of motor vehicles for DWI/refusal offenses. These changes were accomplished by ch. 119, SLA 1990, and are principally reflected in AS 28.15.165 - .166, AS 28.15.181, AS 28.15.201 and AS 28.15.211. If you have any question about the general provisions, you should refer to the statutes and to the legislation summary presented in the 1990 District Attorneys Conference Notebook (at pages 5-13).

The question has arisen whether these new provisions apply to pre-existing revocations; i.e., may people whose licenses were revoked years ago come into court in January 1991 to obtain a limited license? This memorandum is to advise you that it is the position of the Criminal Division that the new provisions *do* apply to pre-1991 revocations. Accordingly, it is very important for all attorneys to be familiar with the policies and legal arguments set out in this memorandum. }

The legislature intended to allow previously convicted persons to obtain limited licenses after the same period of time and in the same fashion as may those whose offenses are committed after the effective date of the act. Thus, someone whose license was revoked for one year on a second DWI offense in 1990 may apply on January 1, 1991, for a limited license for the last 60 days of the revocation period pursuant to AS 28.15.166(b), which specifies that "An initial request for limited license privileges may be made at any time," and pursuant to AS 28.15.201(d), which authorizes the grant of a limited license to a person for the last 60 days if the person has only been convicted once before.

This is so despite the language of sec. 36 of the act, which indicates that its provisions "apply to judicial proceedings and administrative proceedings by the Department of Public Safety relating to offenses that are committed after December 31, 1990." We believe that this applicability clause applies only to the penalty provisions of the act. This issue is ultimately one of legislative intent.

Our analysis is twofold: first, the legislative history of the act reveals that the legislature intended all holders of revoked licenses to have the same opportunity to obtain a limited license, regardless of when the person's offense was committed or when the person was convicted for that offense. (Indeed, we specifically advised the legislature that this would be the effect of the bill.) Second, there is a section in the act that would be meaningless if the act were applied only prospectively. (This is section 18 of the act, adding subsection (e) to AS 28.15.201, which gives an "old" third offender the same chance for a limited license as that given under the act to "new" third offenders.) It is a maxim of statutory construction that legislation should be interpreted whenever possible so that all sections are given effect.

It is also the position of the Criminal Division that the provisions of AS 28.15.201(e), equalizing treatment for old third offenses, apply not only to the holders of revoked licenses who are on their third offense, but also to the third offense of those who are on their fourth or greater offense. Thus, all defendants are eligible for a limited license on their third offense after three years, regardless of when that offense was committed or whether they were subsequently convicted on another offense. This is, again, in accordance with what we believe the legislature intended. It also is in accordance with the rule of statutory construction that a statute should be interpreted so as to avoid discriminating against a particular group unless the legislature clearly intended such discrimination.

Finally, it is the position of the Criminal Division that, even though AS 28.15.201(e) specifies it is applicable to convictions occurring "before the effective date of this Act," it was meant to and is applicable to all persons *charged* under the old law, regardless of whether they are *convicted* before or after December 31, 1990. Again, this is consistent with the legislature's intent and with traditional rules of statutory construction.

The court system has already grappled with this issue and has circulating the attached memorandum to all judges and magistrates.¹ The memorandum takes the same position we are taking. Nonetheless, we have been advised that each judicial district will be formulating its own position and apparently there is some disagreement. Generally, we may expect deference to our position and that of the court administration. A judge may, however, raise one of these issues *sua sponte*, in which case we should offer to brief the issue for the court. In addition to the analysis set out in the court system's memorandum, you may wish to cite the following Alaska cases:

Zurfluh v. State, 620 P.2d 690 (Alaska 1980), in which the Alaska Supreme Court held that an amendment to the sentencing statutes, allowing the imposition of jail time as a

¹ The court system has indicated that its memorandum is *not* to be distributed to the general public and we ask you to respect that wish.

condition of an SIS, should be applied retroactively to cover a "gap period" created by judicial decision despite the act's entire silence on the issue. The court relied on its finding that the act was "curative legislation," and then stated: "The apparent intent of the legislature [w]as that the benefits of this type of sentencing should be available to trial judges as soon as possible and there is nothing to indicate that the legislature meant to discriminate against people who were sentenced during the 153 days when suspended imposition of sentence with a period of incarceration was unavailable." 620 P.2d at 693.²

City of Homer v. Gangl, 650 P.2d 396, 400 n.4 (Alaska 1982), in which the court stated, "We have already rejected the so-called plain meaning rule as a strict exclusionary rule in favor of a sliding scale approach, where the plainer the language of a statute, the more convincing contrary legislative history must be." See also *Wright v. State*, 651 P.2d 846 (Alaska App. 1982), in which the Alaska Court of Appeals acknowledged that a "statutory ambiguity may be based upon consideration of legislative intent."

