

HB

61

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

Chris hi

The TRANSPORTATION Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"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 _____

*CS HB 61 (Trans) X the same title
| | a new title*

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____

** Hi Chris -> never
the C.S. - new
section 5 - teff date
change due to
committee to
Sec. 5 to Jan 1, 1995*

ADOPTS: _____

letter of Intent

ATTACHES NEW FISCAL NOTE(S):

(Dept)

APPROVES PREVIOUS:

(Dept/Date)

fiscal impact ⁽³⁾ *DPS, D.Lew, Admin.*

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>[Signature]</i>		X	
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*Chris
Christianson*

Richard J. [Signature]
CHAIRMAN'S SIGNATURE

1ST DOCUMENT of Level 1 printed in FULL format.

FULL TEXT OF BILLS

103RD CONGRESS; 1ST SESSION
IN THE SENATE OF THE UNITED STATES
AS INTRODUCED IN THE SENATE

S. 605

1993 S. 605;

SYNOPSIS:

A BILL

To amend title 23, United States Code, to require the Secretary of Transportation to withhold certain funds from States that fail to deem a person driving with a blood alcohol concentration of 0.08 percent or greater to be driving while intoxicated, and for other purposes.

DATE OF INTRODUCTION: MARCH 17, 1993

DATE OF VERSION: MARCH 18, 1993 --- VERSION: 1

SPONSOR(S):

Mr. DOMENICI introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

TEXT:

* Be it enacted by the Senate and House of Representatives of the United*
*States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the "Drunk Driving Prevention Act of 1993".

SEC. 2. WITHHOLDING OF FUNDS FOR CERTAIN BLOOD ALCOHOL CONCENTRATIONS.

(a) IN GENERAL.—CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING NEW SECTION:

"161. Withholding of funds for certain blood alcohol concentrations

"(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE; STANDARD.—THE SECRETARY SHALL WITHHOLD AN AMOUNT (DETERMINED UNDER SUBSECTION (B)) REQUIRED TO BE APPORTIONED TO ANY STATE UNDER EACH OF PARAGRAPHS (1), (3), AND (5) OF SECTION 104(B) THAT FAILS TO PROVIDE THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED.

"(B) FORMULA FOR WITHHOLDING.—

"(1) FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 5 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF THE FIRST FISCAL YEAR OR ON THE FIRST DAY OF THE FIRST FISCAL YEAR AFTER THE EXPIRATION OF THE NEXT REGULAR SESSION OF THE STATE LEGISLATURE, WHICHEVER IS LATER, IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(2) AFTER THE FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 10 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF EACH FISCAL YEAR AFTER THE FIRST FISCAL YEAR DESCRIBED IN PARAGRAPH (1) IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(C) RELEASE OF AMOUNTS WITHHELD.—

"(1) STATES NOT ADOPTING STANDARD.—

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Services of Mead Data Central, Inc.

1993 S. 605; MARCH 18, 1993

-- VERSION: 1

"(A) IN GENERAL.-SUBJECT TO SUBPARAGRAPH (B), IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION FOR A PERIOD IN EXCESS OF 3 FISCAL YEARS, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT FOR THE PERIOD EXCEEDING 3 FISCAL YEARS.

"(B) USE OF CERTAIN RELEASED FUNDS.-FUNDS RELEASED TO A STATE UNDER SUBPARAGRAPH (A) MAY BE USED BY THE STATE ONLY TO CARRY OUT PROGRAMS APPROVED BY THE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION THAT PREVENT DRIVING WHILE INTOXICATED, INCLUDING-

"(I) ENFORCEMENT OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED; AND

"(II) ESTABLISHMENT OF SYSTEMS TO MAINTAIN RECORDS OF REPEAT OFFENDERS OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED.

"(2) STATES ADOPTING STANDARD.-IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION AND THE STATE SUBSEQUENTLY PROVIDES THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT AND NOT PREVIOUSLY RELEASED UNDER PARAGRAPH (1).

"(3) AVAILABILITY OF RELEASED FUNDS.-FUNDS RELEASED TO A STATE UNDER THIS SUBSECTION SHALL REMAIN AVAILABLE UNTIL THE END OF THE THIRD FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH THE FUNDS ARE RELEASED. IF FUNDS ARE NOT EXPENDED BY THE END OF THE THIRD FISCAL YEAR, THE AUTHORITY OF THE STATE TO EXPEND THE FUNDS SHALL EXPIRE."

(B) CONFORMING AMENDMENT.-THE ANALYSIS FOR CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING:
"161. National standard for drunk driving prevention."
SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on October 1, 1994.

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Services of Mead Data Central, Inc.

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167 DOCUMENT of Level 1 printed in FULL format.

FULL TEXT OF BILLS

103RD CONGRESS; 1ST SESSION
IN THE HOUSE OF REPRESENTATIVES
AS INTRODUCED IN THE HOUSE

H. R. 1386

1993 H.R. 1386;

SYNOPSIS:

A BILL

To amend title 23, United States Code, to require the Secretary of Transportation to withhold certain funds from States that fail to deem a person driving with a blood alcohol concentration of 0.08 percent or greater to be driving while intoxicated, and for other purposes.

DATE OF INTRODUCTION: MARCH 17, 1993

DATE OF VERSION: MARCH 18, 1993 -- VERSION: 1

SPONSOR(S):

Mr. SCHIFF introduced the following bill; which was referred to the Committee on Public Works and Transportation

TEXT:

* Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, *

SECTION 1. SHORT TITLE.

This Act may be cited as the "Drunk Driving Prevention Act of 1993".

SEC. 2. WITHHOLDING OF FUNDS FOR CERTAIN BLOOD ALCOHOL CONCENTRATIONS.

(a) IN GENERAL.—Chapter 1 of title 23, United States Code, is amended by adding at the end the following new section:

"161. Withholding of funds for certain blood alcohol concentrations
"(a) WITHHOLDING OF FUNDS FOR NONCOMPLIANCE; STANDARD.—THE SECRETARY SHALL WITHHOLD AN AMOUNT (DETERMINED UNDER SUBSECTION (B)) REQUIRED TO BE APPORTIONED TO ANY STATE UNDER EACH OF PARAGRAPHS (1), (3), AND (5) OF SECTION 104(B) THAT FAILS TO PROVIDE THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED.

"(B) FORMULA FOR WITHHOLDING.—

"(1) FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 5 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF THE FIRST FISCAL YEAR OR ON THE FIRST DAY OF THE FIRST FISCAL YEAR AFTER THE EXPIRATION OF THE NEXT REGULAR SESSION OF THE STATE LEGISLATURE, WHICHEVER IS LATER, IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(2) AFTER THE FIRST YEAR.—THE SECRETARY SHALL WITHHOLD 10 PERCENT OF THE AMOUNTS TO BE APPORTIONED TO A STATE, AS DESCRIBED IN SUBSECTION (A), ON THE FIRST DAY OF EACH FISCAL YEAR AFTER THE FIRST FISCAL YEAR DESCRIBED IN PARAGRAPH (1) IN WHICH THE STATE IS NOT IN COMPLIANCE WITH THE STANDARD DESCRIBED IN SUBSECTION (A).

"(C) RELEASE OF AMOUNTS WITHHELD.—

"(1) STATES NOT ADOPTING STANDARD.—

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Services of Mead Data Central, Inc.

1993 H.R. 1386, MARCH 18, 1992

-- VERSION: 1

"(A) IN GENERAL.--SUBJECT TO SUBPARAGRAPH (B), IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION FOR A PERIOD IN EXCESS OF THREE FISCAL YEARS, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT FOR THE PERIOD EXCEEDING THREE FISCAL YEARS.

"(B) USE OF CERTAIN RELEASED FUNDS.--FUNDS RELEASED TO A STATE UNDER SUBPARAGRAPH (A) MAY BE USED BY THE STATE ONLY TO CARRY OUT PROGRAMS APPROVED BY THE ADMINISTRATOR OF THE NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION THAT PREVENT DRIVING WHILE INTOXICATED, INCLUDING--

"(I) ENFORCEMENT OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED; AND

"(II) ESTABLISHMENT OF SYSTEMS TO MAINTAIN RECORDS OF REPEAT OFFENDERS OF LAWS DESIGNED TO PREVENT OR PUNISH DRIVING WHILE INTOXICATED.

"(2) STATES ADOPTING STANDARD.--IF THE SECRETARY WITHHOLDS FUNDS FROM APPORTIONMENT TO A STATE UNDER THIS SECTION AND THE STATE SUBSEQUENTLY PROVIDES THAT A PERSON WITH A BLOOD ALCOHOL CONCENTRATION OF 0.08 PERCENT OR GREATER WHEN DRIVING A MOTOR VEHICLE SHALL BE DEEMED TO BE DRIVING WHILE INTOXICATED, THE SECRETARY SHALL RELEASE TO THE STATE THE FUNDS WITHHELD FROM APPORTIONMENT AND NOT PREVIOUSLY RELEASED UNDER PARAGRAPH (1).

