

SB

279

STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 279
(S) Publish Date: 2-4-94

Revision Date: _____
Title: "An Act relating to driving a motor vehicle ..."
Sponsor: Rules/By Request of the Governor
Requestor: Governor's Office

Department Affected: Department of Law
BRU: Prosecution
Component: All
COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division
Approved by Commissioner: Bruce M. Botelho, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: January 25, 1994
Date: January 25, 1994

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For further dis

INOR'S LEGISLATIVE OFFICE
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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION:

This bill makes several changes to state law to provide for "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles that are in accidents that cause death or serious physical injury to another person. Of particular importance, is the provision for blood chemical tests, after a serious accident, because drug use often goes undetected by breath chemical tests. Consequently, the bill will assist in the collection of better evidence for use by state prosecutors and will not, therefore, have a fiscal impact.

No. 2
 Bill Version: SB 579
 (S) Publish Date: 2-4-94

1994 LEGISLATIVE SESSION

Effective Date: _____
 Title: Relating to operating a motor vehicle
 Sponsor: Rules Committee
 Requestor: Governor

Department Affected: Administration
 BRU: Public Defender Agency
 Component: Public Defender Agency
 COMPONENT SERIAL NO. 3540

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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 EXPENDITURES	0	0	0	0	0	0
CHANGE IN REVENUES ()	0	0	0	0	0	0

FUNDING SOURCE: (Thousands of Dollars)

2 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

Estimate of any current year (FY 94) cost: \$

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 264-4400
 Date: _____

Approved by Commissioner: Nancy Bear Ujersa, Commissioner
 Title: Department of Administration

Date: 2/15/93

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

No. 2
Bill Version: SB 279
(S) Publish Date: 2-4-94

Revision Date: _____ Dept. Affected: Public Safety
Title: Mandatory Drug Alcohol Testing BRU: DPS Statewide Support
Component: Laboratory Services
Sponsor: Ballas
Requestor: Governor COMPONENT SERIAL NO. 527

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

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	49.6	49.6	49.6	49.6	49.6	49.6
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	49.6	49.6	49.6	49.6	49.6	49.6

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

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other Interagency Receipts	49.6	49.6	49.6	49.6	49.6	49.6
TOTAL	49.6	49.6	49.6	49.6	49.6	49.6

Estimate of current year (FY 94) impact: \$ 0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary.)

See attached analysis.

Prepared By: Francis C. Allan Phone: (907) 269-5531
Division: Administrative Services Date: 01/10/94
Approved by Commissioner: *Richard E. Burton* Date: 01/10/94
Agency: Richard E. Burton, Dept. of Public Safety

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Department of Public Safety
Fiscal Note Analysis
Law Log 94-0019
Mandatory Drug/Alcohol Testing
Page 2 of 4

In 1992, 382 major injury crashes involving approximately 550 drivers and 89 fatal crashes involving approximately 125 drivers were reported statewide.

Implementation of this legislation will require chemical test or tests to be administered at the direction of a law enforcement officer who has reasonable grounds to believe that a person was operating or driving a motor vehicle or commercial vehicle involved in an accident that causes death or serious physical injury to another person, for the purpose of determining the presence of controlled substances in that person's blood and urine, even if the person is not under arrest.

The Scientific Crime Detection Laboratory oversees all breath instrument tests statewide. Approximately 6,000 DWI breath tests are conducted per year by city and state. Additionally 250 blood tests are administered for the purpose of determining the alcohol content of the person's blood. It is estimated that approximately 300 chemical tests will be administered statewide per year to detect the apresence of alcohol and/or controlled substances in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person.

To perform this function the Scientific Crime Detection Laboratory will require one additional scientist, a Criminalist I, who will be a trained Toxicologist. This employee will utilize a sophisticated Ion Trap Mass Spectrometer instrument to analyze urine and blood samples to determine the presence or the lack of the presence of alcohol and/or controlled substances. Other duties performed by this employee would include: instrumental identification of controlled substances; drug analysis of specimens from suspects in murder and assault cases; analyses of solid dosages of controlled substances; and other tasks associated with the Statewide Breath Alcohol Program such as instrument calibration and certification.

Currently, the Scientific Crime Detection Laboratory is not performing these toxicolcgy analyses; they are sent out-of-state. To our knowledge, there are no laboratories in the state (other than this laboratory) equipped to do these analyses. Additionally, if court testimony is needed of the analyst, it is very costly to bring them up from the Lower 48 for court purposes.

Department of Public Safety
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Page 3 of 4

It is anticipated that federal highway funds through the Highway Safety Planning Agency will be available to fund the initial three years of this position. Contingent upon the success of the program and review by the regional administrator, federal highway funds may be available to continue this position beyond the initial three year period.