Bolhouse v. State, 687 P.2d 1166, 1178 (Alaska App. 1984) (Bryner, Chief Judge, concurring) ("when sentencing provisions are amended by the legislature, a person who is being sentenced under prior law should normally not receive a greater sentence than that person would receive under the amended law").

State ex rel. Smith v. Tyonek Timber, Inc., 680 P.2d 1148, 1157 (Alaska 1984), in which the Alaska Supreme Court reiterated that "There is no question that a remedial statute is to be liberally construed to effectuate its purposes."³

State v. Andrews, 707 P.2d 900, 907 (Alaska App. 1985):

Ambiguities in criminal statutes must be narrowly read and construed strictly against the government.... The foregoing rule applies equally to provisions governing sentencing and provisions

² In our situation, not only is there "nothing to indicate that the legislature meant to discriminate against people who were sentenced" prior to the act, but the adoption of AS 28.15.201(e) shows that the legislature was actively endeavoring to achieve parity of treatment for all persons with revoked licenses.

³ Cf. *State v. First National Bank of Anchorage*, 660 P.2d 406, 418 n.23 (Alaska 1982) ("The State's argument that ULSPA is 'remedial' and thus deserving of retroactive application on that basis alone is, in our opinion, without merit. Even when a statute is remedial in nature, it will be construed retroactively only if the legislative intent clearly indicates that retroactive operation is intended.")

defining crimes.... Closely allied to the doctrine that criminal statutes must be strictly construed is the so-called rule of lenity. If a statute establishing a penalty is susceptible of more than one meaning, it should be construed so as to provide the most lenient penalty.

Alaska Children's Services v. Williamson, 606 P.2d 786 (Alaska 1980), in which the Alaska Supreme Court held that two statutes, enacted at the same time and dealing with the same subject matter, are *in pari materia* and "should be construed so as to be consistent with one another and in such a manner as to give maximum effect to each."

This is complicated and it may not make sense to you the first time around. If you have questions or need assistance in briefing the issues discussed in this memorandum, please do not hesitate to call or use PROFS. The guiding principle, however, should be to interpret the act as liberally as possible from the outset, rather than our awaiting a mandate to do so from the court of appeals at some later date.

In addition to the court system's memorandum on limited licenses (entitled "SPECIAL PROVISION: LIMITED LICENSES FOR DWI/REFUSAL CONVICTIONS WHICH OCCURRED PRIOR TO JANUARY 1, 1991"), we are also attaching the Clerk's packet of instructions and forms for limited licenses. Please note that the forms include a Certification of Prosecutor, where we are to indicate whether we oppose or do not oppose the defendant's request for a limited license. (You should use traditional standards of prosecutorial discretion in deciding to oppose or not.) Finally, we are also attaching the court system's "cheatsheets" for DWI/Refusal and for DWLR penalties, for your general reference and use.

Good luck!

SPECIAL PROVISION: LIMITED LICENSES FOR DWI/REFUSAL CONVICTIONS
WHICH OCCURRED PRIOR TO JANUARY 1, 1991

This handout provides information regarding the limited license provisions of the new DWI law.

Part A is an explanation of what the legislature intended to accomplish in the new law.

Part B provides examples of how to calculate limited license availability for persons with convictions under the old law.

Part C provides a brief summary of the new statutory standards which must be applied before any limited license may be granted under the new law. (See the handout entitled The 1991 DWI Law for further information about these new standards.)

Part D provides a brief discussion of some potential problems with the law. You may not agree that these are problems and you may find other problems. This information is offered as a guideline to assist courts and carries no legal authority in and of itself.

Please take the time to read both this handout and the handout entitled The 1991 DWI Law before you attempt to apply the limited license provision of the new law. Magistrates who have questions about the law should consult their training judges or magistrate services.

Note: The Forms Committee has prepared a packet of materials for use by all persons who request limited licenses. These materials will be available shortly.

The special provision at AS 28.15.201(e) is intended to be applied to the revocation period which is imposed for a third offense under the old law even if the offender is convicted of more than three offenses. Please see the discussion about the potential problem with applying this provision to such offenders in Part D, Section 2c(1) of this handout.

The legislature has been informing the public that the intent of the law is that the court will "add together" the mandatory periods of license revocation and calculate the periods of limited license availability for each offense to determine when an offender is eligible for a limited license.

For example, an offender with three offenses committed after the effective date of the new law will be revoked for a total of 6 years and 90 days (90 days for the 1st offense, 1 year for the second offense, and 5 years for the third offense). The offender must complete the mandatory period of complete revocation for each offense (30 days for the 1st, 305 days for the 2nd, and 3 years for the 3rd) before the limited license availability period begins. (These calculations are demonstrated in the following section using convictions under the old law in the examples.)