"(3) AVAILABILITY OF RELEASED FUNDS.--FUNDS RELEASED TO A STATE UNDER THIS SUBSECTION SHALL REMAIN AVAILABLE UNTIL THE END OF THE THIRD FISCAL YEAR SUCCEEDING THE FISCAL YEAR IN WHICH THE FUNDS ARE RELEASED. IF FUNDS ARE NOT EXPENDED BY THE END OF THE THIRD FISCAL YEAR, THE AUTHORITY OF THE STATE TO EXPEND THE FUNDS SHALL EXPIRE."

(B) CONFORMING AMENDMENT.--THE ANALYSIS FOR CHAPTER 1 OF TITLE 23, UNITED STATES CODE, IS AMENDED BY ADDING AT THE END THE FOLLOWING: "161. Withholding of funds for certain blood alcohol concentrations." SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on October 1, 1994.

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Kodiak Liquor Licence Association
P.O. Box 947
Kodiak, Alaska 99615
March 9, 1993

Representative Richard Foster
House Of Representatives
State Of Alaska

Re: House Bill 61

Dear Representative Foster:

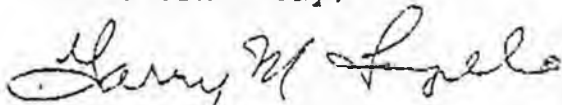
I am writing on behalf of our Association to oppose what we believe to be serious consequences for our industry of HB # 61.

We believe that those that drink and drive should take full responsibility for their actions and that their actions need to be stopped. What our industry is most concerned with is the fact that in Alaska we are also liable and .08 is a very low level for our staff to guage (it might be only two drinks for some people, yet they would show few visible effects) Also there is provision here for the courts to look at .04. The .04 is very scary. We do not mind that ways be made to stop drinking and driving (the level is a technical point, the liability is the issue). We also want to see those in our industry who over serve to be removed, and if current laws were inforced this could be dealt with.

Our industry is in a very great squeeze, on one hand consumption is down 16% over the last 7 years and insurance rates (if you can get coverage) has gone through the roof. The most seriously affected are those Ma and Pa operations that make up the majority of our members.

Please give our thoughts serious consideration.

Yours sincerely,



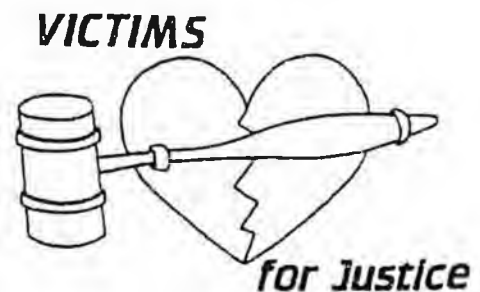
Garry M. Langille
President



**POSITION STATEMENT
FROM THE COALITION OF**

**THE ALASKA PEACE OFFICER'S ASSOCIATION
and MOTHERS AGAINST DRUNK DRIVERS**

before the
19th Alaska Legislature
March 1993



SB 32/HB 61
LOWERING THE PRESUMPTIVE LEVEL TO .08%

Drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. Behavior and attitudes toward the drinking driver have changed remarkably in the last decade. Drinking and driving is no longer as socially acceptable as it once was. People have come to understand and realize the high price we pay for such excesses. As attitudes change in recognition of the problem, so should our laws.

The trend nationally has been to lower the presumptive level in Driving While Intoxicated cases from .10% to .08%. Studies show that drivers with this lower level of alcohol in their blood are significantly impaired. Drivers with this level of impairment are responsible for a large percentage of motor vehicle accidents causing untold damage to property and human life.

We believe that there is a relationship between a lower limit of blood alcohol content and the reduction of the alcohol related accidents. The passage of this bill will assist law enforcement in removing the impaired driver off the roadways, and the citizens of Alaska will be better protected.

Besides lowering the presumptive level of intoxication from .10% to .08%, we encourage the legislature to change the Implied Consent Law to require motorists to submit to a test of any combination of blood, breath, or urine tests, with the type of test to be administered left to the discretion of the arresting officer. Presently, the only test required is a breath test which is incapable of determining drug intoxication.

Further, we propose rescinding the statutory language that became effective in 1991 which allows people who refuse to take a breath test and people who are DWI re-offenders to have a limited license. This language makes Alaska ineligible for Federal 410 Funds (approximately \$400,000 annually). Another requirement of 410 Funds is that the state adopt the .08% presumptive intoxication level within 4 or 5 years of the receipt of the funds. Unless the legislature changes the language mentioned above, the State of Alaska will continue to be ineligible for federal funds.

Is MADD Veering off the Road?

by Candy Lightner, founder of MADD

Cleveland Plain Dealer

Thursday, May 21, 1992

I founded Mothers Against Drunk Driving 12 years ago after my 13-year-old daughter, Cari, was killed by a hit-and-run drunken driver. Two days before he killed my daughter, the man had been arrested for another hit-and-run drunken driving with injury. His blood alcohol content was 0.22% -- more than twice the 0.10%, the current legal limit in most states.

My grief and anger made me determined to do everything in my power to stop the senseless slaughter caused by impaired drivers. Though still deeply committed to that goal, I worry that the movement I helped create has lost direction.

Our biggest obstacle was society's tolerance of drinking and driving. So we passed more than 1,000 laws, and attitudes changed. Society no longer considers impaired driving socially acceptable.

This led to significant reductions in alcohol-related fatalities; 50% in 1988 involved alcohol, as compared to 57% in 1982. But we are still nowhere near the point of eliminating this horrible tragedy from our streets and highways.

Lately, anti-drunken driving groups are working on legislation that would lower the BAC to .08. The recent federal highway bill conditions access to highway aid on implementing anti-drunken driving measures, including the suggestion that states adopt the .08 standard. Unfortunately, this ignores the real core of the problem, individuals who, despite new laws and the change in attitude, continue to drink and drive.

While no one can deny that the safest BAC is no BAC, this is also unrealistic given our limited resources and energies. What is realistic, is attacking the problem drinker or chronic drunken driver, the most dangerous threat to our safety.

In our rush to "do the right thing" let's not lose sight of the facts:

- * Half of the drinking drivers involved in fatal crashes have a BAC of 0.17 or greater. Most drivers with a level this high are problem drinkers and repeat offenders.
- * Even among young people aged 16 to 24, the great majority of deaths involved drinkers with a BAC of at least .15%.

Lowering the blood alcohol content won't make a difference to these offenders. After 12 years we should be past the point of just raising public consciousness. We need to bring creativity into play and focus on the programs and laws that will make the most difference.

Ohio, for example, is concentrating on measures that would reduce recidivism. In the past 10 years, 53% of all drunken driving offenses were committed by repeat offenders. The State Highway Patrol now notifies law enforcement officers of individuals whose driving record includes five or more DUI convictions and whose licenses were suspended. The repeat offenders were also contacted directly and told they risked re-arrest if they continued to drive.

The results: 16% were arrested in the first month of the crackdown. Law enforcement officers also use "boots" to immobilize the vehicles of repeat offenders after their licenses have been suspended.

Similarly, Oregon impounds the vehicles of those who drive with a suspended license and forfeits them to the city. I am still amazed that the man who killed my daughter is barred from ever owning a handgun, but he can own a car, even though he has been arrested six times for impaired driving and injured two other people.

In addition to measures aimed at repeat offenders, why not issue "graduated licenses" to young people instead of giving them "carte blanche" to drive at the age of 16? They can gain valuable driving experience under less hazardous circumstances, such as daytime driving only, with a limited number of passengers, at restricted speeds, and without alcohol impairment.

Where it has been tried it has worked. Crash rates among young drivers showed dramatic reduction.

We accomplished our goal of changing attitudes. Now it's time for new direction. Rather than put our limited resources into laws that fail to address the real problem, we need better enforcement of existing laws and proven policies that have demonstrated a significant impact, such as swift and sure license suspension, sobriety checkpoints and designated driver programs.

If we really want to save lives, let's go after the most dangerous drivers on the road. Putting our trust in new laws and regulations that attack only the tip of the iceberg will not make our highways safer.

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 15, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: _____

The TRANSPORTATION Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"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 _____

CS HB 61 (Trans)

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)

fiscal impact DPS, D.Law, Admin.

fiscal note(s) _____

zero fiscal note _____

zero fiscal note(s) _____

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
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		<i>[Signature]</i>		X	
		<i>[Signature]</i>	✓		
<i>[Signature]</i>	X	<i>[Signature]</i>	X		
		<i>[Signature]</i>	X		

[Signature]
CHAIRMAN'S SIGNATURE



Public Safety Employees Association, Inc.

"Representing Alaska's Finest"

1569 S. Bragaw #201, Anchorage, AK 99508

(907) 337-1979

Fax (907) 337-1753



**International Union of
Police Associations
Local 92 AFL-CIO**

February 17, 1993

Representative Jim Nordlund
State Capital
Juneau, AK 99801-1182

Dear Representative Nordlund,

I would like to commend you on your sponsorship on HB61. This legislation is long overdue and I wish you success in your endeavor to further the safety and welfare of the citizens of Alaska.