PERSONAL SERVICES

Salary - Criminalist I Range 15, Step A	\$34,260
Benefits	<u>15,321</u>

Total Personal Services

\$49,581

POSITION INFORMATION HAS BEEN UPDATED AND FUNDING HAS BEEN UPDATED.
12/30/93 Position Information Inquiry/Update

07:58:10

Position: 12-12#091 Project: 0 Salary Costs: 34,260
Component: 12-62-06-02-01-10 Benefits Costs: 15,32
Scenario: 3 FY: 95 COLA %= 0.00 Total Costs: 49,581.32

Actuals not available (Status: UNKNOWN) Retirement Code: A

00/00/00 ° Step: A for 12.0 months & Step: B for 0.0 months (total: 12.00)
0 ° Merit Date; use merit defaults? N (0.0 @ & 0.0 @)
0 ° Class/Sched Prefix: 1 Schedule: 1A (actual:)
° Bargaining Unit: GG Range: 15 (actual:)
° Location Code: EBA Place: ANCHORAGE
° Job Class Code: P8371 Title: CRIMINALIST I
° Seasonal Indic.: F Type: -

Optional Override Salary Rates:

Monthly Rate: 0.00 for 0.0 months ? rate of 0.00 for 0.0 months
Hourly Rate: 0.00 for 0.0 months Frozen at this rate? (Y/N): N

Press ENTER to update record; enter # or use PF key to go to another screen:
1=Premium pay info 2=Funding info 4=Code Translations 6=Calculations
7=MISC NEW POS DATA 8=Detail Report 12=Exit w/o update Selection: 0_

S20

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STATE OF ALASKA
1994 LEGISLATIVE SESSION

Bill Version: SB 234
(S) Publish Date: 2-4-94

Revision Date: _____
Title: Relating to operating a motor vehicle
Sponsor: Rules Committee
Requestor: Governor

Department Affected: Administration
BRU: Office of Public Advocacy
Component: Office of Public Advocacy
COMPONENT SERIAL NO. 43

EXPENDITURES/REVENUES:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
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	0.0	0.0	0.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()	0	0	0	0	0	0
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FUNDING SOURCE:

(Thousands of Dollars)

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
4 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	0.0	0.0	0.0

Estimate of any current year (FY 94) cost: \$ 0

POSITIONS:

	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary.)

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

Phone: 274-1684
Date: _____

Approved by Commissioner: Nancy Bear Usher
Agency: Administration

Date: 1/27/94

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GOVERNOR HICKEL'S DWI LAWS (SB 279 & HB 445)

Governor Hickel has introduced legislation to remove the impaired driver from the Alaska's highways. The main objective of this legislation is to provide "implied consent" for, and administration of, chemical tests to detect the presence of drugs in drivers of motor vehicles or commercial motor vehicles involved in accidents that cause death or serious physical injury.

Impaired driving, and crashes related to it account for more than half of all traffic deaths in Alaska and is among the nation's leading problems. Despite a rising tide of public indignation, the wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to Alaska's highways.

The Governor's legislation amends the implied consent statutes to specify that a person who operates a motor vehicle or commercial motor vehicle in this state is considered to have given consent to submit to a chemical test or tests of the person's blood and urine for the purpose of determining the presence of both alcohol and drugs if the person is involved in an accident that causes death or serious physical injury to another person, even if the person is not under arrest. The tests may be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating a motor vehicle or commercial vehicle that was involved in an accident that caused death or serious physical injury to another person.

The penalty for refusal to submit to a chemical test under the provision of the legislation is a Class A misdemeanor and will result in revocation of the driver's license, privilege to drive, or privilege to obtain a license, in addition to other criminal penalties. If a person has been notified of the penalties that will result from refusal to submit to a chemical test, and the person refuses to submit, the chemical test may not be given unless the person has been arrested and the arrest resulted from an accident that causes death or serious physical injury to another person.

Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. This legislation will provide law enforcement and prosecutors with the tools they need to combat the significant highway safety problems presented by those drivers who use drugs and then cause fatal or serious injury accidents.

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RECENT ACTIVITIES OF THE INTERNATIONAL ASSOCIATION FOR
CHEMICAL TESTING

A Report to the National Safety Council Committee on Alcohol and Other
Drugs
October 6, 1993
Chicago, IL

prepared by Patrick Harding, IACT liaison to the CAOD

Mr. Chairman,

The International Association for Chemical Testing continues to grow in membership. In keeping with the pledges of our two organizations to keep each other informed of activities, members of the COAD have been placed on our mailing list to receive the IACT Newsletter. Additionally, the minutes of COAD meetings are summarized and published in the Newsletter for the benefit of IACT members.

The following report is a summary of the some of IACT's recent activities:

RESOLUTIONS

"Mandatory Alcohol/Drug Testing of All Drivers in Fatal and Serious Injury Crashes"

Whereas, alcohol and other drug involvement is a major factor in fatal and serious traffic crashes, and

Whereas, the best method for confirming alcohol and other drug involvement in drivers is to obtain an alcohol/drug test, and

Whereas, currently only 73 percent of fatally injured drivers and 25 percent of surviving drivers in fatal crashes are tested for alcohol in the United States, and

Whereas, drug testing of fatally injured drivers and surviving drivers in fatal and serious injury crashes is not routinely done, and

Whereas, it is important for the scientific community to be able to accurately determine alcohol and other drug involvement in all fatal and serious injury traffic crashes in order to develop and evaluate intervention measures; be it therefore

RESOLVED that the International Association for Chemical Testing urges all jurisdictions to pass and actively implement laws requiring alcohol/drug testing of all drivers involved in fatal and serious injury producing crashes. Such laws, if implemented, would allow year to year tracking of alcohol and other drug involvement in all fatal and serious injury producing crashes in order to evaluate the effectiveness of alcohol/drug countermeasures. Further, such laws would allow and authorize law enforcement agencies to identify alcohol and other drug impaired drivers involved in fatal and serious injury crashes who heretofore have gone undetected.