B. DETERMINING LIMITED LICENSE AVAILABILITY PERIODS

Below are examples of how the legislature intended sections (d) and (e) of AS 28.15.201 to apply to offenders who were charged and sentenced under the old law (prior to January 1, 1991). (Calculations for offenders who are charged and sentenced under the new law are identical except that AS 28.15.201(e) does not apply.)

1st Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days

AS 28.15.201(d) provides limited license availability for the first offense. The offender must complete the mandatory period of complete revocation - 30 days - before requesting a limited license.

Note that AS 28.15.201 describes the limited license availability periods as "the final 60 days", "the final two years", "the final five years", and "the final seven years" of the license revocation. The "mandatory period of complete revocation" is the length of time which must elapse before the limited license availability period begins. For example, for first-time offenders the mandatory revocation period is 90 days. The limited license availability period is the final 60 days. Thus the mandatory period of complete revocation is 30 days (90 days minus 60 days.)

(Reminder: For first offenses only, the period of limited license availability is the same under the new law as under the old law.)

2nd Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days
2nd	1 year	final 60 days	305 days

AS 28.15.201(d) provides limited license availability for the first and second offenses.

The two-time offender must complete the mandatory period of complete revocation for both offenses - 30 days plus 305 days, for a total of 335 days - before requesting a limited license.

3rd Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days
2nd	1 year	final 60 days	305 days
3rd	10 years	final 7 years	3 years

AS 28.15.201(d) provides limited license availability for the first and second offenses. AS 28.15.201(e) provides a special period of limited license availability for third offenses under the old law (which resulted in 10 year license revocations).

The three-time offender must complete the mandatory period of complete revocation for all offenses - 30 days plus 305 days plus 3 years, for a total of 3 years and 335 days - before requesting a limited license.

4th Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days
2nd	1 year	final 60 days	305 days
3rd	10 years	final 7 years	3 years
4th	10 years	final 5 years	5 years

AS 28.15.201(d) provides limited license availability for the first, second, and fourth offenses. AS 28.15.201(e) provides a special period of limited license availability for third offenses under the old law (which resulted in 10 year license revocations).

The four-time offender must complete the mandatory period of complete revocation for all offenses - 30 days plus 305 days plus 3 years plus 5 years, for a total of 8 years and 335 days - before requesting a limited license.

5th Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days
2nd	1 year	final 60 days	305 days
3rd	10 years	final 7 years	3 years
4th	10 years	final 5 years	5 years
5th	10 years	final 5 years	5 years

AS 28.15.201(d) provides limited license availability for the first, second, fourth, and fifth offenses. AS 28.15.201(e) provides a special period of limited license availability for third offenses under the old law (which resulted in 10 year license revocations).

The five-time offender must complete the mandatory period of complete revocation for all offenses - 30 days plus 305 days plus 3 years plus 5 years plus 5 years, for a total of 13 years and 335 days - before requesting a limited license.

6th Offense

<u>Offense</u>	<u>License Revocation</u>	<u>Limited License Availability</u>	<u>Mandatory Period of Complete Revocation</u>
1st	90 days	final 60 days	30 days
2nd	1 year	final 60 days	305 days
3rd	10 years	final 7 years	3 years
4th	10 years	final 5 years	5 years
5th	10 years	final 5 years	5 years
6th	10 years	final 5 years	5 years

AS 28.15.201(d) provides limited license availability for the first, second, fourth, fifth, and sixth offenses. AS 28.15.201 (e) provides a special period of limited license availability for third offenses under the old law (which resulted in 10 year license revocations).

The six-time offender must complete the mandatory period of complete license revocation for all offenses - 30 days plus 305 days plus 3 years plus 5 years plus 5 years plus 5 years, for a total of 18 years and 335 days - before requesting a limited license.

7th Offense

Seven-time offenders are not allowed limited licenses under AS 28.15.201. They must complete the complete period of revocation for all offenses.

C. STATUTORY STANDARDS FOR ISSUANCE OF LIMITED LICENSE

Limited licenses which are issued beginning January 1, 1991 may be issued only according to the more stringent statutory standards of the new AS 28.15.201(d). The court must review the person's driving record and other relevant information, and may issue a limited license only for good cause and only if:

1. a person's ability to earn a livelihood would be severely impaired,
2. a limitation can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public, and
3. the person has successfully completed an alcoholism education and rehabilitation program.

Please refer to the handout entitled The 1991 DWI Law for additional information regarding the standards for granting limited licenses.

SPECIAL NOTE: Beginning January 1, 1991, the only offenders who can be issued a limited license under the more general statutory standards of the old law are those first-time offenders convicted under the old law. (See Part D, Section 2(d), below.)