As President of the Public Safety Employee's Association, I represent law enforcement officers working throughout the State of Alaska. We fully endorse this proposed legislation. It would not only assist law enforcement officers with their responsibilities, but would take another step towards getting Alaska's most dangerous and lethal drivers off the roads.

It is readily apparent that the current regulations do not go far enough. At a .08 alcohol level drivers are extremely dangerous. Their vision is impaired, their reactions are slowed and they are more inclined to take risks. A .10 limit is just too high. We as citizens of the State of Alaska need this legislation. Our lives may depend on it. If there is any assistance our Association can provide in seeing HB61 prevail, don't hesitate to call. Good luck and thank you for your hard work.

Sincerely,

Keith Perrin
President

RECEIVED

FEB 22 1993

Ans'd.....

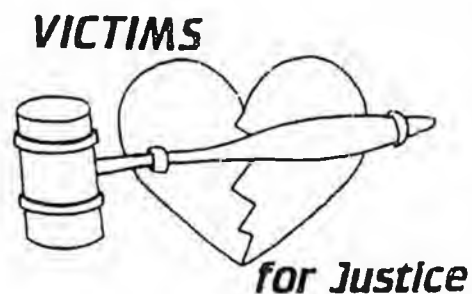
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**POSITION STATEMENT
FROM THE COALITION OF**

**THE ALASKA PEACE OFFICER'S ASSOCIATION
and MOTHERS AGAINST DRUNK DRIVERS**

before the
19th Alaska Legislature
March 1993



FOREWORD

This Coalition, consisting of the Alaska Peace Officers Association, Victims for Justice, and MADD, have jointly identified our six top priorities involving legislation affecting public safety statewide.

We strongly urge your support of these issues. We believe that every citizen in Alaska is affected by this legislation. Our Coalition strives to improve the professionalism of the Justice System and asks that the Legislature continue to support us by passing laws which enable us to better serve the people of Alaska.

We will continue to work vigorously against any legislation we feel does not support professional law enforcement and the public's safety. However, we will support other bills that serve our needs and the public's needs in these areas. We are always ready to work with both the Governor's Office and the Legislature.

We thank you for your interest and consideration. The Coalition invites any of you to call or meet with our Executive Boards. These people can be contacted and identified through APOA's Anchorage office, P.O. Box 240106, Anchorage, Alaska, 99524 or phone (907) 277-0515.

CONSPIRACY

Law Enforcement officers are dealing with people who in increasing numbers act in concert to commit crimes, usually homicide and drug offenses. There appears to be a lot of misconceptions about conspiracy legislation and the following is an effort to "de-mystify" it.

Black's law dictionary defines "conspiracy" as, "A combination or confederation between two or more persons formed for the purpose of committing, by their joint efforts, some unlawful or criminal act, or some act which is lawful in itself, but becomes unlawful when done by the concerted action of the conspirators, or for the purpose of using criminal or unlawful means to the commission of an act not in itself unlawful.

FICTION

People will get charged for "thinking about a crime".

FACT

By definition two or more people must act together by committing an overt act with the intention of violating a law.

FICTION

The current laws relating to aiding and abetting suffice.

FACT

Under Alaska's aiding and abetting statute, a person is legally accountable for the conduct of another constituting an offense if that person acts with a specific "intent to promote or facilitate the commission of the offense." When several persons combine to violate the law, the police will seldom be able to show that each of the co-conspirators acted with a specific intent to promote the commission of the crime.

Simply put, our aiding and abetting law places too great a burden on law enforcement. A conspiracy statute would permit prosecution of those who acted "knowingly" to violate the law even though they may not have "intended" the result. In short, those who act with guilty knowledge could be punished.

Under aiding and abetting, all participants must act with a specific intent to accomplish the target offense. A conspiracy may be a continuing one; actors may drop out, and others drop in; the details of the operation may change from time to time; the members need not know each other or the part played by others; a member need not know all the details of the plan or the operations; he must, however, know the purpose of the conspiracy and agree to become a party to a plan to effectuate that purpose.

This legislation also creates a separate crime of conspiracy which is a crime different from the target offense.

We are long overdue for this legislation. Alaska is the only state that does not have conspiracy legislation. The US Congress long ago promulgated a strong conspiracy statute. Forty-nine other states and the US Congress can't be wrong. This legislation is imperative for law enforcement in Alaska to do its job effectively.

ISSUES RELATING TO THE JUVENILE JUSTICE SYSTEM

The following are suggested changes to the current statute/rules relating to Juvenile Criminal laws/procedures.

1. **JUVENILE WAIVER (SB 54)** - People ages 16 and 17 charged with an Unclassified or Class A Felony (these are violent crimes against people) should be treated as adults and prosecuted in adult court.
2. **CONFIDENTIALITY** - There is an assumption that confidentiality in criminal matters relating to juveniles will prevent recidivism. The basis for this assumption is questionable. As a result of confidentiality, there is no public awareness of the crime or the criminal. Reaffirmation of societal norms is minimized. The victim as well as the entire community needs to have an ability to voice their outrage and condemnation. There should be non-confidential sentencings to allow public scrutiny into the juvenile criminal justice system. We propose a change to allow a juvenile's first criminal charge be handled in a confidential manner. After the first conviction, all other criminal proceedings should be handled publicly.
3. **TWELVE PERSON JURIES** - In adult court, those charged with misdemeanors are entitled to a six person jury; felony defendants get twelve person juries. The Delinquency Rules of Court allow all juveniles charged with any crime, misdemeanor, or felony, to be tried by a twelve person jury. With the constraints on the court system and the attorneys for both the prosecution and defense, this puts an undue burden on the system. Juveniles charged with misdemeanors should get six person juries like adults.
4. **JUVENILE SENTENCING** - Under Title 12 of the Alaska Statutes, Courts may only use an adult's juvenile criminal history as an aggravator. The court should be required to review any juvenile criminal records. We recommend in cases where an adult with one prior juvenile adjudication on a felony charge is being sentenced on a felony in adult court, the judge should consider the juvenile record as an aggravator for a subsequent adult felony conviction. If the

adult has more than one juvenile felony adjudication, the court should be required to use presumptive sentencing. If presumptive sentencing does not apply to the particular offense, the court should consider the juvenile record as an aggravator to the possible sentence.

Further, there should be statutory guidelines for the sentencing of the juvenile offender similar to the Chaney Criteria for adult sentencing. The juvenile's probability of rehabilitation should be evaluated, but it should not be the overriding consideration. The judge should also be required to base his sentence upon the need to isolate the offender, to fashion a sentence based upon community condemnation of the offender and deterrence of other juveniles who are likely to know or learn about the case.

5. **RESTITUTION** - The principle crimes committed by juveniles are property offenses, in particular, burglaries, thefts, and auto theft. The punishments for these crimes should be more severe. Presently, there is no reason for the offender to stop offending. As a matter of policy, courts do not order juveniles to pay more than \$2000 in restitution. The principle of restitution is to make a victim whole within the possible means of the offender.

Further, restitution orders by the court are presently not enforceable after the juvenile reaches 19 years of age. If a juvenile makes only token payments until his or her 19th birthday, the court loses jurisdiction and the balance of the restitution owed can not be compelled. The juvenile's debt to the victim should survive his 19th birthday and the court should retain the authority to force restitution.

6. **INSTITUTIONALIZATION** - The Court of Appeals in R.P. v State (718 P2nd 168) held that institutionalization of juveniles should be used only as a last resort, that juveniles should be placed in the least restrictive placement. Rehabilitation is an important goal, however it should not be at the expense of the protection of the community. These goals are not mutually exclusive. With more rehabilitative efforts within the institutional environment, these goals can compliment one another. The court should also be mindful of protection of the community and the other sentencing criteria mentioned above.

INDEMNIFICATION OF GOVERNMENT EMPLOYEES

We believe that government must be held responsible for its actions. When someone is wrongly harmed through the actions of the government, injured parties should be able to make claims as appropriate. However, we believe very strongly that government employees should be defended and protected when their actions are made in good faith.

Generally when a lawsuit is filed, employees are listed as parties to the action. In the past, employees have not been held personally liable for actions taken at the behest of their employer, unless they were clearly working outside the scope of their authority. This seems to be changing. Recent court rulings imposing personal punitive damages are placing the livelihoods of our public employees in jeopardy.

The trend where public employees are being held personally liable places employees in a position where their own personal assets are at risk. All government employees are in danger, from the highest level policy maker to the lowest level of workers where those policies are carried out. The social worker, the road maintenance supervisor, the police officer, the medic, the fire fighter, the department manager, and elected officials are all vulnerable.

We in law enforcement believe this is an undue burden upon the state's public employees. It carries great potential for the workings of government to become bogged down because employees fear that decisions they make in good faith may result in the loss of their assets.