Adopted March 26, 1993

DRUG IMPAIRED DRIVING

RESOLUTION 93-14 (new)

WHEREAS, people who operate motor vehicles while under the influence of alcohol have long been known to cause thousands of crashes, injuries and deaths each year, but only recently has the magnitude of the problems caused by drug (other than alcohol) impaired drivers come to light; and

WHEREAS, a NHTSA report to Congress disclosed a frequency of drug use by fatally injured drivers is between 10-15 percent; and

WHEREAS, many studies have documented this finding, pointing to a national prevalence of drug impaired driving; and

WHEREAS, NHTSA has developed a standardized curriculum for training police officers as Drug Recognition Experts (DRE);

NOW THEREFORE BE IT RESOLVED, that NAGHSR encourages states to adopt legislation which makes it illegal to operate a motor vehicle while impaired by drugs other than alcohol or in combination with alcohol; and

BE IT FURTHER RESOLVED, that states allow the chemical test sample to be analyzed to determine the presence and/or concentration of drugs other than alcohol.

8-GS2019E

Ford

3/25/94

CS FOR SENATE BILL NO. 279(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to operating or driving a motor vehicle, commercial motor
2 vehicle, aircraft, or watercraft and to classifying certain driving while intoxicated
3 offenses as felonies; and providing for an effective date."

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

5 * Section 1. AS 28.15.165(a) is amended to read:

6 (a) A law enforcement officer shall read a notice, and deliver a copy of it, to
7 a person operating a motor vehicle, commercial motor vehicle, or aircraft, if a
8 chemical test administered under AS 28.33.031(a) or AS 28.35.031(a) or (g) produces
9 a result described in AS 28.35.030(a)(2); a chemical test administered under
10 AS 28.33.031(a) produces a result described in AS 28.33.030(a)(2); or the person
11 refuses to submit to a chemical test authorized under AS 28.33.031(a) [AS 28.33.031]
12 or AS 28.35.031(a) or (g) [AS 28.35.032]. The notice must advise that

13 (1) the department intends to revoke the person's driver's license,
14 privilege to drive, or privilege to obtain a license, refuse to issue an original license

1 to the person, or disqualify the person;

2 (2) the person has the right to administrative review of the action taken
3 against the person's license or determination not to issue an original license;

4 (3) if the person has a driver's license or a nonresident privilege to
5 drive, the notice itself is a temporary driver's license that expires seven days after it
6 is delivered to the person, except that if the person was operating a commercial motor
7 vehicle the person will be ordered out of service for 24 hours under AS 28.33.130;

8 (4) revocation of the person's driver's license, privilege to drive, or
9 privilege to obtain a license, a determination not to issue an original license, or a
10 disqualification of the person, takes effect seven days after delivery of the notice to the
11 person unless the person, within seven days, requests an administrative review.

12 * Sec. 2. AS 28.15.165(c) is amended to read:

13 (c) Unless the person has obtained a temporary permit or stay of a
14 departmental action under AS 28.15.166, if the chemical test administered under
15 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
16 AS 28.35.030(a)(2) or the person refused to submit to a chemical test authorized
17 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032], the
18 department shall revoke the person's license, privilege to drive, or privilege to obtain
19 a license, shall refuse to issue an original license, and, if the chemical test administered
20 under AS 28.33.031(a) produced a result described in AS 28.33.030(a)(2) or the person
21 refused to submit to a chemical test authorized under AS 28.33.031(a)
22 [AS 28.33.031], shall disqualify the person. The department's action takes effect seven
23 days after delivery to the person of the notice required under (a) of this section, and
24 after receipt of a sworn report of a law enforcement officer

25 (1) that a chemical test administered under AS 28.33.031(a) or
26 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
27 chemical test administered under AS 28.33.031(a) produced a result described in
28 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
29 under AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032];

30 (2) that notice under (a) of this section was provided to the person; and

31 (3) describing the

1 (A) circumstances surrounding the arrest and the grounds for the
2 officer's belief that the person operated a motor vehicle, commercial motor
3 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or
4 AS 28.35.030; or

5 (B) grounds for the officer's belief that the person operated
6 a motor vehicle that was involved in an accident causing death or serious
7 physical injury to another person.