D. PROBLEMS AND SPECIAL ISSUES

The 1991 DWI law is complex and confusing. It appears to have a number of drafting errors, not all of which are discussed here.

While it is not possible to provide a detailed analysis of every aspect of the new law, the following discussion is offered to assist judges and magistrates in interpreting and applying the law. Unfortunately one of the most difficult new provisions, the limited license provision, is expected to bring a number of people into court to request limited licenses very soon after the law takes effect.

1. Which Law Applies?

a. The General Rule Regarding New Legislation.

The general rule regarding the application of new legislation is found at AS 11.81.200:

When all or part of a criminal statute is amended or repealed, the criminal statute or part of it so amended or repealed remains in force for the purpose of authorizing the accusation, prosecution, conviction, and punishment of a person who violated the statute or part of it before the effective date of the amending or repealing Act, unless otherwise specified in the amending or repealing Act.

This means that defendants are charged and sentenced under the old law for offenses which occur through midnight on December 31, 1990.

b. The Exception: New Legislation and Legislative Intent.

AS 01.10.090 provides that "[n]o statute is retrospective unless expressly declared therein." This section embodies the general rule on the retroactivity of statutes. The iron-clad language of this section is modified to some extent by AS 01.10.020, which provides:

The provisions of AS 01.10.040 - 01.10.090 shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature.

In other words, a statute may be applied retroactively even if it does not say that it is retroactive, if that was the intent of the legislature.

The legislature's intent in passing a law may be important in matters other than retroactivity. Over the years, the courts have created rules of statutory construction to help a judge decide when it is appropriate to consider the intent of the legislature, and how this intent should be ascertained. In Alaska, these rules are more complex than in most other states. They may differ from case to case, depending on the type of case, the nature of the statute, the effect which the decision has on the parties, and other factors. Because of this, and because the way these rules are applied may affect the outcome of a particular case, it is not possible to provide you with a list of specific rules to be applied to this new statute.

2. Particular Problems in the New DWI Law.

a. The "Applicability" Problem.

Based on information provided to citizens by the legislature and on legislative memoranda, committee hearing notes, and other commentary relating to the enactment of this bill (some of which is available from Magistrate Services) it appears that the legislature intended the new limited license provisions to apply to all license revocations imposed as a result of DWI/Refusal convictions both before and after the effective date of the new law.

However, section 36 of the act reads:

APPLICABILITY. The provisions of this act apply to judicial proceedings and administrative proceedings by the Department of Public Safety relating to offenses that are committed after December 31, 1990.

This applicability provision can be read most narrowly to mean that none of the provisions of the law apply to convictions for offenses which are committed under the old law (before January 1, 1991).

It can be read more broadly to mean that none of the provisions of the law apply to offenses committed before January 1, 1991 except the special third-time limited license provision at AS 28.15.201(e), which has an express statement of applicability (see Section 3 below).

Viewed even more broadly, however, a limited license may be characterized as an independent limited privilege to drive which is separate and distinct from the fact of a license revocation and which has no effect on the underlying revocation. Under such a

view, the general applicability provision should not prevent the court from fulfilling the legislative intent and allowing all offenders to benefit from the limited license availability provisions.

The arguments against construing Criminal Rule 35 as a barrier to the court's ability to grant a limited license (discussed immediately below) further support the view that a limited license does not modify the underlying conviction and thus is available to all offenders regardless of the general applicability provision.

b. Criminal Rule 35 and the 120 Day Limit on Reducing Sentences.

Criminal Rule 35 provides that a court may reduce a sentence within 120 days of the day it is imposed. It had been suggested that this rule prohibits the court from granting a limited license more than 120 days after imposing sentence because a grant of a limited license is a reduction in a sentence.

A persuasive argument can be made, however, that the issuance of a limited license is not a reduction in sentence. It is instead a separate grant of an independent privilege which, while it is requested only because there is an underlying license revocation, does not erase or abolish that revocation.

In support of that analysis, consider this: if an offender who is under revocation is granted a limited license which allows driving only on a particular job, and that job ends, the court is not required to reinstate the underlying license revocation when the limited license ends because the underlying revocation remains in effect for the duration of its original imposition unless the revocation itself is amended.

c. AS 28.15.201 (e): The "Third Offense" Limited License Provision.

AS 28.15.201(e) is a special provision which is intended to equalize the limited license availability for three-time offenders with 10 year revocations under the old law. It reads as follows:

(e) Notwithstanding (d) of this section, a court revoking a driver's license under AS 28.15.181(c), or a hearing officer revoking a driver's license under AS 28.15.165(c), may grant limited license privileges for the final seven years during which the license was revoked if

(1) the person has been previously convicted twice and not more than twice;

(2) the court or hearing officer determines that the person's ability to earn a livelihood would be severely impaired and a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public;

(3) the conviction for which the license was revoked occurred before the effective date of this Act; and

(4) the court or hearing officer determines that the person has successfully completed an alcoholism education and rehabilitation program.