When employees are doing the work of the government, within the scope of their authority and without malice, they should not be held personally liable when they are named as parties to law suits.

Legislation should be passed that indemnifies public employees and frees them from the burden of working under the constant threat that the good faith judgments they make can result in the loss of their homes, their cars, or their savings.

SB 32/HB 61
LOWERING THE PRESUMPTIVE LEVEL TO .08%

Drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. Behavior and attitudes toward the drinking driver have changed remarkably in the last decade. Drinking and driving is no longer as socially acceptable as it once was. People have come to understand and realize the high price we pay for such excesses. As attitudes change in recognition of the problem, so should our laws.

The trend nationally has been to lower the presumptive level in Driving While Intoxicated cases from .10% to .08%. Studies show that drivers with this lower level of alcohol in their blood are significantly impaired. Drivers with this level of impairment are responsible for a large percentage of motor vehicle accidents causing untold damage to property and human life.

We believe that there is a relationship between a lower limit of blood alcohol content and the reduction of the alcohol related accidents. The passage of this bill will assist law enforcement in removing the impaired driver off the roadways, and the citizens of Alaska will be better protected.

Besides lowering the presumptive level of intoxication from .10% to .08%, we encourage the legislature to change the Implied Consent Law to require motorists to submit to a test of any combination of blood, breath, or urine tests, with the type of test to be administered left to the discretion of the arresting officer. Presently, the only test required is a breath test which is incapable of determining drug intoxication.

Further, we propose rescinding the statutory language that became effective in 1991 which allows people who refuse to take a breath test and people who are DWI re-offenders to have a limited license. This language makes Alaska ineligible for Federal 410 Funds (approximately \$400,000 annually). Another requirement of 410 Funds is that the state adopt the .08% presumptive intoxication level within 4 or 5 years of the receipt of the funds. Unless the legislature changes the language mentioned above, the State of Alaska will continue to be ineligible for federal funds.

FORFEITURE IN DRUG CASES

Among the most serious problems affecting the health and welfare of the citizens of Alaska is illegal trafficking in drugs. One of the most effective tools for combating this illegal trade is the judicious seizing of property that is owned or purchased as a direct result of unlawful activity.

The federal government has had asset forfeiture laws for several years. The concept of asset forfeiture is simple. It takes the profit out of crime by seizing money or property that was purchased with the proceeds of illegal drug activity. The property is then used or converted to cash which in turn can only be used by law enforcement for the continued battle against crime.

When the federal government extended the use of its forfeiture to state and local law enforcement, it was expected that each state would enact their own forfeiture laws. Most states have already enacted or are considering forfeiture legislation. The use of federal law was almost stopped two years ago, however, the U.S. Congress extended the law to allow states more time to enact their own legislation. We do not know for certain how much longer we can continue to use Federal Asset Seizure laws.

If this legislation is enacted, it would work much like its federal counterpart. The bill is very specific as to when and how law enforcement can seize property, and all seizure of assets is subject to judicial review.

State and local law enforcement in Alaska have had several years of experience in the utilization of federal asset seizure. We believe that it is timely for Alaska to enact its own laws concerning forfeiture. When used properly, the seizure of assets can be one of the most powerful weapons available for use against illegal drug activity. We can not continue to allow crime to pay.

FELONY VEHICLE THEFT

In the State of Alaska, vehicle joyriding is a misdemeanor. If the state can prove the defendant intended to permanently deprive the owner of the property (i.e., they change the Vehicle Identification Number [VIN]), the charge then becomes a felony. It is nearly impossible to prove the defendant intended to permanently deprive the owner so people are rarely convicted of felony vehicle theft.

Using this scenario, a person can take your \$30,000 vehicle and drive it for two months. Unless they change the VIN or they try to sell the vehicle to someone or do some other act which evidences their intent to permanently deprive the owner of the vehicle, the thief will be charged with only a misdemeanor, even though you were not able to use your property. By policy, the most a juvenile is required to pay restitution is \$2000. (Refer to "Changes in Juvenile Statutes/ Rules" for further information on restitution.)

As you know, the price of vehicles is ever increasing. If a vehicle is stolen, it should be a felony. This is the second most expensive investment a person usually makes in their lifetime. We feel this is no longer acceptable.

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WHILE IN SESSION:
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Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

MEMORANDUM

*TENNIE
2.2.93
R*

TO: Representative Richard Foster, Chair
Transportation Committee

FROM: Representative Jim Nordlund *JN*

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: February 16, 1993

I would greatly appreciate it if a Transportation hearing could be scheduled as soon as possible on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received received the benefits of the increase.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff is preparing the necessary back up and will provide it to you as soon as necessary.

Thank you for your consideration of this matter.



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

P.O. Box 104830 • Anchorage, Alaska 99510
401 K Street • (907) 272-5133 • Fax: (907) 271-8630

February 23, 1993

Representative Richard Foster
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Foster,

House Bill 61, shortly to be considered by the Transportation Committee, would lower the legal definition of intoxication from a Blood Alcohol Content (BAC) of 0.10 to 0.08%. This bill does not address the real cause of the drunk driving problem, the alcohol abuser, and may in fact, impede efforts to reduce the number of accidents and fatalities caused by intoxicated drivers. The State of Maine adopted the lower BAC standard in 1988, one of only 5 states to do so. Between 1988 and 1990, the arrest rate increased by 16% as more people were considered technically intoxicated. At the same time, the alcohol-related fatality rate increased, by more than 7%.

These deaths were the unintended result of diluting the law enforcement and judicial resources available to combat the real culprit, the alcohol abuser. The average BAC of someone involved in an alcohol-related accident is over 0.15%. To direct scarce resources against the responsible consumer is counterproductive. We are continually reminded by the media of our overloaded court and jail facilities, to the point of serious recommendations that jail time for first time DWI offenders under the current definition be abolished.

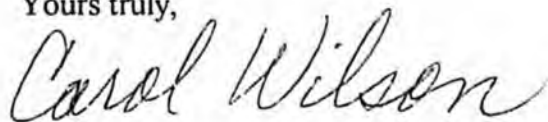
Addressing the problem by restricting responsible consumption is clearly misdirected. Instead, our efforts should be directed to pursue realistic solutions to this terrible social problem by providing our law enforcement, judiciary, and corrections systems the assets they require to implement current laws and to provide stiffer penalties against repeat offenders.

Candy Lightner, the founder of Mothers Against Drunk Drivers (MADD), has doubts about lowering the BAC to 0.08% which she has expressed publicly on several occasions. I am enclosing a copy of a newspaper column that she wrote issue in 1992. Also enclosed is a reprint of a report originally published by the Beverage Retailers

Against Drunk Driving which is a concise presentation of the industry position on this issue.

CHARR members are united in their opposition to this legislation and we ask for your support of our position. Thank you for your consideration.

Yours truly,

A handwritten signature in cursive script that reads "Carol Wilson". The signature is written in black ink and is positioned below the typed name.

Carol Wilson
Executive Director

Enclosures

DWI — ARE WE OFF TRACK?

by Terry M. Klein

American Beverage Institute

DWI — Are We Off Track?

by Terry M. Klein

ABOUT THIS REPORT —

In 1986 several state legislatures explored the idea of reducing allowed blood alcohol content levels (BAC) while driving in an effort to reduce highway accidents. Beverage Retailers Against Driving Drunk (BRADD) published this report five years ago to add new evidence to the ongoing discussions at that time. While most legislatures eventually focused on more effective means of addressing drunk driving, the BAC issue is being discussed again as a method to control DWI incidents. The American Beverage Institute has republished the original Klein analysis with an updated foreword by Dr. H. Laurence Ross.

FOREWORD

In reprinting this 1986 report by Terry Klein, the American Beverage Institute has chosen wisely. Although new data are available today, they serve to reinforce the assumptions made in Klein's work of a few years ago.

It remains true that alcohol is often present in the blood of drivers involved in fatal crashes. Now, as then, the bulk of the problem is accounted for by drivers who have blood alcohol concentrations (BACs) of 0.10% or more (suggesting the consumption of more than 5 drinks in a couple of hours).

There is a need for our society to reduce deaths due to drunk driving. A common response to this need has been to increase the severity of the punishment for drunk driving, especially by mandating jail, at least for repeat offenders. Unfortunately, this approach has not led to important progress in reducing alcohol-related fatalities. Not only are the nation's jails so crowded that additional misdemeanants often cannot be accommodated, but the threat of a severe penalty for convicted drunk drivers has become inherently unbelievable as the proportion of those arrested is typically on the order of one in a thousand.

Because the risk of a fatality increases steeply with more alcohol in the blood, a second response has been to lower the limit of legal tolerance from 0.10% BAC to 0.08%. This is currently the law in four states. Such a concentration could be achieved by some people with three drinks in an hour. Klein's report addresses this policy. He properly argues that the heart of the drunk driving fatality problem is not at these levels—and that it is inefficient to squander resources in dealing with drivers who have relatively low BACs. Instead, policy should focus on heavier drinking drivers, who are disproportionately involved in fatal crashes.