8 * Sec. 3. AS 28.15.166(g) is amended to read:

9 (g) The hearing for review of action by the department under AS 28.15.165
10 shall be limited to the issues of whether the law enforcement [ARRESTING] officer
11 had reasonable grounds to believe that the person was operating a motor vehicle that
12 was involved in an accident causing death or serious physical injury to another
13 person, or that the person was operating a motor vehicle, commercial motor
14 vehicle, or aircraft while intoxicated in violation of AS 28.33.030 or AS 28.35.030 and
15 whether

16 (1) the person refused to submit to a chemical test authorized under
17 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032] after being
18 advised that refusal would result in disqualification or the suspension, revocation, or
19 denial of the person's license, privilege to drive, or privilege to obtain a license, and
20 that the refusal is a misdemeanor;

21 (2) the chemical test administered [AUTHORIZED] under
22 AS 28.33.031(a) or AS 28.35.031(a) or (g) produced a result described in
23 AS 28.35.030(a)(2); or

24 (3) the chemical test administered [AUTHORIZED] under
25 AS 28.35.031(a) produced a result described in AS 28.33.030(a)(2).

26 * Sec. 4. AS 28.15.181(a) is amended to read:

27 (a) Conviction of any of the following offenses is grounds for the immediate
28 revocation of a driver's license, privilege to drive, or privilege to obtain a license:

29 (1) manslaughter or negligent homicide resulting from driving a motor
30 vehicle;

31 (2) a felony in the commission of which a motor vehicle is used;

1 (3) failure to stop and give aid as required by law when a motor
2 vehicle accident results in the death or personal injury of another;

3 (4) perjury or making a false affidavit or statement under oath to the
4 department under a law relating to motor vehicles;

5 (5) operating a motor vehicle or aircraft while intoxicated;

6 (6) reckless driving;

7 (7) using a motor vehicle in unlawful flight to avoid arrest by a peace
8 officer;

9 (8) refusal to submit to a chemical test authorized under
10 AS 28.33.031(a) [AS 28.33.031] or AS 28.35.031(a) or (g) [AS 28.35.032 WHILE
11 UNDER ARREST FOR OPERATING A MOTOR VEHICLE, COMMERCIAL
12 MOTOR VEHICLE, OR AIRCRAFT WHILE INTOXICATED];

13 (9) driving while license, privilege to drive, or privilege to obtain a
14 license, canceled, suspended, or revoked, or in violation of a limitation.

15 * Sec. 5. AS 28.33.031(a) is amended to read:

16 (a) A person who operates a commercial motor vehicle in this state is
17 considered to have given consent to a chemical test or tests

18 (1) of the person's breath if the person is lawfully arrested for an
19 offense arising out of acts alleged to have been committed when the person was
20 operating the commercial motor vehicle while intoxicated; the [. THE] test or tests
21 may be administered at the direction of a law enforcement officer who has reasonable
22 grounds to believe that the person was operating a commercial motor vehicle while
23 intoxicated in violation of AS 28.33.030 or AS 28.35.030;

24 (2) of the person's breath and blood for the purpose of determining
25 the alcoholic content of the person's breath and blood, and of the person's blood
26 and urine, for the purpose of determining the presence of controlled substances
27 in the person's blood and urine, if the person is involved in a motor vehicle
28 accident that causes death or serious physical injury to another person; the test
29 or tests may be administered at the direction of a law enforcement officer who
30 has reasonable grounds to believe that the person was operating a commercial
31 motor vehicle that was involved in an accident causing death or serious physical

1 injury to another person.

2 * Sec. 6. AS 28.33.190 is amended to read:

3 Sec. 28.33.190. DEFINITIONS. In this chapter [AS 28.33.100 - 28.33.190],

4 (1) "alcoholic beverage" has the meaning given in AS 04.21.080(b);

5 (2) "commercial motor vehicle" has the meaning given in
6 AS 28.40.100;

7 (3) "controlled substance" means any substance listed as being
8 controlled under AS 11.71 or 21 U.S.C. 812 - 813, or determined under federal
9 regulations to be controlled for purposes of 21 U.S.C. 801 - 813 (Controlled
10 Substances Act);

11 (4) "disqualification" means a withdrawal of the privilege to drive a
12 commercial motor vehicle;

13 (5) "disqualified" means that a person's privilege to drive a commercial
14 motor vehicle has been withdrawn;

15 (6) "drive a commercial motor vehicle" means to affect the movement,
16 attempt to affect the movement, or to be in actual physical control, of a commercial
17 motor vehicle in motion, excluding slight motion incidental to loading, unloading,
18 servicing, or inspecting the vehicle;

19 (7) "employer" means a person who

20 (A) provides compensation to a person who operates a
21 commercial motor vehicle, including wages or other remuneration, whether
22 through an employment relationship or by contract; or

23 (B) acts as an agent of someone who provides compensation to
24 a person who operates a commercial motor vehicle, with authority to allow,
25 require, permit, assign, or authorize the person being compensated to operate
26 a commercial motor vehicle;

27 (8) "hazardous substance" means a substance found by the United
28 States Secretary of Transportation to be hazardous for purposes of 49 U.S.C. 1801 -
29 1813 (Hazardous Materials Transportation Act);

30 (9) "operating a commercial motor vehicle" means

31 (A) to drive a commercial motor vehicle; or

1 (B) whether or not the vehicle is in motion, or is capable of
2 being moved, to be in actual physical control, or to attempt to affect the
3 movement, of a commercial motor vehicle; and

4 (10) "serious traffic violation" means

5 (A) speeding 15 miles per hour or more above the posted limit;

6 (B) reckless or negligent driving, in violation of AS 28.35.040
7 or 28.35.045 or an ordinance with substantially similar elements;

8 (C) violation of a provision of this title, or a regulation adopted
9 under this title, relating to improper lane changes or following too closely, or
10 an ordinance with substantially similar elements; or

11 (D) violation of a law or ordinance relating to traffic control,
12 which was determined by the court by a preponderance of the evidence to have
13 been a factor in causing physical injury to a person.