Two problems with the wording of this provision are suggested here. There may be other problems, also.

(1) Offenders with more than three convictions.

Despite the language of AS 28.15.201(e)(1) which states that the provision applies to offenders who have been previously convicted "twice and not more than twice", it appears that the legislature intended this provision to be applied to the revocation which was imposed for an offender's third conviction even if the offender has more than three convictions.

If this section is not applied to offenders with more than three offenses then the only offenders convicted under the old law who have the same limited license opportunities as those convicted under the new law are those with exactly three offenses. This is because an offender with four or more offenses who gets a limited license for only the "final two years" provided by subsection (d) instead of for the "final seven years" of subsection (e) will have five additional years of complete revocation for the third offense.

The examples in part B of this handout apply this provision to all persons with three or more convictions under the old law. For example, a person with four convictions prior to January 1, 1991 would be allowed a limited license for the

final 60 days of the revocation for the first offense, for the final 60 days of the revocation for the second offense, for the final 7 years of the revocation for the third offense, and for the final 5 years of the revocation for the fourth offense.

The interpretation of this statute is a judicial decision.

- (2) Offenders who are charged under the old law but convicted after the effective date of the act.

Another problem with the special third-offense limited license provision is that according to AS 28.15.201(e)(3) it applies to convictions which occurred "before the effective date of this Act". That language appears to prohibit applying the provision to persons who are charged under the old law but who are not actually convicted until after December 31, 1990.

Since the provision is intended to provide a special limited license opportunity to all persons who had third convictions under the old law, it should include not only those persons who were convicted prior to the effective date of the act, but also anyone who is charged and sentenced under the old law, even if the conviction does not take place until after December 31, 1990.

The interpretation of this statute is a judicial decision.

d. First Offenders: Which Limited License Standards Apply?

A first offender who is charged, convicted, and sentenced under the old law may request a limited license in the last 60 days of the 90 day revocation under the old law.

A request for a limited license from such an offender is subject to the old standards for the issuance of a limited license, not to the more stringent new standards (which require successful completion of an alcoholism education or rehabilitation program). (See Part D, Section 1a, above.)

December 20, 1990

CLERKS' INSTRUCTIONS

REQUEST FOR LIMITED LICENSE PRIVILEGES

(DWI and Refusal to Take Breath Test Convictions)

1. If the offense (DWI or Refusal) was committed after December 31, 1990, and the defendant asks how to get a limited license, give the defendant the new limited license request packet (made up of the CR-520 Instructions and the CR-521 Request form).

If the offense was committed on December 31, 1990, or before that date, the defendant may not be eligible to use the new procedures for requesting a limited license. Ask your judge whether or not you should give the packet to such defendants.

2. When the defendant returns the completed Request form, check to make sure:
 - a. All five pages have been completed, and
 - b. A ten-year driving record from DMV is attached.

If the request and required attachments are not complete, notify the defendant that the request needs to be completed before it will be forwarded to the judge for decision.

3. When the request is complete, ask your judge whether it is necessary to set a hearing on the request or if the judge will decide it without a hearing. If a hearing is necessary, notify both the defendant and prosecuting attorney of the time and place of the hearing.
4. When you send the request to the judge for decision, enclose in the case file a blank form CR-525, Order for Limited License Privileges.
5. If the judge denies the request, distribute the Order as follows:
 - a. Original to case file.
 - b. Copy to defendant.

It is not necessary to send a copy to DMV.

6. If the judge grants the request, distribute the order as follows:

a. Original to court file.

b. Send two copies to DMV in either Anchorage or Juneau.

Anchorage and Juneau are the only two DMV offices that have hearing officers who can grant limited license privileges on the defendant's concurrent administrative license revocation. The addresses are:

Division of Motor Vehicles
Driver Services
P. O. Box 20020
Juneau, AK 99802

Division of Motor Vehicles
Driver Improvement Office
2150 E. Dowling
Anchorage, AK 99507

It is not necessary to send a copy of the request to DMV along with the copies of the court's order.

Be sure to fill in the defendant's date of birth and driver's license number (OL number) in the caption before sending copies of the order to DMV.

Do not send a copy of the order to the defendant at this time. The defendant will not receive a copy of the order until DMV has decided whether or not to grant limited license privileges on DMV's administrative revocation action. DMV will send the defendant a copy of the court's order after DMV fills in the Administrative Order in the box at the bottom of the court's order. DMV will not send the court a copy of this.

