

**HB**

**159**

CS FOR HOUSE BILL NO. 159(JUD)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Bunde

A BILL

FOR AN ACT ENTITLED

1 "An Act allowing a person under age 21 to be arrested by a peace officer without  
2 a warrant for illegal possession, consumption, or control of alcohol; relating to the  
3 offenses of driving while intoxicated and failure to submit to a chemical test of breath  
4 or blood; and providing for an effective date."

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

6 \* Section 1. AS 12.25.030(b) is amended to read:

7 (b) In addition to the authority granted under (a) of this section, a peace officer  
8 without a warrant may arrest a person when the peace officer has reasonable cause for  
9 believing that the person has committed a crime under, or violated conditions imposed  
10 as a part of the person's release before trial on misdemeanor charges brought under,

11 (1) AS 04.16.050;

12 (2) AS 11.41.270 or AS 11.56.740; or

13 (3) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an



1 person has been previously convicted more than four times and is not subject to  
2 punishment under (n) of this section: and is not subject to

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 drive,  
9 or privilege to obtain a license under AS 28.15.181, and may order the motor vehicle or  
10 aircraft that was used in commission of the offense to be forfeited under AS 28.35.036.

11 \* Sec. 4. AS 28.35.030(m)(4) is amended to read:

12 (4) "previously convicted" means having been convicted in this or another  
13 jurisdiction, within 10 years preceding the date of the present offense, of any of the  
14 following offenses [OR OF ANOTHER LAW OR ORDINANCE WITH  
15 SUBSTANTIALLY SIMILAR ELEMENTS]; however, convictions for any of these  
16 offenses, if arising out of a single transaction and a single arrest, are considered one  
17 previous conviction:

18 (A) operating a motor vehicle, aircraft, or watercraft while  
19 intoxicated, in violation of this section or in violation of another law or  
20 ordinance with substantially similar elements, except that the other law or  
21 ordinance may require a lower level of alcohol in the person's blood or  
22 breath than imposed under (a)(2) of this section:

23 (B) refusal to submit to a chemical test in violation of  
24 AS 28.35.032 or in violation of another law or ordinance with substantially  
25 similar elements; or

26 (C) operating a commercial motor vehicle while intoxicated in  
27 violation of AS 28.33.030 or in violation of another law or ordinance with  
28 substantially similar elements, except that the other law or ordinance may  
29 require a lower level of alcohol in the person's blood or breath than imposed  
30 under AS 28.33.030(a)(2).

31 \* Sec. 5. AS 28.35.030 is amended by adding a new subsection to read:

1 (n) A person is guilty of a class C felony if the person is convicted of driving  
2 while intoxicated and has been previously convicted two or more times. For purposes of  
3 determining if a person has been previously convicted, the provisions of (m)(4) of this  
4 section apply, except that only convictions occurring within five years preceding the date  
5 of the present offense may be included. Upon conviction the court

6 (1) shall impose a fine of not less than \$5,000 and a minimum sentence  
7 of imprisonment of not less than

8 (A) 120 days if the person has been previously convicted twice;

9 (B) 240 days if the person has been previously convicted three or  
10 more times;

11 (2) may not

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

15 (B) suspend imposition of sentence;

16 (3) shall revoke the person's driver's license, privilege to drive, or  
17 privilege to obtain a license under AS 28.15.181(c);

18 (4) may order as a condition of probation or parole that the person take  
19 a drug or combination of drugs, intended to prevent the consumption of an alcoholic  
20 beverage; a condition of probation imposed under this paragraph is in addition to any  
21 other condition authorized under another provision of law; and

22 (5) may also order forfeiture under AS 28.35.036 of the vehicle or aircraft  
23 used in the commission of the offense, subject to remission under AS 28.35.037.

24 \* Sec. 6. AS 28.35.032(f) is amended to read:

25 (f) Except as provided under (g) of this section, refusal [REFUSAL] to  
26 submit to a chemical test authorized by AS 28.33.031(a) or AS 28.35.031(a) or (g) is a  
27 class A misdemeanor.