14 * Sec. 7. AS 28.35.030(b) is amended to read:

15 (b) Except as provided under (n) of this section, driving [DRIVING] while
16 intoxicated is a class A misdemeanor. Upon conviction

17 (1) the court shall impose a minimum sentence of imprisonment of

18 (A) not less than 72 consecutive hours and a fine of not less
19 than \$250 if the person has not been previously convicted;

20 (B) not less than 20 days and a fine of not less than \$500 if the
21 person has been previously convicted once [;

22 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS
23 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED
24 TWICE;

25 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
26 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
27 CONVICTED THREE TIMES;

28 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
29 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
30 CONVICTED FOUR TIMES;

31 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT

1 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
2 CONVICTED MORE THAN FOUR TIMES];

3 (2) the court may not

4 (A) suspend execution of sentence or grant probation except on
5 condition that the person serve the minimum imprisonment under (1) of this
6 subsection;

7 (B) suspend imposition of sentence;

8 (3) the court shall revoke the person's driver's license, privilege to
9 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor
10 vehicle or aircraft that was used in commission of the offense to be forfeited under
11 AS 28.35.036.

12 * Sec. 8. AS 28.35.030 is amended by adding a new subsection to read:

13 (n) A person is guilty of a class C felony if the person is convicted of driving
14 while intoxicated and has been previously convicted two or more times. Upon
15 conviction the court

16 (1) shall impose a minimum sentence of imprisonment of 360 days and
17 a fine of not less than \$1,000;

18 (2) may not

19 (A) suspend execution of sentence or grant probation except on
20 condition that the person serve the minimum imprisonment under (1) of this
21 subsection; or

22 (B) suspend imposition of sentence;

23 (3) shall revoke the person's driver's license, privilege to drive, or
24 privilege to obtain a license under AS 28.15.181, and may order the motor vehicle or
25 aircraft that was used in commission of the offense to be forfeited under AS 28.35.036;
26 and

27 (4) may order as a condition of probation that the person take antabuse
28 or a similar drug intended to prevent the consumption of an alcoholic beverage; a
29 condition of probation imposed under this paragraph is in addition to any other
30 condition authorized under another provision of law.

31 * Sec. 9. AS 28.35.031 is amended by adding a new subsection to read:

1 (g) A person who operates or drives a motor vehicle in this state shall be
2 considered to have given consent to a chemical test or tests of the person's breath and
3 blood for the purpose of determining the alcoholic content of the person's breath and
4 blood and shall be considered to have given consent to a chemical test or tests of the
5 person's blood and urine for the purpose of determining the presence of controlled
6 substances in the person's blood and urine if the person is involved in a motor vehicle
7 accident that causes death or serious physical injury to another person. The test or
8 tests may be administered at the direction of a law enforcement officer who has
9 reasonable grounds to believe that the person was operating or driving a motor vehicle
10 in this state that was involved in an accident causing death or serious physical injury
11 to another person.

12 * Sec. 10. AS 28.35.032(a) is amended to read:

13 (a) If a person under arrest for operating a motor vehicle or aircraft while
14 intoxicated refuses the request of a law enforcement officer to submit to a chemical
15 test authorized under AS 28.33.031(a)(1) [AS 28.33.031(a)] or AS 28.35.031(a), or
16 if a person involved in a motor vehicle accident that causes death or serious
17 physical injury to another person refuses the request of a law enforcement officer
18 to submit to a chemical test authorized under AS 28.33.031(a)(2) or
19 AS 28.35.031(g), after being advised by the officer that the refusal will [, IF THAT
20 PERSON WAS ARRESTED WHILE OPERATING A MOTOR VEHICLE OR
21 AIRCRAFT.] result in the denial or revocation of the driver's license, privilege to
22 drive, or privilege to obtain a license, that the refusal may be used against the person
23 in a civil or criminal action or proceeding arising out of an act alleged to have been
24 committed by the person while operating a motor vehicle or [, AN] aircraft [, OR A
25 WATERCRAFT] while intoxicated, and that the refusal is a crime, a chemical test may
26 not be given, except as provided by AS 28.35.035. If a person under arrest for
27 operating a watercraft while intoxicated refuses the request of a law enforcement
28 officer to submit to a chemical test authorized under AS 28.35.031(a), after being
29 advised by the officer that the refusal may be used against the person in a civil
30 or criminal action or proceeding arising out of an act alleged to have been
31 committed by the person while operating a watercraft while intoxicated, and that

1 the refusal is a crime, a chemical test may not be given, except as provided by
2 AS 28.35.035.