INSTRUCTIONS FOR REQUESTING LIMITED LICENSE PRIVILEGES
For Persons Convicted of DWI or Refusal to Take Breath Test

The 1990 Alaska Legislature passed a law which changes the procedures for granting limited license privileges to drivers whose licenses have been revoked for DWI or refusing to take a breath test. The new law applies to offenses committed after December 31, 1990. It is unclear whether or to what extent this law applies to offenses committed on or before that date.

Court personnel are prohibited from giving legal advice.

If you have any questions about your eligibility for limited license privileges or need assistance in completing the attached form, it is recommended that you talk with a lawyer.

WHO IS ELIGIBLE?

If your driver's license was revoked because you were convicted of either of the following two offenses, you may be eligible to request limited license privileges:

- operating a vehicle, aircraft or watercraft while intoxicated (DWI)
- refusal to submit to chemical test (Refusal)

In order to decide whether to grant you such privileges, the court must review your driving record and other relevant information. The court may grant limited license privileges only if:

- a. the revocation of your license severely impairs your ability to earn a livelihood, and
- b. a limitation can be placed on the license that will allow you to earn a livelihood without excessive danger to the public, and
- c. you have successfully completed an alcoholism education and rehabilitation treatment program.

WHAT ARE LIMITED LICENSE PRIVILEGES?

Any limited license privileges the court may give you will only allow work-related driving (to and from work and/or during work). You will not be allowed to do recreational driving or driving for other purposes.

Limited license privileges may only be granted for a portion of the license revocation period as shown below:

NUMBER OF OFFENSES (DWI OR REFUSAL)	MINIMUM REVOCATION PERIOD	LIMITED LICENSE MAY BE ISSUED FOR
1	90 days	final 60 days
2	1 year	final 60 days
3	5 years	final 2 years
4	10 years	final 5 years
5	10 years	final 5 years
6	10 years	final 5 years
7	10 years	no limited license

In addition, the judge may limit your driving privileges in other ways. For example, the judge may order you to carry proof of insurance while driving or order you not to drive within 12 hours after consuming alcohol.

HOW TO REQUEST

To request limited license privileges, you must complete the attached request form. The form includes the following sections:

1. Request for Limited License Privileges (pages 1-3) to be completed by you. On the "Case No." line write the case number of the most recent DWI or Refusal case in which your license was revoked. Write the case number at the top of every page of the request form.

You must attach a copy of your driving record from the Division of Motor Vehicles (DMV). When you go to a DMV office to get this record, you must specifically ask for your record for the last 10 years. Attach the original of the record you obtain from DMV, not a photocopy. Do not separate the perforated pages.

2. Certification of Employer (page 4) to be completed by your employer. If you are self-employed, you must fill out this section of the form.

3. Alcohol Treatment Verification (page 5) to be completed by the alcohol screening agency you were referred to in your judgment in this case.

Note: Fill in your name and address at the bottom of page 5 of this form so the alcohol screening agency can return the form to you.

4. Certification of Prosecutor (page 5) to be completed by the prosecuting agency (district attorney, city or borough prosecutor's office) which brought the charges against you. Make sure your name and address are filled in at the bottom of page 5 before you give it to the prosecutor.

You must give the prosecutor all 5 pages of the form, and all preceding sections must be completed before the prosecutor gets it.

The court may require additional information before ruling on your request.

All 5 pages of the request form must be complete, with required attachments, at the time you bring your request to the clerk's office for filing.

The court will notify you if it is necessary to have a hearing on your request.

If the court denies your request, the court will send you a copy of the denial order.

If the court grants your request, the court will forward a copy of its order to the Division of Motor Vehicles (DMV) so DMV can determine whether to grant you limited license privileges on any administrative revocations which may currently be in effect. The court will not notify you when it does this. The court's order approving limited license privileges is not effective until DMV also agrees to grant you these privileges and fills in the effective dates at the bottom of the order.

DMV will notify you of its action on your request. If DMV denies your request, you will not have any limited license privileges. If DMV grants your request, DMV will send you a copy of the court's order with DMV's action and the effective date information filled in at the bottom of the order.

If both the court and DMV agree to give you limited license privileges, you will be allowed to drive only at the times and for the purposes described in the court's order. You must carry the court's order with you whenever you drive to prove that you are authorized to be driving.

IN THE DISTRICT COURT FOR THE STATE OF ALASKA
AT _____

() STATE OF ALASKA)
() _____)
Plaintiff,)
vs.)
_____)
Defendant.)

Case No. _____ CR
(Use case number from most re-
cent DWI or Refusal case in
which your license was revoked.)