28 \* Sec. 7. AS 28.35.032(g) is amended to read:

29 (g) Upon conviction under this section

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

31 (A) not less than 72 consecutive hours and a fine of not less than

1 \$250 if the person has not been previously convicted;

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

4 (C) not less than 60 days and a fine of not less than \$1,000 if the  
5 person has been previously convicted twice and is not subject to punishment  
6 under (q) of this section;

7 (D) not less than 120 days and a fine of not less than \$2,000 if the  
8 person has been previously convicted three times and is not subject to  
9 punishment under (q) of this section;

10 (E) not less than 240 days and a fine of not less than \$3,000 if the  
11 person has been previously convicted four times and is not subject to  
12 punishment under (q) of this section;

13 (F) not less than 360 days and a fine of not less than \$4,000 if the  
14 person has been previously convicted more than four times and is not subject to  
15 punishment under (q) of this section;

16 (2) the court may not

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

20 (B) suspend imposition of sentence;

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

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

26 \* Sec. 8. AS 28.35.032 is amended by adding a new subsection to read:

27 (q) A person is guilty of a class C felony if the person is convicted under this  
28 section and has been previously convicted two or more times. For purposes of  
29 determining if a person has been previously convicted, the provisions of  
30 AS 28.35.030(m)(4) apply, except that only convictions occurring within five years  
31 preceding the date of the present offense may be included. Upon conviction,

1 (1) the court shall impose a fine of not less than \$5,000 and a minimum  
2 sentence of imprisonment of not less than

3 (A) 120 days if the person has been previously convicted twice;

4 (B) 240 days if the person has been previously convicted three or  
5 more times;

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

10 (B) suspend imposition of sentence;

11 (3) the court shall revoke the person's driver's license, privilege to drive,  
12 or privilege to obtain a license under AS 28.15.181(c);

13 (4) the court may order as a condition of probation or parole that the  
14 person take a drug or combination of drugs intended to prevent consumption of an  
15 alcoholic beverage; a condition of probation imposed under this paragraph is in addition  
16 to any other condition authorized under another provision of law;

17 (5) the sentence imposed by the court under this subsection shall run  
18 consecutively with any other sentence of imprisonment imposed on the person; and

19 (6) the court may also order forfeiture under AS 28.35.036, of the vehicle  
20 or aircraft used in the commission of the offense, subject to remission under  
21 AS 28.35.037.

22 \* Sec. 9. APPLICABILITY. This Act applies to offenses that are committed on or after the  
23 effective date of this Act, except that references to previous convictions include convictions  
24 occurring before, on, or after the effective date of this Act.

25 \* Sec. 10. This Act takes effect July 1, 1995.

9-LS0600\K ✓  
Ford  
3/21/95

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A BILL

FOR AN ACT ENTITLED

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2 without a warrant for illegal possession, consumption, or control of alcohol;  
3 relating to the offenses of driving while intoxicated and failure to submit to a  
4 chemical test of breath or blood; and providing for an effective date."

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

6 \* Section 1. AS 12.25.030(b) is amended to read:

7 (b) In addition to the authority granted under (a) of this section, a peace officer  
8 without a warrant may arrest a person when the peace officer has reasonable cause for  
9 believing that the person has committed a crime under, or violated conditions imposed  
10 as a part of the person's release before trial on misdemeanor charges brought under.

11 (1) AS 04.16.050 or an ordinance with similar elements:

12 (2) AS 11.41.270 or AS 11.56.740; or

13 (3) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an  
14 ordinance with elements substantially similar to the elements of a crime under

1 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former  
2 spouse of the person who committed the crime; a parent, grandparent, child, or  
3 grandchild of the person who committed the crime; a member of the social unit  
4 comprised of those living together in the same dwelling as the person who committed  
5 the crime; or another person who is not a spouse or former spouse of the person who  
6 committed the crime but who previously lived in a spousal relationship with the person  
7 who committed the crime or is in or has been in a dating, courtship, or engagement  
8 relationship with the person who committed the crime.

9 \* Sec. 2. AS 12.55.102(d) is amended to read:

10 (d) The court may include the cost of the ignition interlock device as a part  
11 of the fine required to be imposed against the defendant under AS 28.35.030(b) or (n)  
12 or 28.35.032(g) or (a).