3 * Sec. 11. AS 28.35.032(e) is amended to read:

4 (e) The refusal of a person to submit to a chemical test authorized under
5 AS 28.33.031(a) or AS 28.35.031(a) or (g) [OF BREATH UNDER (a) OF THIS
6 SECTION] is admissible evidence in a civil or criminal action or proceeding arising
7 out of an act alleged to have been committed by the person while operating or driving
8 a motor vehicle or operating an aircraft or watercraft while intoxicated.

9 * Sec. 12. AS 28.35.032(f) is amended to read:

10 (f) Except as provided under (g) of this section, refusal [REFUSAL] to
11 submit to a [THE] chemical test [OF BREATH] authorized by AS 28.33.031(a) or
12 AS 28.35.031(a) or (g) is a class A misdemeanor.

13 * Sec. 13. AS 28.35.032(g) is amended to read:

14 (g) Upon conviction under this section

15 (1) the court shall impose a minimum sentence of imprisonment of

16 (A) not less than 72 consecutive hours and a fine of not less
17 than \$250 if the person has not been previously convicted;

18 (B) not less than 20 days and a fine of not less than \$500 if the
19 person has been previously convicted once [;

20 (C) NOT LESS THAN 60 DAYS AND A FINE OF NOT LESS
21 THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED
22 TWICE;

23 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
24 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
25 CONVICTED THREE TIMES [;

26 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
27 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
28 CONVICTED FOUR TIMES;

29 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
30 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
31 CONVICTED MORE THAN FOUR TIMES];

1 (2) the court may not

2 (A) suspend execution of the sentence required by (1) of this
3 subsection or grant probation, except on condition that the person serve the
4 minimum imprisonment under (1) of this subsection; or

5 (B) suspend imposition of sentence;

6 (3) the court shall revoke the person's driver's license, privilege to
7 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor
8 vehicle or aircraft that was used in commission of the offense be forfeited under
9 AS 28.35.036; and

10 (4) the sentence imposed by the court under this subsection shall run
11 consecutively with any other sentence of imprisonment imposed on the person.

12 * Sec. 14. AS 28.35.032(j) is amended to read:

13 (j) For purposes of this section, convictions for operating or driving while
14 intoxicated under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
15 chemical test [OF BREATH] under this section, if arising out of a single transaction
16 and a single arrest, are considered one previous conviction.

17 * Sec. 15. AS 28.35.032 is amended by adding a new subsection to read:

18 (q) A person is guilty of a class C felony if the person is convicted under this
19 section and has been previously convicted two or more times. Upon conviction,

20 (1) the court shall impose a minimum sentence of imprisonment of 360
21 days and a fine of not less than \$1,000;

22 (2) the court may not

23 (A) suspend execution of the sentence required by (1) of this
24 subsection or grant probation, except on condition that the person serve the
25 minimum imprisonment under (1) of this subsection; or

26 (B) suspend imposition of sentence;

27 (3) the court shall revoke the person's driver's license, privilege to
28 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor
29 vehicle or aircraft that was used in commission of the offense be forfeited under
30 AS 28.35.036;

31 (4) the court may order as a condition of probation that the person take

1 antabuse or a similar drug intended to prevent consumption of an alcoholic beverage;
2 a condition of probation imposed under this paragraph is in addition to any other
3 condition authorized under another provision of law; and

4 (5) the sentence imposed by the court under this subsection shall run
5 consecutively with any other sentence of imprisonment imposed on the person.

6 * Sec. 16. AS 28.35.035(a) is amended to read:

7 (a) If a person is under arrest for an offense arising out of acts alleged to have
8 been committed while the person was operating a motor vehicle, aircraft, or watercraft
9 while intoxicated, and that arrest results from an accident that causes death or physical
10 injury to another person, a chemical test may be administered without the consent of
11 the person arrested to determine the amount of alcohol in that person's breath or blood
12 or to determine the presence of controlled substances in that person's blood and
13 urine.

14 * Sec. 17. AS 28.35.035(b) is amended to read:

15 (b) A person who is unconscious or otherwise in a condition rendering that
16 person incapable of refusal is considered not to have withdrawn the consent provided
17 under AS 28.33.031(a) or AS 28.35.031(a) or (g) and a chemical test may be
18 administered to determine the amount of alcohol in that person's breath or blood or
19 to determine the presence of controlled substances in that person's blood and
20 urine. A person who is unconscious or otherwise incapable of refusal need not be
21 placed under arrest before a chemical test may be administered.

22 * Sec. 18. AS 28.35.036(b) is amended to read:

23 (b) For purposes of this section, convictions for both driving while intoxicated
24 and for refusal to submit to a chemical test authorized [OF BREATH] under
25 AS 28.35.031(a) or (g), if arising out of a single transaction and a single arrest, are
26 considered one previous conviction.

27 * Sec. 19. AS 28.35 is amended by adding a new section to article 2 to read:

28 Sec. 28.35.039. DEFINITION FOR AS 28.35.029 - 28.35.039. In
29 AS 28.35.029 - 28.35.039, "controlled substance" has the meaning given in
30 AS 28.33.190.

31 * Sec. 20. AS 28.40.100(a) is amended by adding a new paragraph to read:

1 (24) "serious physical injury" has the meaning given in
2 AS 11.81.900(b).