Recent research supports Klein's assessment that 0.10% BAC is a reasonable legal limit. Drivers with BACs between 0.10% and 0.15% appear to be over four times more likely to cause a fatal crash than those who, in most states, are obeying the current law. Drivers over 0.15% BAC appear to be over 30 times more dangerous. Clearly, the heart of the problem lies in the area of extremely heavy drinking—the drinker with a BAC of more than 0.15%, who has probably consumed more than a dozen drinks in a few hours.

Data from a national survey of drivers indicate that reducing the tolerated BAC below 0.10% would not necessarily be good public safety policy. Reducing the limit to 0.08% would increase the number of law violators by about 60%. Prohibiting BACs of 0.05% would more than double their numbers. Unless enforcement is increased proportionately, this might result in a decrease in the probability of arrest for extreme violators. To the extent that the law's threats lack credibility (because of a low risk of apprehension), the change could greatly exacerbate enforcement difficulties and possibly reduce the existing effectiveness of the law.

A related problem arises from the fact that BACs under 0.10% are extremely difficult to identify through behavioral cues. Although breath-testing instruments can reliably detect BACs down to 0.05%, in the absence of arbitrary and random breath testing, it is likely that most law violators with BACs below 0.10% would be undetected, even if stopped by police for another traffic offense or at a safety check.

Finally, it can be argued that at BACs below 0.10%, the ratio of the benefits of drinking to the costs associated with it is far more favorable than at higher BACs. It is an error to allocate scarce resources to this segment of drinkers when the more dangerous segment is seldom apprehended. Further research into benefits deriving from alcohol consumption is needed, but plausible claims have been made for reductions in stress and cardio-vascular problems. Folklore and literature as well as common experience suggest that other socially valued goals are achieved in moderate drinking.

Drunk driving is still a significant social problem in America but laws lowering the tolerated BAC below 0.10% are unlikely to be helpful in addressing the problem. Such laws may reduce the credibility of the threat to punish the heaviest drinkers thus possibly reducing deterrence of the most dangerous drivers. At the same time, they would brand as criminal much behavior that is customary, pleasurable, and much less risky to society. I concur with Klein that reducing the BAC limit is unlikely to be either fair or effective in reducing deaths due to drunk driving.

H. Laurence Ross, Ph. D.

*Professor of Sociology
University of New Mexico
June 1991*

ABOUT DR. ROSS —

H. Laurence Ross is Professor of Sociology at the University of New Mexico. He is author of numerous studies and reviews dealing with the effect of law on driving while impaired by alcohol, including Deterring the Drinking Driver; Legal Policy and Social Control, published by Lexington Books in 1982. In 1989, he received the Widmark Award For Lifetime Achievement from the International Committee on Alcohol, Drugs, and Traffic Safety. He spent 1990-91 as Visiting Scholar at the Insurance Institute for Highway Safety, during which he completed a manuscript, Life Saving: Policy for Reducing Drunk Driving in America, to be published by Yale University Press in 1992.

POSITION SUMMARY

Alcohol abuse is one of the major social problems of our day. Alcohol abusers who drive are a particularly serious threat.

A recent wave of proposed state legislation, however, causes us concern. The proposed legislation is off target and detracts from focusing on the people who unquestionably cause the great majority of alcohol related accidents and fatalities.

The proposed legislation would lower the criterion of intoxication from the current 0.10 percent blood alcohol concentration rate to 0.08 or 0.05 percent (about two drinks for the average person in a two hour period).

On the surface, the legislation (now being reviewed in many states) might appear to be a "fix" to a problem that concerns us all. But let's look deeper.

- The 0.10 percent blood alcohol concentration rate is the historical standard for intoxication supported by the National Highway Traffic Safety Administration based on their in-depth studies and their analysis of driving drinking problems.
- Research (both government and independent studies) over the past 20 years shows that 70 to 75 percent of those convicted of driving while drunk have blood alcohol concentrates of at least 0.15 percent and many have levels of 0.20 percent or higher. They are way past the official "drunk" mark.
- Multiple studies have shown that in a breakdown of the statistics of alcohol-related traffic fatalities, more than half of those killed are the drunk drivers themselves. Twenty percent are passengers in the car with the drunk driver, and eleven percent are drunk pedestrians who are at fault by walking into the paths of oncoming cars.
- Half of the fatally injured drivers who are legally drunk have blood alcohol contents at or above 0.20 percent.
- Studies have shown that problem drinking drivers have other identifiable problems: a record of one or more alcohol related arrests; previous contacts with police or social agencies; reports of marital, employment or social problems.

What does this information tell us? **That the person doing *most* of the damage drinks far in excess of the current legal limit.** He is not a "social" drinker. He drinks irresponsibly, and he tends to have other identifiable problems related to his problem drinking. Further, in most driving fatalities, it is the drunk driver killing himself and/or those riding with him.

Lowering the legal BAC will have little or no effect on these persons. The main target of such a measure would be drivers who currently drink and drive within the legal limits and who account for under ten percent of all drivers involved in fatal accidents (and many of these are due to non-alcohol related factors).

Aside from the fact that research has yet to pinpoint a need for lowering the recommended blood alcohol concentration levels, the costs of enforcing low limits are staggering. In a time of economic belt tightening, do we want to further burden state and local agencies with enforcing legislation that just sounds good? Could not our money be better spent to seriously crack down on enforcement of the 0.10% and over blood alcohol concentration levels that we know are connected to the majority of drunk driving accidents?

We've heard the public outcry for tough and consistent DWI laws. Let's join community efforts to implement strong and well-funded treatment and rehabilitation programs that will surely help the excessive drinker—the repeat offender.

Public education programs have done a great deal to create an environment where drunk driving is socially unacceptable. Our young people are getting the message. Let's keep the education effort strong.

Beverage retailers are working hard to promote safe attitudes and behavior among guests and customers. Whether it's in the form of providing food and attractive non-alcoholic drink options, educating beverage servers and sellers, or enforcing minimum drinking age laws, retailers are joining in this important health and safety effort.

The following report by traffic safety expert Terry Klein addresses the issues in more detail. Specific recommendations that will work to attack the drunk driving problem can be found on pages 8-10 of this publication.

— *American Beverage Institute*

DWI — ARE WE OFF TRACK?

*by Terry M. Klein **

Proposed drunk driving legislation, now being discussed in many states, calls for the reduction of the legal BAC (blood alcohol concentration) level from 0.10 percent to 0.05 percent.

The relative effectiveness of such a measure will depend on that group of drivers at which it is focused; that is, drivers with BAC levels between 0.06 and 0.09 percent, generally referred to as the "social drinker." To analyze the issue of lowering the BAC limit, the following question should be addressed: "What are the drinking characteristics of those persons currently apprehended for drunk driving and involved in the majority of fatal traffic accidents?" The answer to this question will shed light on which drivers constitute the greatest drunk driving threat and where new countermeasures can be effectively focused to achieve the maximum benefits.

In almost all states, it is illegal to drive with a BAC of 0.10 percent, which translates to an average person consuming about five drinks in two hours. At this level of intoxication, researchers have estimated that the risk of this person causing a traffic accident is about six times as great as that of a sober person. This factor increases to twenty-five times as great a risk at a BAC of 0.15 percent (approximately seven drinks in two hours). In contrast, to reach the proposed lowered limit of 0.05 BAC, the average person would consume about two drinks in a two-hour period.

** As president of Sigmastat, Inc., Terry M. Klein is a consultant to the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration (NHTSA). He is currently developing a large-scale computer model for estimating the prevalence of driver and pedestrian alcohol-impairment in fatal traffic accidents.*

Klein also spent ten years with NHTSA in the U.S. Department of Transportation as chief evaluator in the Planning and Evaluation Division of the Office of Occupant Protection and as senior statistician in the Information Systems and Modeling Division of the Office of Alcohol Countermeasures.

Klein holds a B.S. in Mathematics and an M.S. in Statistics from the University of Maryland. He is author of numerous articles and papers on DWI and traffic safety.

A Lowered Level Would Affect About 10 Percent of the Problem

The general experience has been that 60 to 75 percent of convicted drunk drivers are considered to be problem drinkers, with BACs at the time of arrest of at least 0.15 percent, many at 0.20 percent or higher. At these excess levels of intoxication, the risk of causing an accident increases very fast.

In 1984, accidents involving legally drunk drivers (BAC of at least 0.10 percent) resulted in about 40 percent of all traffic fatalities. Accidents involving persons who drank but were not legally drunk accounted for only 10 percent of all traffic fatalities. The remaining 50 percent of the fatalities occurred in accidents involving drivers who had not been drinking.¹

It seems evident that the greatest safety benefits could be derived from reducing drunk driving by problem drinkers, who constitute the greatest part of the problem and who repeatedly drive at high BAC levels of 0.10 and above. It has been estimated that half of the fatally injured drivers who are legally drunk have a BAC at or above 0.20 percent,² an indicator of extreme excess drinking. Most researchers in the alcohol area consider attaining this BAC level alone to indicate problem drinking. Lowering the legal BAC to 0.05 percent should have little or no effect on these persons who generally drink far in excess of the current 0.10 percent BAC.