REQUEST FOR LIMITED
LICENSE PRIVILEGES

My ability to earn a livelihood is severely impaired due to my
license revocation because _____

I request that I be granted limited license privileges to permit
me to drive

to and from work at the following times:

	<u>To Work</u>		<u>From Work</u>
SUN	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
MON	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
TUES	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
WED	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
THURS	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
FRI	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)
SAT	_____ to _____ (am)(pm) and		_____ to _____ (am)(pm)

during work as follows: (List times you will need to drive,
vehicle you will use and reason you must drive.)

Case No. _____ CR

Exact Mileage from Home to Work: _____

Is there bus service from within six blocks of your residence to within six blocks of your place of employment? _____ Yes _____ No

If yes, why is this method of transportation not practical for you during the revocation period? _____

Is other transportation available (e.g., taxi, household member, fellow worker)? _____

Personal Information

Full Name: _____ Daytime Phone: _____
(First) (Middle) (Last)

Residence Address: _____

Mailing Address: _____

Birth Date: _____ Driver's License No.: _____

Employment Information

Name of Employer: _____

Address of Employer: _____

Employer's Telephone Number: _____

My Job Title: _____

My Immediate Supervisor: _____

Driving Record

I am attaching a copy of my 10 year driving record from DMV.

Conviction Information

1. List below all your previous convictions for the following two offenses, whether in Alaska or elsewhere:
 - a. Operating a motor vehicle, aircraft or watercraft while intoxicated (or a similar law or ordinance);
 - b. Refusal to submit to chemical test (or a similar law or ordinance).

For each offense, give the date of conviction, the type of offense, the case number and the place of conviction.

<u>Case Number</u>	<u>Conviction Date</u>	<u>Type of Offense</u>	<u>Place</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. List below all convictions for traffic and criminal offenses which occurred after the conviction in this case.

<u>Case Number</u>	<u>Conviction Date</u>	<u>Type of Offense</u>	<u>Place</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

I swear or affirm that all statements made in this request are true. I understand that any false statements may cause denial of this request for limited license privileges and may result in a prosecution for perjury.

_____ Date
 Subscribed and sworn to or affirmed before me at _____, Alaska on _____, 19____. Defendant's Signature _____

(SEAL)

 Clerk of Court, Notary Public or Other
 Person Authorized to Administer Oaths
 My Commission Expires: _____

CERTIFICATION OF EMPLOYER

Verification of Employment

Name of Company: _____

Address of Company: _____

I certify that I am authorized to verify employment for the above company and that _____ is currently employed by the company. (employee's name)

I certify that the above-named employee is scheduled to work the following schedule:

SUN	_____	(am)(pm)	to	_____	(am)(pm)
MON	_____	(am)(pm)	to	_____	(am)(pm)
TUES	_____	(am)(pm)	to	_____	(am)(pm)
WED	_____	(am)(pm)	to	_____	(am)(pm)
THURS	_____	(am)(pm)	to	_____	(am)(pm)
FRI	_____	(am)(pm)	to	_____	(am)(pm)
SAT	_____	(am)(pm)	to	_____	(am)(pm)

Verification of Need for On-The-Job Driving

Is above-named employee required to drive at work? ___ Yes ___ No

If yes, explain: _____

If yes, what vehicle is the employee required to drive?

___ his/her personal vehicle

___ a company vehicle

If employee is required to drive a company vehicle:

Is the vehicle insured? ___ Yes ___ No

Will above employee be insured to drive the vehicle?

___ Yes ___ No

Employer's Signature: _____

Print Employer's Name: _____

Business Telephone Number: _____

Subscribed and sworn to or affirmed before me at _____, Alaska on _____, 19__.

(SEAL)

Notary Public in and for Alaska
My Commission Expires: _____

ALCOHOL TREATMENT VERIFICATION

(Note: This section must be filled out by the agency you were referred to in your judgment of conviction in this case.)

I certify that _____ has successfully completed
(name of defendant)
all court-ordered alcohol education and/or rehabilitation program
requirements in this case.

All required screening fees have been paid: ___ Yes ___ No

Authorized Signature: _____

Printed Name: _____

Agency: _____

Date: _____ Business Telephone Number: _____

Return this form to the defendant at the address below.