13 \* Sec. 3. AS 28.35.030(b) is amended to read:

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

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

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

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

21 (C) not less than 60 days and a fine of not less than \$1,000 if  
22 the person has been previously convicted twice and is not subject to  
23 punishment under (n) of this section;

24 (D) not less than 120 days and a fine of not less than \$2,000  
25 if the person has been previously convicted three times and is not subject to  
26 punishment under (n) of this section;

27 (E) not less than 240 days and a fine of not less than \$3,000 if  
28 the person has been previously convicted four times and is not subject to  
29 punishment under (n) of this section;

30 (F) not less than 360 days and a fine of not less than \$4,000 if  
31 the person has been previously convicted more than four times and is not

1                   subject to punishment under (n) of this section;

2                   (2) the court may not

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

6                   (B) suspend imposition of sentence;

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

11               \* Sec. 4. AS 28.35.030(h) is amended to read:

12                   (h) The court shall order a person convicted under this section to satisfy the  
13                   screening, evaluation, referral, and program requirements of an agency authorized by  
14                   the court to make referrals for rehabilitative treatment or to provide rehabilitative  
15                   treatment. If a person is convicted under (n) of this section, the court shall order  
16                   the person to be evaluated as required by this subsection before the court imposes  
17                   sentence for the offense.

18               \* Sec. 5. AS 28.35.030(j) is amended to read:

19                   (j) If a person fails to satisfy the requirements of an authorized agency under  
20                   (i) of this section, the court

21                   (1) may impose any portion of a suspended sentence; however, if the  
22                   person was convicted under (n) of this section, the court shall impose the  
23                   remaining portion of any suspended sentence;

24                   (2) may punish the failure as contempt of the authority of the court  
25                   under AS 09.50.010 or as a violation of a condition of probation; and

26                   (3) shall order the revocation or suspension of the person's driver's  
27                   license, privilege to drive, and privilege to obtain a driver's license until the  
28                   requirements are satisfied.

29               \* Sec. 6. AS 28.35.030(m)(4) is amended to read:

30                   (4) "previously convicted" means having been convicted in this or  
31                   another jurisdiction, within 10 years preceding the date of the present offense, of any

1 of the following offenses [, OR OF ANOTHER LAW OR ORDINANCE WITH  
2 SUBSTANTIALLY SIMILAR ELEMENTS]; however, convictions for any of these  
3 offenses, if arising out of a single transaction and a single arrest, are considered one  
4 previous conviction:

5 (A) operating a motor vehicle, aircraft, or watercraft while  
6 intoxicated, in violation of this section or in violation of another law or  
7 ordinance with similar elements, except that the other law or ordinance  
8 may provide for a lower level of alcohol in the person's blood or breath  
9 than imposed under (a)(2) of this section;

10 (B) refusal to submit to a chemical test in violation of  
11 AS 28.35.032 or in violation of another law or ordinance with similar  
12 elements; or

13 (C) operating a commercial motor vehicle while intoxicated in  
14 violation of AS 28.33.030 or in violation of another law or ordinance with  
15 similar elements, except that the other law or ordinance may provide for  
16 a lower level of alcohol in the person's blood or breath than imposed  
17 under AS 28.33.030(a)(2).

18 \* Sec. 7. AS 28.35.030 is amended by adding a new subsection to read:

19 (n) A person is guilty of a class C felony if the person is convicted of driving  
20 while intoxicated and has been previously convicted two or more times. For purposes  
21 of determining if a person has been previously convicted, the provisions of (m)(4) of  
22 this section apply, except that only convictions occurring within five years preceding  
23 the date of the present offense may be included. Upon conviction the court

24 (1) shall impose a fine of not less than \$5,000 and a minimum sentence  
25 of imprisonment of not less than

26 (A) 120 days if the person has been previously convicted twice;

27 (B) 240 days if the person has been previously convicted three  
28 times;

29 (C) 360 days if the person has been previously convicted four  
30 or more times;

31 (2) may not

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

4 (B) suspend imposition of sentence;

5 (3) shall revoke the person's driver's license, privilege to drive, or  
6 privilege to obtain a license under AS 28.15.181(c);

7 (4) may order as a condition of probation or parole that the person take  
8 a drug or combination of drugs, intended to prevent the consumption of an alcoholic  
9 beverage; a condition of probation imposed under this paragraph is in addition to any  
10 other condition authorized under another provision of law; and

11 (5) may also order forfeiture under AS 28.35.036 of the vehicle or  
12 aircraft used in the commission of the offense, subject to remission under  
13 AS 28.35.037.

14 \* Sec. 8. AS 28.35.032(f) is amended to read:

15 (f) Except as provided under (q) of this section, refusal [REFUSAL] to  
16 submit to a chemical test authorized by AS 28.33.031(a) or AS 28.35.031(a) or (g)  
17 is a class A misdemeanor.