The main target of such a measure would be drivers who currently drink and drive within the legal limit and who account for about ten percent of all drivers involved in fatal accidents. (It should also be noted that alcohol involvement is not necessarily the cause of accidents. The same factors that cause non-alcohol-related accidents are most certainly present here, too.)

Countermeasures aimed at what are today considered responsible drivers can only serve to divert resources away from the larger part of the problem and potentially could have negative effects. The increased burden of "more legally drunk drivers" could stretch the current enforcement and judicial resources beyond their means. In addition, application of the harsh mandatory sanctions upon drivers who do not appear even mildly drunk at a BAC of 0.05 percent could become a source of alienation to the enforcement and judicial communities.

Results of Current Countermeasures

The question arises of how the current programs have fared in terms of reducing drunk driving, especially by problem drinkers? While this question cannot be fully addressed in the current study, some indications of their progress can be found in analyses of accident data.

Recent analyses of changes in alcohol involvement in fatal crashes have indicated that current programs are much more effective in deterring drunk driving by social drinkers than problem drinkers. While consistent reductions in alcohol involvement have been observed since 1982, the greatest changes occurred at times of low problem drinking-driving. For example, daytime alcohol involvement decreased more than nighttime alcohol involvement. A pages based on these accident analyses and recently presented at the International Congress and Exposition of the Society of Automotive Engineers noted this pattern of change:

*"Problem drinker-drivers and most high BACs are frequently found in crashes between midnight and 6 a.m. These 'hard core' drinking drivers may not be affected by alcohol campaigns. Responsible, social drinkers, for the most part, would most likely be affected by these campaigns."*³

This feeling is apparently shared by the authors of a City of Philadelphia study,⁴ who contend that a short jail sentence for the first offenders will have little effect on the problem drinkers: ". . . will scare the unfortunate social drinker who got caught in the net, but the problem drinker who goes to jail for 30 days will be drunk on the 31st day."

What Will Work? Fresh Solutions

Drunk driving is symptomatic of the larger problem of chronic alcoholism. Greater benefits could be realized by focusing new resources on programs involving prevention, and the treatment and rehabilitation of problem drinkers, rather than on making criminals out of responsible citizens by lowering the legal BAC to 0.05 percent.

Programs should focus on solutions to the problem drinker aspect of drunk driving, since this is where the greatest benefits can accrue. Police agencies, which form the bulwark of any drunk driving deterrence program, require continuous financial resources to maintain effectiveness. One method of achieving this is the adoption of a plan like the New York State STOP-DWI Program. This legislation mandates minimum fines of \$250 to \$350 for each DWI conviction, with much of these funds returned to the counties where the arrests are made, if the county has a comprehensive plan. In 1984, \$13 million was returned to the counties to pay for increased efforts.

Forty-six percent of the total dollars budgeted on the STOP-DWI program were for the enforcement component. An evaluation of program effectiveness found significant reductions in alcohol-related crashes after the program began and concluded that:

*"The Counties should continue to receive monies for their STOP-DWI efforts under the present funding arrangement. Experience during the initial years of this program demonstrates its value in reducing accidents and injuries."*⁵

Such funding mechanisms provide the support for long-term continuous programs. To support the enforcement effort, there is a need for the consistent levying of effective penalties for drunk driving, such as automatic administrative license suspension and mandatory treatment/education programs. Suspending the driving privilege of drunk drivers draws their attention to the existence of a problem; mandatory treatment/education programs involve the problem drinker in a long-term commitment to solve his/her drinking problem. These approaches can have widespread benefits beyond saving lives by reducing the disruptions in family and job that can result from problem drinking.

These recommendations and others are presented in greater detail in a 1985 BRADD report titled "Straight Talk About the Drunk Driving Problem."⁶

Background Case Studies

To get a rough idea of the magnitude of the drinking problem among drunk drivers, contacts were made⁷ with a number of agencies responsible for the screening and disposition of convicted drunk drivers. The purpose of these contacts was to ask what types of drinkers are passing through the system. While the precise definition of the terms "problem" and "social" drinker are not universally agreed upon, the latest consensus seems to be that a problem drinker is a person who, whenever he or she drinks, generally drinks too much (cannot stop at "just a few").

Albuquerque

Over a three-year period beginning in 1982, the National Council on Alcoholism in Albuquerque, New Mexico, screened over 7,000 drunk drivers who were considered to be first-time offenders. The classification of these drunk drivers was based on scores on questionnaires, diagnoses by trained interviewers, and the person's BAC at the time of arrest. This was the case with almost all of the agencies contacted. The average BAC of these first offenders was 0.168, with many at or above 0.20 BAC or a consumption of approximately 15 drinks. Of these 7,000 persons reviewed, almost 60 percent were considered to be problem drinkers. Considering that this survey only covered first offenders, one should expect a higher proportion of problem drinking among multiple offenders.

Colorado

In Colorado the law requires that everyone arrested for drunk driving must be screened for alcohol problems; in 1985 over 25,000 persons were screened. The average BAC of these persons was found to be 0.17 percent. Over 50 percent of these persons were classified as problem drinkers, and another 30 percent were considered to be "incipient" problem drinkers (those in the early stages of problem drinking).

New York

The Pre-trial Services Corp. of the Monroe County, New York Bar Association runs a county-funded screening and assessment program. In New York all persons with at least one prior drunk driving conviction must be screened. In the over 300 interviews in 1985, over 70 percent were considered problem drinkers. The average BAC of this multiple-offender group was 0.20 percent.

Maryland

The DWI Monitoring Program of the State of Maryland is responsible for tracking the progress of over 16,000 persons arrested for drunk driving in 1985. According to assessments made by the Health Department, over 70 percent of these persons are considered problem drinkers. It seems to be the consensus of physicians working in the area of alcohol abuse that "95 percent of second-offender drunk drivers are alcoholics, and that almost every third offender certainly is."⁸

Philadelphia

A recent study of the DUI treatment program in the City of Philadelphia found that 75 percent of the 21,000 convicted drunk drivers were problem drinkers or alcoholics. The average BAC at the time of arrest was 0.19 percent.

New Jersey

The State of New Jersey Division of Alcoholism estimated that half the people evaluated in their screening program were referred for treatment for serious alcohol problems, and that most drivers convicted of drunk driving were "usually well over 0.10 percent BAC."

References

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2. National Highway Traffic Safety Administration, "The Fatal Accident Reporting System," 1982-1986.
3. H. Laurence Ross, Deterrence of the Drinking Driver: An International Survey, National Highway Traffic Safety Administration, March, 1981, DOT-HS-805-820.
4. E. W. Fine, P. Scholes and R. A. Steer, "Personality Characteristics and Drinking Patterns of High Risk Drivers Never Apprehended for Driving While Intoxicated," Journal of Studies on Alcohol, Vol. 45, No. 4, pp. 411-416, 1984.
5. A. McCartt and A. Dowling, An Impact Evaluation of the New York State STOP-DWI Program, The Institute for Traffic Safety Management and Research, March 1985.
6. Charles F. Livingston, Straight Talk About the Drunk Driving Problem, Beverage Retailers Against Driving Drunk, Inc., September, 1985.
7. The National Council On Alcoholism, Albuquerque, New Mexico; Alcohol and Drug Abuse Division of the Colorado State Department of Health, Denver, Colorado; Pre-trial Services Corp. of the Monroe County, New York Bar Association, Rochester, New York; The Division of Parole and Probation, Drinking Drivers Monitor Program, Baltimore, Maryland.
8. This comment was made by the Director of the Division of Parole and Probation, State of Maryland Drinking Drivers Monitor Program during the interview conducted by the author. One of the Director's responsibilities is a liaison with the State Health Department's physicians, who have espoused this opinion. This feeling has also been expressed by physicians attending meetings and seminars to discuss the health status of drunk drivers and alcoholics.



Official Business

Alaska State Legislature

State Capitol

Juneau, Alaska 99801-1182

HOUSE TRANSPORTATION COMMITTEE
THURSDAY, FEBRUARY 25, 1993
CAPITOL, ROOM 17
5:00 P.M.

HB 61 - "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

I N D E X:

1. ORIGINAL VERSION, HB 61
2. SECTIONAL ANALYSIS, HB 61
3. SPONSOR STATEMENT, HB 61
4. MEMO DATED 2/16/93 TO: REP. FOSTER FROM REP. NORDLUND
RE: HB 61
5. CONTROLLED DRINKING GUIDE INFORMATION
6. FISCAL NOTES

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465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SECTIONAL ANALYSIS

Section 1. Findings and purpose.

Section 2. Reduces the level of alcohol at which a person commits the crime of driving while intoxicated from 0.10% to 0.08%.

Section 3. Imposes a mandatory minimum fine of \$250 for a person convicted of driving while intoxicated who had a level of at least 0.08% but less than 0.10%. Imposes existing penalties for a person with a level of intoxication of 0.10% or more.