CERTIFICATION OF PROSECUTOR

I certify that I am authorized to represent the (STATE) (CITY)
(BOROUGH) (MUNICIPALITY) in this action. I have reviewed the
request and certifications on the preceding pages of this form.
This office is

___ not opposed to defendant's request for limited license

___ opposed to defendant's request for limited license

_____ Date

_____ Prosecutor's Signature

_____ Type or Print Name

Return this form to the defendant at the following address:

Name: _____

Address: _____

VARIATIONS IN PENALTIES FOR OPERATING A VEHICLE, AIRCRAFT OR WATERCRAFT WHILE INTOXICATED (AS 28.35.030)

AND

REFUSAL TO SUBMIT TO CHEMICAL TEST (AS 28.35.032)

(CLASS A MISDEMEANOR)

OFFENSE #	FINE		IMPRISONMENT		PERIOD OF REVOCATION	LIMITED LICENSE	FORFEITURE	ALCOHOL PROGRAM
	MIN.	MAX.	MIN.	MAX.			OF MOTOR-VEHICLE OR AIRCRAFT 28.35.036/.038	
1st offense	\$250	\$5,000	72 consec- utive hours	1 year	Not less than 90 days (not applicable in watercraft cases)	Possible for final 60 days of revocation	No	Yes
2nd offense	\$500	\$5,000	20 days	1 year	Not less than 1 year (not applicable in watercraft cases)	Possible for final 60 days of revocation	No	Yes
3rd offense	\$1,000	\$5,000	60 days	1 year	Not less than 5 years (not applicable in watercraft cases)	Possible for final 2 years of revocation	Possible (Watercraft may <u>not</u> be forfeited)	Yes
4th offense	\$2,000	\$5,000	120 days	1 year	Not less than 10 years (not applicable in watercraft cases)	Possible for final 5 years of revocation	Possible (Watercraft may <u>not</u> be forfeited)	Yes
5th offense	\$3,000	\$5,000	240 days	1 year	Not less than 10 years (not applicable in watercraft cases)	Possible for final 5 years of revocation	Possible (Watercraft may <u>not</u> be forfeited)	Yes
6th offense	\$4,000	\$5,000	360 days	1 year	Not less than 10 years (not applicable in watercraft cases)	Possible for final 5 years of revocation	Possible (Watercraft may <u>not</u> be forfeited)	Yes
7th offense	\$4,000	\$5,000	360 days	1 year	Not less than 10 years (not applicable in watercraft cases)	Not possible	Possible (Watercraft may <u>not</u> be forfeited)	Yes

**PENALTY VARIATIONS FOR DRIVING WHILE LICENSE CANCELED, SUSPENDED,
REVOKED OR IN VIOLATION OF LIMITATION**

AS 28.15.291
CLASS A MISDEMEANOR

	IMPRISONMENT MIN. MAX.	FINE MIN. MAX.	COMMUNITY WORK SERVICE	REVOCATION OF LICENSE	LIMITED LICENSE		
1. If original license action is <u>not</u> a result of court action on conviction for DWI or Refusal							
A. First Offense	10 days with 10 suspended	1 year		\$5,000	Not less than 80 hours	Not less than 90 days after license could have been restored	No
B. Subsequent Offenses	10 days (may <u>not</u> be suspended)	1 year		\$5,000		Not less than 90 days after license could have been restored	No
2. If original license action is a result of <u>court action</u> on:							
A. First Conviction for DWI/Refusal	20 days with no more than 10 days suspended	1 year	\$500	\$5,000	Not less than 80 hours	Not less than 90 days after license could have been restored	No
B. Second or subsequent conviction for DWI/Refusal	30 days (may <u>not</u> be suspended)	1 year	\$1,000	\$5,000		Not less than 90 days after license could have been restored	No

January 1, 1991

COMPARISON OF PENALTIES
CSHB 53 (JUD)

CRIME	CURRENT LAW	CSHB 53 (Jud)
1st DWI	3 days in jail; 90 day loss/license \$250 fine	3 days in jail; 90 day loss/license Earn back last 60 dy \$250 fine
2nd DWI	20 days in jail; 1 yr loss/license \$500 fine	20 days in jail; 1 yr loss/license Earn back last 60 dy \$500 fine
3rd DWI	30 days in jail; 10 yr loss/license \$1000 fine	60 days in jail; 5 yr loss/license Earn back last 2 yrs \$1000 fine
4th DWI	30 days in jail; 10 yr loss/license \$1000 fine	120 days in jail; 10 yr loss/license Earn back last 5 yrs \$2000 fine
5th DWI	30 days in jail; 10 yr loss/license \$1000 fine	240 days in jail; 10 yr loss/license Earn back last 5 yrs \$3000 fine
6th DWI	30 days in jail; 10 yr loss/license \$1000 fine	360 days in jail; 10 yr loss/license Earn back last 5 yrs \$4000 fine
DWLR/DWLS 1/non-DWI	10 days in jail; 1 yr loss/license	10 days/jail w/10 sus 90 day loss/license 80 hrs comm. service
<i>HB 53</i>		
<i>1) Inc. mand. min. penalties</i>		
	1; nse	10 days in jail 90 day loss/license
<i>2) Earn back provision</i>		
	1; nse	20 days/jail w/10 sus 90 day loss/license 80 hrs comm. service \$500 fine
	1; nse	30 days in jail; 90 day loss/license \$1000 fine