18 \* Sec. 9. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction under this section

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

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

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

25 (C) not less than 60 days and a fine of not less than \$1,000 if  
26 the person has been previously convicted twice and is not subject to  
27 punishment under (q) of this section;

28 (D) not less than 120 days and a fine of not less than \$2,000  
29 if the person has been previously convicted three times and is not subject to  
30 punishment under (q) of this section;

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9 minimum imprisonment under (1) of this subsection; or

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12 drive, or privilege to obtain a license under AS 28.15.181, and may order the motor  
13 vehicle or aircraft that was used in commission of the offense be forfeited under  
14 AS 28.35.036; and

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

17 \* Sec. 10. AS 28.35.032(l) is amended to read:

18 (l) The court shall order a person convicted under this section to satisfy the  
19 screening, evaluation, referral, and program requirements of an agency authorized by  
20 the court to make referrals for rehabilitative treatment or to provide rehabilitative  
21 treatment. If a person is convicted under (q) of this section, the court shall order  
22 the person to be evaluated as required by this subsection before the court imposes  
23 sentence for the offense.

24 \* Sec. 11 AS 28.35.032(n) is amended to read:

25 (n) If a person fails to satisfy the requirements of an authorized agency under  
26 (m) of this section, the court

27 (1) may impose any portion of a suspended sentence; however, if the  
28 person was convicted under (q) of this section, the court shall impose the  
29 remaining portion of any suspended sentence;

30 (2) may punish the failure as contempt of the authority of the court  
31 under AS 09.50.010 or as a violation of a condition of probation; and

1 (3) shall order the revocation or suspension of the person's driver's  
2 license, privilege to drive, and privilege to obtain a driver's license until the  
3 requirements are satisfied.

4 \* Sec. 12. AS 28.35.032 is amended by adding a new subsection to read:

5 (q) A person is guilty of a class C felony if the person is convicted under this  
6 section and has been previously convicted two or more times. For purposes of  
7 determining if a person has been previously convicted, the provisions of  
8 AS 28.35.030(m)(4) apply, except that only convictions occurring within five years  
9 preceding the date of the present offense may be included. Upon conviction,

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12 (A) 120 days if the person has been previously convicted twice;

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25 person take a drug or combination of drugs intended to prevent consumption of an  
26 alcoholic beverage; a condition of probation imposed under this paragraph is in  
27 addition to any other condition authorized under another provision of law;

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29 consecutively with any other sentence of imprisonment imposed on the person; and

30 (6) the court may also order forfeiture under AS 28.35.036, of the  
31 vehicle or aircraft used in the commission of the offense, subject to remission under

1 AS 28.35.037.

2 \* Sec. 13. APPLICABILITY. This Act applies to offenses that are committed on or after  
3 the effective date of this Act, except that references to previous convictions include  
4 convictions occurring before, on, or after the effective date of this Act.

5 \* Sec. 14. This Act takes effect July 1, 1995.

receiving the request. The review provided in this subdivision is not subject to the contested case provisions of the administrative procedure act in sections 14.01 to 14.70. As a result of this review, the commissioner may authorize the issuance at no cost of new registration plates to the registered owner of the vehicle if the registered owner's license or driving privileges were not revoked under section 169.123 or as a result of an impaired driving conviction as defined in section 169.121, subdivision 3.

Review under this subdivision shall take place, if possible, at the same time as any administrative review of the person's license revocation under section 169.123, subdivision 5b.

Subd. 10. Petition for judicial review. (a) Within 30 days following receipt of a notice and order of impoundment under this section, a person may petition the court for review. The petition must include the petitioner's date of birth, driver's license number, and date of the violation. The petition shall state with specificity the grounds upon which the petitioner seeks rescission of the order for impoundment. The petition may be combined with any petition filed under section 169.123, subdivision 5c.

(b) Except as otherwise provided in this section, the judicial review and hearing are governed by section 169.123, subdivisions 5c and 6, and shall take place at the same time as any judicial review of the person's license revocation under section 169.123. The filing of the petition shall not stay the impoundment order. The reviewing court may order a stay of the balance of the impoundment period if the hearing has not been conducted within 60 days after filing of the petition upon terms the court deems proper. The court shall order either that the impoundment be rescinded or sustained, and forward the order to the commissioner of public safety. The court shall file its order within 14 days following the hearing.