Section 4. Amends the presumptions of intoxication in a civil or criminal action relating to driving while intoxicated to conform with amendments in section 2.

Section 5. Effective date.

Alaska State Legislature

House of Representatives

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561-7007

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JUNEAU, ALASKA 99801-1182
465-4968



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SPONSOR STATEMENT

House Bill 61 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means it would be illegal for a person to be in control of a motor vehicle, aircraft, or watercraft with a blood alcohol level of .08% or greater.

Five states have already lowered their legal definition of intoxication to .08%: California, Oregon, Utah, Maine, and Vermont. All of Canada has a .08% blood alcohol threshold, and all European nations prohibit driving with a .08% or lower blood alcohol level.

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% 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.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year.

In addition to the inherent benefits of the bill, the National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

In the past, the argument against this type of law has been that it will further burden our corrections system. However, section 3 of this bill establishes the minimum penalty for newly affected drivers (those with blood alcohol levels between .08% and .10%) as a \$250 fine only. It is therefore not likely to have any effect on overcrowding except in the rare instance when a judge imposes jail time.

Since it was introduced, House Bill 61 has received an overwhelming amount of public support. In addition to the support of many individual Alaskans, House Bill 61 is endorsed by:

National Highway Traffic Safety Administration
Allstate Insurance Company
State Farm Insurance
American Medical Association
American Association of Neurological Surgeons
American Spinal Injury Association
National Safety Council
Mothers Against Drunk Driving (MADD)
Remove Intoxicated Drivers (RID)
Insurance Institute for Highway Safety
National Committee on Uniform Traffic Laws and Ordinances
National Commission Against Drunk Driving

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
561-7007

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund
MEMORANDUM

TO: Representative Richard Foster, Chair
Transportation Committee

FROM: Representative Jim Nordlund

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: February 16, 1993

I would greatly appreciate it if a Transportation hearing could be scheduled as soon as possible on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff is preparing the necessary back up and will provide it to you as soon as necessary.

Thank you for your consideration of this matter.

3111 C STREET
ANCHORAGE, ALASKA 99503-3957
561-7007

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

	# OF DRINKS TO .10 BAC (1HR PERIOD)	#OF DRINKS TO .08 BAC (1HR PERIOD)
FEMALE 100 LBS.	2	2
FEMALE 140 LBS.	3	3
FEMALE 180 LBS.	4	3
MALE 120 LBS.	3	3
MALE 160 LBS.	5	4
MALE 200 LBS.	6	5
MALE 240 LBS.	7	6

* Information from the "Controlled Drinking Guide" published by The Alaska Center for Responsible Alcohol Control

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: HB 61

Revision Date: _____ Dept. Affected: Public Safety
 Title: "An Act relating to offense of operating a motor vehicle while intoxicated." BRU: Alaska State Troopers
 Sponsor: Representative Nordlund Component: Detachments
 Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
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 FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	12.5	12.5	0	0	0	0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	12.5	12.5	0	0	0	0

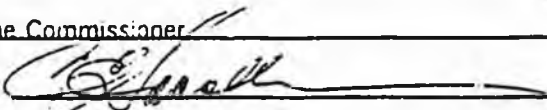
POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)

Please see attached.

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 1/22/93
 Approved by Commissioner:  Date: 1/22/93
 Agency: Richard I. Burton, Dept. of Public Safety

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Analysis:

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 94 budget request. In the meantime, \$25,000 in contractual funding (\$12,500 in each of the next two fiscal years) 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.

FISCAL NOTE

BJLL NO. HB 61

STATE OF ALASKA
1993 LEGISLATIVE SESSION

Revision Date: February 22, 1993
Title: "...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated..."
Sponsor: Representative Nordlund
Requestor: Representative Nordlund

Department Affected: Department of Law
BRU: Prosecution
Component: Third Judicial District
COMPONENT SERIAL NO. 0097

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	54.8	109.6	109.6	109.6	109.6	109.6
TRAVEL	2.5	5.0	5.0	5.0	5.0	5.0
CONTRACTUAL	6.0	11.9	11.9	11.9	11.9	11.9
SUPPLIES	5.8	4.8	4.8	4.8	4.8	4.8
EQUIPMENT	15.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	69.1	131.3	131.3	131.3	131.3	131.3

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	69.1	131.3	131.3	131.3	131.3	131.3
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL						

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

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Richard I. Peque

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

Phone: 465-3672
Date: February 22, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law

Date: February 22, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

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, a class A misdemeanor, from 0.10 percent to 0.08 percent. The bill also provides that a court shall impose a minimum mandatory fine of not less than \$250 when there was at least 0.08 but less than 0.10 percent blood alcohol.

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 will probably occur if the bill is approved. And although it could be that the bill will result in less litigation, the amount of litigation will most probably increase.

The bill provides for a fine of at least \$250 when a person's blood alcohol content is below 0.10 percent, but the underlying crime is still a class A misdemeanor, and a court is free to impose a far harsher penalty, including imprisonment. This means that defendants must be accorded a jury trial and, if eligible, a publicly-funded defense. Even in those cases where a person might expect to face only the potential of a \$250 fine, defendants can still be expected to wage an aggressive defense because of the serious collateral consequences of a guilty verdict. These include most particularly the restriction or suspension of a person's privilege to drive (as ordered by the court or as a result of an administrative process) and the certainty of a substantially increased cost for insurance.

The defense of these types of 0.08 DWI cases will be easier than normal DWI cases and therefore more defendants may decide to go to trial. In a normal DWI case the state can obtain a conviction by proving either that a breath-test yielded a result of 0.10% or that the person was "under the influence." Therefore even if the results of the breath-test are suppressed or if the jury does not believe the breath-test results (which often happens), the person is nonetheless convicted because bad driving or other symptoms of intoxication prove that the person was "under the influence." In 0.08 cases, the only issue is the validity of the test results; if the jury does not believe the test result, the defendant is acquitted.

Ironically, the existence of a different penalty for 0.08% cases than for normal DWI cases is an advantage to all DWI defendants, not merely for those whose blood alcohol is below 0.10%. The reason is because this new offense may be considered to be a "lesser included offense" of normal DWI, and thus every DWI defendant will ask that the jury be permitted to find that this lesser offense, rather than normal DWI, was committed. The possibility of this kind of compromise verdict may encourage more defendants to take their chances at trial. Alternatively, defendants may ask for a "special verdict", in which the jury is asked to determine the specific amount of blood alcohol. This may tend to prolong jury deliberations and may lead to jury confusion if the jury cannot agree on a specific amount.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

ANALYSIS CONTINUATION:

During FY 92, nearly 4,000 DWI complaints were referred to Department of Law prosecutors. If Alaska follows the California example, a ten percent increase would result in 400 new DWI cases statewide. The largest number of new cases would be experienced in the Anchorage and Mat-Su Valley areas. When we commented on similar legislation in 1992 (HB 102) we indicated that although we expected an increase in the misdemeanor caseload we were not going to request fiscal note funds because of the recent addition of three new prosecutors in Anchorage. Subsequently, the department's budget was reduced and the three attorney positions, plus one paralegal and two clerical positions were eliminated in Anchorage. We expect that this bill will cause us to prosecute 300 or more additional class A misdemeanors in the Third Judicial District, where the effects of the bill will be felt most. Because of staffing cutbacks in Anchorage, and because the Anchorage office is the hub from which prosecutors are sent to other offices to assist in times of overload, it will therefore be necessary to add one Attorney III at Anchorage.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HE 61

ANALYSIS CONTINUATION:

	<u>Attorney III</u> (22A)	<u>Legal Secretary I</u> (10B)	<u>Total</u>
Personal Services	72.3	37.3	109.6
Travel	5.0	--0--	5.0
Contractual	7.4	4.5	11.9
Supplies	4.1	4.1	8.2
Equipment	6.5	8.5	15.0
	<hr/>	<hr/>	<hr/>
Total	95.3	54.4	149.7

Position Title Attorney III		No. of Positions 1	Range / Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7/15
TYPE OF EXPENDITURE		AMOUNT		
Salary		53,304		
Benefits		19,011		
Premium Pay				
Other				
Total Personal Services		73,315		
Travel		5,000		
Contractual		7,400		
Commodities		4,100		
Equipment		6,500		
Other				
Total Cost		95,300		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		95,300		
I-A Receipts1007				
CIP Receipts1061				
Other				
Justification This position is needed to handle the 300 or more additional class A misdemeanors that are expected if HB 61 is enacted. The bill will lower the blood alcohol content from 0.10 percent to 0.08 percent for driving while under the influence of alcohol, resulting in a potential increase of 10 percent in the number of DWI prosecutions handled by the Anchorage District Attorney's Office and other offices in the District where the Anchorage office provides overload and relief coverage. Because of skills required to prosecute class A misdemeanors, this position should be allocated to the Attorney III level.				