3 * Sec. 21. AS 28.35.030(m)(1) is repealed.

4 * Sec. 22. APPLICABILITY. The amendments made by secs. 7, 8, 13, and 15 - 16 of this
5 Act apply to offenses that are committed on or after the effective date of this Act, except that
6 references to previous convictions include convictions occurring before, on, or after the
7 effective date of this Act.

8 * Sec. 23. This Act takes effect July 1, 1994.

Richard L. Burton
Commissioner

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

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Mandatory Drug/Alcohol Testing
Discussion Paper

"A bill to provide for implied consent for, and administration of, chemical test to detect the presence of drugs in drivers of motor vehicles or commercial vehicles that are involved in accidents that cause death or serious physical injury to another person".

This proposed legislation gives law enforcement officers additional tools they need to combat the significant highway safety challenge presented by those drivers who use drugs and then cause fatal or serious injury accidents.

Discussion:

Much deserved attention has been focused on drunk driving, while the related dangers presented by individuals driving under the influence of drugs other than alcohol or taken in conjunction with alcohol or other drugs have had little attention. One of the reasons for the lack of attention has been a lack of legislation allowing for the taking of blood and urine samples in those cases where drug use may be suspected.

The impact of intentional or unintentional drug abuse on motor vehicle operation in our highly mobile society is enormous as there currently are obtainable over 20,000 prescription drugs; 100,000 over-the-counter drugs; 500 illicit drugs; and 200 herbal drugs.

Drug use has become prevalent in our society. An estimated twenty-three million people are marijuana users, at least five million people use cocaine, and even a greater number use psychoactive prescription and over-the-counter medication.

There are unique subcategories of drivers whose apparent drug use patterns differ from those of the general driving population. For example, commercial truck drivers exhibit a substantially lower alcohol-involvement crash rate than do passenger vehicle drivers. In 1985, five percent of the drivers of heavy trucks involved in fatal crashes had been drinking whereas thirty-four percent of the drivers of passenger vehicles involved in fatal crashes had consumed alcohol. However, truck drivers were found to have been more apt to use stimulants.

The National Transportation Safety Board (NTSB) released a study in October 1988 revealing that at least 26 accidents of 189 heavy truck accidents from 1985 to 1987 conclusively involved drug or alcohol abuse. In one case, the driver of a heavy truck struck the rear of a queue of four other heavy trucks; the driver had not slept in the previous forty-four hours and had consumed alcohol, amphetamines, and cocaine in an attempt to stay awake.

Another unique subgroup appears to be young male drivers. An often-cited study (Compton, A Report to Congress 1988) of drug incidence among fatally injured young male drivers in California found higher rates of drug use in general and marijuana and cocaine use in particular than among the general population. One or more drugs were detected in 81 percent of 440 male drivers aged 15 to 34 killed in vehicle crashes, whereas two or more drugs were detected in 43 percent. In addition, drugs other than alcohol rarely were detected alone; the drugs usually were found in combination with alcohol and generally the BAC levels were 0.10 percent or higher. The use of drugs among young drivers is thought to present a greater risk than among the general population since youths are beginning to experiment with drugs and are inexperienced at driving.

The wide variety of drugs, their use in combination with alcohol or other drugs, and their availability combine to produce a major public safety problem to the nation's highways.

It is the consensus of the Highway Safety Planning Agency that passage of this legislation will provide law enforcement with an additional tool in which to remove the impaired driver from the state's highways.

Lorn M. Campbell
Lorn M. Campbell
Executive Director
Alaska Highway Safety Planning Agency

02/08/94
Date

DEPARTMENT OF PUBLIC SAFETY
OFFICE OF THE COMMISSIONER

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February 16, 1994

DRUGS IN SERIOUS INJURY AND FATAL ACCIDENTS

FACT SHEET

1. Very few studies have been conducted of drug use by drivers involved in crashes. What limited data is available has focused on limited geographic areas and special driver populations such as young males.
2. In 1988, the National Highway Transportation Administration synthesized existing research in a report to Congress and found that drugs were present in 10-22 percent of crash involved drivers.
3. Los Angeles Police Department personnel estimate that 20 percent of persons arrested for impaired driving were under the influence of drugs. In addition, when drugs were found in either crash involved or arrested drivers, they were found most often in combination with alcohol.
4. Urine is generally the best specimen to screen for the presence of a drug, but blood is necessary if you wish to know the degree of influence of the drug as well as possible dose and time of administration.
5. If you want to know if a suspect was under the influence of a drug at the time of committing an offense, a blood and urine sample should be collected as close to the time of the offense as possible.
6. In one study blood specimens were obtained from nearly 2,000 fatally injured drivers from seven states. Drugs other than alcohol were present in approximately 18 percent of these drivers.
7. A second recent study which was a far more comprehensive which focused on fatally injured drivers who died within four hours of the crash. Blood specimens were collected from a sample of 1,882 fatally injured drivers from 13 sampling sites, encompassing three entire states (Massachusetts, North Carolina, and Wisconsin), and selected counties in California, Nevada, Texas and Virginia. The results of the tests are as follows:
 - a. Alcohol was found in 52 percent of fatalities.