(c) In addition to the issues described in section 169.123, subdivision 5c, the scope of a hearing under this subdivision is limited to:

- (1) whether the violator owns, is the registered owner of, possesses, or has access to the vehicle used in the violation; and
- (2) whether a member of the violator's household has a valid driver's license, the violator or registered owner has a limited license issued under section 171.30, the registered owner is not the violator and the registered owner has a valid or limited driver's license, or a member of the registered owner's household has a valid driver's license.

(d) In a hearing under this subdivision, the following shall be admissible in evidence:

- (1) certified copies of the violator's driving records; and
- (2) certified copies of vehicle registration records bearing the violator's name.

Subd. 11. Rescission of revocation and issuance of new plates. If the driver's license revocation that is the basis for an impoundment order is rescinded, the registrar of motor vehicles shall issue new registration

plates for the vehicle at no cost, when the registrar receives an application that includes a copy of the order rescinding the driver's license revocation.

Subd. 12. Issuance of special registration plates. A violator or registered owner may apply to the commissioner for new registration plates, which must bear a special series of numbers or letters so as to be readily identified by traffic law enforcement officers. The commissioner may authorize the issuance of special plates if:

- (1) a member of the violator's household has a valid driver's license;
- (2) the violator or registered owner has a limited license issued under section 171.30;
- (3) the registered owner is not the violator and the registered owner has a valid or limited driver's license; or
- (4) a member of the registered owner's household has a valid driver's license.

The commissioner may issue the special plates on payment of a \$25 fee for each vehicle for which special plates are requested.

Subd. 13. Sale of vehicle subject to impoundment order. A registered owner may not sell a motor vehicle during the time its registration plates have been ordered impounded or during the time its registration plates bear a special series number, unless:

- (1) the sale is for a valid consideration;
- (2) the transferee does not reside in the same household as the registered owner; and
- (3) all elements of section 168A.10 are satisfied.

The registrar may then transfer the title to the new owner upon proper application and issue new registration plates.

Subd. 14. Misdemeanor offenses. A person is guilty of a misdemeanor who:

- (1) fails to comply with an impoundment order under this section;
- (2) files a false statement under subdivision 5 or 6;
- (3) operates a motor vehicle on a street or highway when the vehicle is subject to an impoundment order issued under this section; or
- (4) fails to notify the commissioner of the impoundment order when requesting new plates.

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168.05 Held unconstitutional

CHAPTER 168

MOTOR VEHICLE REGISTRATION, TAXATION, SALE

168.042 Administrative impoundment of plates.

Subdivision 1. Definitions. (a) For purposes of this section, the following terms have the meanings given.

(b) "Violator" means a person who was driving, operating, or in physical control of the motor vehicle when the violation occurred.

(c) "Violation" means a violation of section 169.123 or an impaired driving conviction as defined in section 169.123, subdivision 3, that results in the revocation of a person's driver's license or driving privileges, and also includes an alcohol-related license revocation from another state.

Subd. 2. Violation; issuance of impoundment order. The commissioner shall issue a registration plate impoundment order when a person's driver's license or driving privileges are revoked for a third violation within five years or a fourth or subsequent violation within ten years. The order shall require the impoundment of the registration plates of the vehicle involved in the violation and all vehicles owned by, registered, or leased in the name of the violator, including vehicles registered jointly or leased in the name of the violator and another. An impoundment order shall not be issued for the registration plates of a rental vehicle as defined in section 168.041, subdivision 10, or a vehicle registered in another state.

Subd. 3. Notice of impoundment. An impoundment order is effective when the commissioner or a peace officer acting on behalf of the commissioner notifies the violator or the registered owner of the vehicle of the intent to impound and order of impoundment. The notice must advise the violator of the duties and obligations set forth in subdivisions 5 and of the right to obtain administrative and judicial review. The notice to the registered owner who is not the violator must include the procedure to obtain new registration plates under subdivision 9. If mailed, the notice and order of impoundment is deemed received three days after mailing to the last known address of the violator or the registered owner.

Subd. 4. Peace officer as agent for notice of impoundment. (a) On behalf of the commissioner, a peace officer issuing a notice of intent to revoke and of revocation under section 169.123 shall also serve a notice of intent to impound and an order of impoundment if the violation is the third violation within five years or the fourth or subsequent violation within ten years. If the vehicle involved in the violation is accessible to the officer at the time the impoundment order is issued, the officer shall seize the registration plates subject to the impoundment order. The officer shall destroy all plates seized or impounded under this section. The officer shall send to the commissioner copies of the notice of intent to impound and the order of impoundment and a notice that registration plates impounded and seized under this section have been destroyed.