Request For New Position

AGENCY DEPARTMENT OF LAW
 BRU Prosecution
 COMPONENT Third Judicial District 0087

FY 94

Page 1 of 2
 Revised Date:

Position Title Legal Secretary I		No. of Positions 1	Range / Step 10B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location Anchorage		Election District 7/15
TYPE OF EXPENDITURE		AMOUNT		
Salary		25,524		
Benefits		11,780		
Premium Pay				
Other				
Total Personal Services		37,304		
Travel				
Contractual		4,500		
Commodities		4,100		
Equipment		8,500		
Other				
Total Cost		54,404		
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts1002				
G.F. Match1003				
General Fund1004		54,404		
I-A Receipts1007				
CIP Receipts1061				
Other				
Justification This position is needed to handle the paperwork and witness scheduling for an additional 300 misdemeanors that are expected to be handled if HB 61 is enacted. Full-time legal secretarial assistance is required due to the large number of misdemeanor trials that are expected. Preparation of legal pleadings and other documentation is appropriately handled by the Legal Secretary I classification.				

Request For New Position

AGENCY DEPARTMENT OF LAW
 BRU Prosecution
 COMPONENT Third Judicial District 0087

FY 94

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: "An Act relating to the offense of BRU: Statewide Programs; Institutions
operating a motor vehicle... while intoxicated..." Component: Statewide Programs; Institutions
 Sponsor: Rep. Nordlund
 Requestor: Rep. Nordlund COMPONENT SERIAL NO. 1860: 1858

Expenditures/Revenues:

	(Thousands of Dollars)					
	FY94	FY95	FY96	FY97	FY98	FY99
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING:

(Thousands of Dollars)

	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS: (Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Dana LaTour *D. LaTour* Phone: 465-3376
 Division: Office of the Commissioner Date: 2-23-93
 Approved by Commissioner: Lloyd G. Rupp *L. G. Rupp for* Date: 2-23-93
 Agency: Department of Corrections

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Fiscal Analysis

HB 61: "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated;"

Page 2

This bill amends AS 28 by lowering the blood alcohol limit for drunk driving from 0.10 to 0.08 percent. Although the crime remains a class a misdemeanor, the bill provides that a court shall impose a minimum mandatory fine of \$250. The department assumes that although the court can impose a sentence of incarceration, in most cases it will order only a fine.

The Department of Public Safety provided the department with data that shows the motorists stopped by Alaska State Troopers for suspicion of driving while under the influence of alcohol test on the intoximeter at an average blood alcohol level of 0.19 percent. Statistics from the Juneau Police Department show that in 1990 148 people were tested on the intoximeter, and none tested at between 0.08 and 0.10 percent.

Considering the infrequency of the number of offenders whose test result fall into the 0.08 and 0.10 rate, it is assumed that HB 61 will not have a significant fiscal impact on the Department.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Department of Corrections
 Title: "An Act relating to the offense of operating a motor vehicle... while intoxicated..." BRU: Statewide Programs; Institutions
 Component: Statewide Programs; Institutions
 Sponsor: Rep. Nordlund
 Requestor: Rep. Nordlund COMPONENT SERIAL NO. 1860; 1858

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE FUND SOURCE:	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING:

(Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ -0-

ANALYSIS:

(Attach a separate page if necessary)

See attached fiscal analysis.

Prepared by: Dana LaTour
 Division: Office of the Commissioner
 Approved by Commissioner: Lloyd G. Rupp
 Agency: Department of Corrections

Phone: 465-3376
 Date: 2-23-93
 Date: 2-23-93

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Fiscal Analysis

HB 61: "An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated;"

Page 2

This bill amends AS 28 by lowering the blood alcohol limit for drunk driving from 0.10 to 0.08 percent. Although the crime remains a class a misdemeanor, the bill provides that a court shall impose a minimum mandatory fine of \$250. The department assumes that although the court can impose a sentence of incarceration, in most cases it will order only a fine.

The Department of Public Safety provided the department with data that shows the motorists stopped by Alaska State Troopers for suspicion of driving while under the influence of alcohol test on the intoximeter at an average blood alcohol level of 0.19 percent. Statistics from the Juneau Police Department show that in 1990 148 people were tested on the intoximeter, and none tested at between 0.08 and 0.10 percent.

Considering the infrequency of the number of offenders whose test result fall into the 0.08 and 0.10 rate, it is assumed that HB 61 will not have a significant fiscal impact on the Department.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offense of operating a motor vehicle, aircraft or watercraft while intoxicated" BRU: Public Defender Agency
 Component: Public Defender Agency
 Sponsor: Reps. Nordlund, Ulmer
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES	52.5	108.0	111.2	114.5	117.0	121.4
TRAVEL	-0-	-0-	-0-	-0-	-0-	-0-
CONTRACTUAL	-0-	-0-	-0-	-0-	-0-	-0-
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	55.5	109.0	112.2	115.5	118.9	122.4

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

REVENUE FUND SOURCE:						
----------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	55.5	109.0	112.2	115.5	118.9	122.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	55.5	109.0	112.2	115.5	118.9	122.4

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPCRARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary)

See attached.

Prepared by: John Salemi, Public Defender
 Division: Public Defender Agency
 Approved by Commissioner: Nancy Bear Usera
 Agency: Administration

Phono: 279-7541
 Date: _____
 Date: 2/24/93

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CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 61

HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in his/her system in order to be found guilty of driving while intoxicated. Under present law a suspected drunk driver who takes a chemical test and is found with 0.10% or more (by weight) of alcohol in his/her blood is presumed by the court to be under the influence. If found guilty of said offense, mandatory minimum penalties must be imposed.

HB 61 lowers the amount of alcohol which needs to be found in the blood in order for a person to be presumed guilty of driving while intoxicated. This proposal also changes the evidentiary presumptions with respect to this issue. See Section 4, paragraph (a)(4), amending A.S. 28.35.033.

This bill makes distinctions, in terms of punishment, between those individuals who are convicted of DWI with an alcohol level of 0.10% or higher and those whose alcohol level is at least 0.08% but less than 0.10% blood alcohol level. It appears from the bill that a fine of \$250 is the only mandatory punishment. If this bill passes into law, it remains to be seen how the courts will otherwise distinguish, in terms of punishment, a .08% offender from a .10% offender.

The Public Defender supports all legislative enactments which reasonably deter driving while under the influence. Other states have lowered the blood alcohol level as is done through this proposal.

Fiscal Impact

There will be distinct fiscal impact on the Public Defender Agency if this bill becomes law. Under present law individuals who fall into the .08% - .10% range typically are offered a reduced charge of Reckless Driving in exchange for a plea of no contest. This charge carries no significant mandatory minimum penalties, does not have the same stigma as a DWI conviction and in other ways is a more acceptable resolution of a case, from a defendant's perspective, than is a conviction for drunk driving. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, it is likely additional resources will be required so that effective legal representation can be provided. It is felt that the fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks. In that the effective date for enactment is January 1, 1994, the requested FY 94 personal services expenditures are for one half of the fiscal year.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 61

Budget Analysis

Anchorage

Paralegal II 16A 25.8

Fairbanks

Paralegal II 16A 26.7

100	Personal Services	52.5
200	Travel	-0-
300	Contractual	-0-
400	Supplies	1.0
500	Equipment (one time)	<u>2.0</u>
	TOTAL	55.5

Position Title Paralegal Assistant II		No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 24.0	Location EBA - JBA		Election District 7 - 20
TYPE OF EXPENDITURE		Amount	Justification HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in their system in order to be found guilty of driving while intoxicated. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, additional resources will be required so that effective legal representation can be provided. The fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.	
Salary	74,340			
Benefits	30,550			
Premium Pay				
Other				
Total Personal Services	104,890			
Travel	-0-			
Contractual	-0-			
Commodities	1.0			
Equipment	2.0			
Other				
Total Cost	107,890			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	107,890		
I-A Receipts	1007			
CPP Receipts	1061			
Other				

**Request For
New Position**

AGENCY Department of Administration
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY _____

Page 4 of 4
 Revised Date: _____

FISCAL NOTE
STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HB 61

Revision Date: _____
 Title: 'An Act relating to the offenses of operating a motor vehicle. . . .'

 Sponsor: Reps. Nordlund, Ulmer
 Requestor: House Transportation

Department Affected: Administration
 BRU: Office of Public Advocacy
 Component: Office of Public Advocacy

 COMPONENT SERIAL NO. 43

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: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Brant McGee, Public Advocate
 Division: Office of Public Advocacy

Phone: 274-1684
 Date: _____

Approved by Commissioner: Nancy Bear Usura
 Agency: Administration

Date: 2/24/93

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Amendment

PROPOSED AMENDMENT

By

Renumber Section 5 as Section 6

Add a new Section 5 to read:

This Act takes effect only if the state fails to become eligible before January 1, 1995, for a basic federal grant to reduce traffic safety problems as required under 23 U.S.C. 410(c). Before January 1, 1995, the commissioner of the Department of Public Safety shall notify the revisor of statutes regarding the eligibility of the state to receive a basic grant as described in this section.