- c. 64 percent of drug cases also had alcohol.
 - d. A drug was detected without alcohol in 6.3 percent of fatalities.
 - e. Abuse drugs (e.g., marijuana, cocaine) were found most frequently in the 25-54 age group.
 - f. Marijuana and cocaine were found more frequently in urban crashes than in rural ones.
 - g. Prescription drugs were found most frequently in the over 55 age group.
 - h. Drugs were found mostly in males.
 - i. Regional difference: Amphetamines were found nearly exclusively in California; Marijuana/cocaine were unusually prevalent in Dallas, TX; and Wisconsin had the lowest abuse drug involvement.
8. With a urine sample, the lab is able to screen for a wide range of all types of controlled substances in detail very cheaply. Then the lab is able to go back after identifying the controlled substance in the urine and quantify the amount through the blood test. If blood alone is submitted it is a very cumbersome, slow expensive process to attempt to identify multiple substances or in essence screen the blood.
9. The following substances are usually checked during a routine urine screen.
- A. Stimulants
 - 1. Amphetamines
 - 2. methamphetamine
 - 3. "MDA"
 - 4. Dexedrine
 - B. Depressants
 - 1. Barbiturates
 - 2. Seconal
 - 3. Nembutal
 - C. Tranquilizers
 - 1. Valium
 - 2. Librium
 - D. Opiates
 - 1. Morphine
 - 2. Percodan
 - 3. Heroin
 - 4. Dilaudid
 - E. Antidepressants
 - 1. Elavil

F. Marijuana

G. Cocaine

H. LSD

Lorn M. Campbell

Lorn M. Campbell (Name of Submitter)

HSPA (Agency)

465-4374 (Phone Number)

Repeat DWI

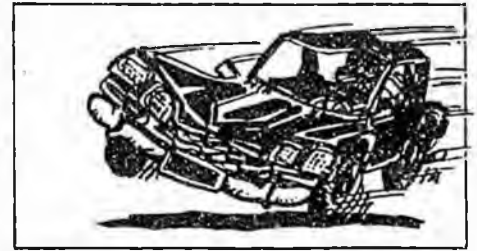
What can be done? For starters, fund prisons, alcohol programs

First comes the almost overwhelming anger. The drunken driver who hit and killed Leigh Ann Barnes and her daughter Lindsey Hurst Saturday morning had five previous drunken driving convictions and nine convictions for driving with a suspended license. What was Daniel James Bushey doing behind the wheel of a car?

Then comes the despair. How do we keep drivers like him off the road?

Daniel Bushey's been to jail already. He should have been there Saturday morning, cooling his heels for another two months from a July conviction. If he had been in jail instead of driving a car 50 mph through a red light, Leigh Ann Barnes and Lindsey would be home safe in Cordova now.

Instead, Daniel Bushey walked away from a halfway house before his sentence ended. That may be cause for anger — at Daniel Bushey, at the system that let him walk — but here is



reason for despair: Even had he served the full sentence, what then?

Repeat offenders account for a disproportionate number of fatal accidents, in spite of licenses suspended and jail time served. In fatal accidents in which the driver is drunk, people with a prior conviction for drunken driving are almost five times more likely to be involved than those with no record, according to the National Highway Transportation Safety Administration.

But we can't let despair convince us there's nothing we can do. Jail may provide only a temporary respite, but it's better than nothing. Just ask the family of Leigh Ann Barnes and Lindsey Hurst.

It's a crime that drunken driving remains a misdemeanor here no matter how many times a person is convicted of it. At some point — we'd suggest five is more than enough — a repeat conviction should become a felony. If jail is the only way to keep repeat offenders from driving drunk, we need to keep them there for longer than the 365-day maximum allowed under the misdemeanor charge.

But tougher laws are only as good as their enforcement, and we don't have enough jail space for the prisoners we have now. That's why Daniel Bushey was in a halfway house instead of a jail — it's cheaper.

Gov. Wally Hickel wants to increase funding for the Corrections Department, but a House subcommittee is recommending a 5 percent cut. That's absurd.

As for long-term solutions, the same subcommittee is also recommending cutting state grants for substance abuse programs by \$8 million. Tell the family of Leigh Ann Barnes and Lindsey Hurst we don't have an alcohol abuse problem in this state. Then vent your anger to the House Finance Committee.

NATIONAL SAFETY COUNCIL

POLICY STATEMENT

COMMITTEE ON ALCOHOL AND OTHER DRUGS

ENFORCEMENT OF LAWS AIMED AT ALCOHOL-IMPAIRED DRIVING

There is strong scientific consensus suggesting that the public's perception of effective enforcement appears to be a strong deterrent to alcohol impaired driving. In order to enhance the effectiveness of enforcement activities in preventing impaired driving, the National Safety Council recommends that jurisdictions:

Implement new enforcement programs requiring chemical tests of body substance samples for all drivers involved in nighttime crashes.

Consider the use of new technologies such as passive alcohol sensors and motor vehicle ignition interlocks.

Develop and use highly visible and widely publicized enforcement approaches that increase the public's perception of the risk of apprehension.

Passed by the Committee on Alcohol and Other Drugs, November 4, 1992.