Subd. 5. Temporary permit. If the vehicle is registered to the

violator, the officer shall issue a temporary vehicle permit that is valid for seven days when the officer issues the notices under subdivision 4. If the vehicle is registered in the name of another, the officer shall issue a temporary vehicle permit that is valid for 45 days when the notices are issued under subdivision 3. The permit must be in a form determined by the registrar and whenever practicable must be posted on the left side of the inside rear window of the vehicle. A permit is valid only for the vehicle for which it is issued.

Subd. 6. Vehicles subject to impoundment orders. Within seven days after issuance of the impoundment notice, a person who receives a notice of impoundment and impoundment order shall surrender all registration plates subject to the impoundment order that were not seized by a peace officer under subdivision 4. Registration plates required to be surrendered under this subdivision must be surrendered to a Minnesota police department, sheriff, or the state patrol, along with a copy of the impoundment order. A law enforcement agency receiving registration plates under this subdivision shall destroy the plates and notify the commissioner that they have been destroyed. The notification to the commissioner shall also include a copy of the impoundment order.

Subd. 7. Vehicle not owned by violator. A violator may file a sworn statement with the commissioner within seven days of the issuance of an impoundment order stating any material information relating to the impoundment order, including that the vehicle has been sold or destroyed and supplying the date, name, location, and address of the person or entity that purchased or destroyed the vehicle. The commissioner shall rescind the impoundment order if the violator shows that the impoundment order was not properly issued.

Subd. 8. Reissuance of registration plates. (a) The commissioner shall rescind the impoundment order if a person subject to an impoundment order under this section, other than the violator, files with the commissioner an acceptable sworn statement that the person:

- (1) is the registered owner of the vehicle from which the plates have been impounded under this section;
- (2) is the current owner and possessor of the vehicle used in the violation;
- (3) was not a passenger in the vehicle at the time of the violation; and
- (4) knows that the violator may not drive, operate, or be in physical control of a vehicle without a valid driver's license.

(b) If the order is rescinded, the owner shall receive new registration plates at no cost, if the plates were seized and destroyed.

Subd. 9. Administrative review. At any time during the effective period of an impoundment order, a person may request in writing a review of the impoundment order by the commissioner. On receiving a request, the commissioner or the commissioner's designee shall review the order, the evidence upon which the order was based, and any other material information brought to the attention of the commissioner, and determine whether sufficient cause exists to sustain the order. The commissioner shall report in writing the results of the review within 15 days of

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Table 8: Drunk Driving

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
ALABAMA	32-5A-191	.10% BAC per se at time of driving	Yes on first offense; DUI court referral program approved by state	1st offense: 90 days; 2nd: 1 yr.; 3rd: 3 yrs.	1st offense: imprisonment up to 1 yr. and/or \$250-1000; 2nd within 5 yrs.: up to 1 yr. and \$500-2500; 3rd within 5 yrs.: up to 1 yr. and \$1000-\$5000
ALASKA	28.35.030; 28.15.181	.10% BAC as determined by test taken within 4 hours	Yes, program of alcohol education or rehabilitation that court finds appropriate for term specified by court	1st: 90 days min.; 2nd: 1 yr. min.; 3rd: 10 yrs. min.	1st: min. 72 hrs. and min. \$250; 2nd within 10 yrs.: min. 20 days and min. \$500; 3rd within 10 yrs.: min. 30 days and min. \$1000
ARIZONA	28-692. et seq.	.10% BAC at time of offense	Yes, alcohol abuse screening session by screening or treatment facility approved by health services; alcohol abuse classes or treatment facility if necessary; habitual abuse	1st: 90 days; 2nd within 5 yrs.; revocation; 3rd within 5 yrs.; revocation min. 3 yrs.	1st: min. 24 hrs. and min. \$250 and 8-24 hrs. community service; 2nd within 5 yrs.: min. 60 days and min. \$500; 3rd within five yrs.: min. 6 mos.
ARKANSAS	5-65-103. et seq.	.10% BAC as determined by test	Alcohol Education Program prescribed and approved of by Arkansas Highway Safety Program or alcohol treatment program approved by Office on Alcohol and Drug Abuse Prevention	1st: 90-120 days; 2nd: 12-16 mos.; 3rd: 24-30 mos.; 4th: 3 yrs.	1st: 1 day to 1 yr. prison, court can order public service in lieu of jail and \$150-1000; 2nd within 3 yrs.: 7 days to 1 yr. and \$400-3000; 3rd within 3 yrs.: 90 days to 1 yr. and \$900-5000; 4th within 3 yrs.: felony, 1-6 yrs.; fine only for 2nd and 3rd offenses within 5 yrs.
CALIFORNIA	Veh. §§23152. et seq.	0.10% BAC at time of driving (rebuttably presumed that percentage at time of driving was more than at time of test); if test is less than .05% BAC, BAC presumed not .10% when driving; if test is .05-.10%, not presumption but evidence of .10%; .10% at time of test equals .10% at time of driving	1st: if probation, must participate in alcohol or drug education program designated by court if programs approved of are available in that county; 2nd: if probation, 1 yr. in program acceptable to court	1st: 6 mos., or if probation granted, could be 90 days with exception of traveling to work and rehab program; 2nd: restricted to necessary travel (work and rehab) for 1 yr.; 3rd: 3 yrs.	1st: 96 hrs. to 6 mos. prison and \$390-1000; 2nd within 5 yrs.: 90 days to 1 yr. and \$390-1000; 3rd within 5 yrs.: 120 days to 1 yr. and \$390-\$1000

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
COLORADO	42-2-122.1; 42-4-1202	.15 g. of alcohol per 100 mm. of blood while driving or .15 g. of alcohol per 200 mm. of blood at time of test	Court's discretion up to 2 yrs.; drug and alcohol driving safety program	1 yr.	1st: 5 days to 1 yr. and court may fine \$300-1000 and 48-96 hrs. useful community service; 2nd within 5 yrs.: 90 days to 1 yr. and court may fine \$500-1500 and 60-120 hrs. useful community service
CONNECTICUT	14-227a	.10% BAC at time of offense	Court may order participation in alcohol education and treatment program in addition to any fine or sentence	1st: 1 yr. (court's discretion); 2nd: 2 yrs.; 3rd: 3 yrs.; 4th: permanently	1st: \$500-1000 and jail up to 6 mos. or 100 hrs. community service; 2nd within 5 yrs.: \$500-2000 and jail up to 1 yr.; 3rd within 5 yrs.: \$1000-4000 and jail up to 2 yrs.; 4th within 5 yrs.: \$2000-8000 and jail up to 3 yrs.
DELAWARE	Tit. 21 §4177	.10% BAC as shown by test taken within 4 hours of offense	1st: required program of rehabilitation or course of instruction which may include inpatient up to 6 mos.; 2nd: program of education or rehabilitation which may include inpatient treatment up to 15 mos.	1st or 2nd: 1 yr.; 3rd or more: 18 mos.	1st: \$200-1000 or jail 60 days-6 mos.; for each subsequent offense within 5 yrs. of former offense: \$500-2000 and jail 2-18 mos.
DISTRICT OF COLUMBIA	40-716	.10% BAC; .13% alcohol in urine	No	Yes for unspecified time	1st: up to \$300 and/or 90 days; 2nd within 15 yrs.: up to \$5000 and/or up to 1 yr.; 3rd within 15 yrs.: up to \$10,000 and/or up to 1 yr.

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
FLORIDA	316.193	.10% BAC	Substance abuse course specified by the court	Revocation/suspension upon conviction	1st: \$250-500 and jail up to 6 mos.; 2nd within 3 yrs.: \$500-1000 and jail up to 9 mos.; 3rd within 3 yrs.: \$1000-2500 and jail up to 12 mos.; 4th within 3 yrs.: 3rd degree felony, prison up to 5 yrs.; if first offense BAC exceeds .20%: 1st: \$500-100 and jail up to 9 mos.; 2nd within 3 yrs.: \$1000-2000 and jail up to 12 mos.; 3rd within 3 yrs.: \$2000-5000 and jail up to 12 mos.; additional penalties: 1st: probation up to 1 yr. and community service of 50 hrs. minimum or \$10 fine per hour not worked
GEORGIA	40-5-63; 40-6-391	.10% BAC at time of test		1st: 1 yr.; 2nd within 5 yrs.; 3rd within 5 yrs.; considered habitual offender. 5 yrs.	1st: \$300-1000 and 10 days to 12 mos.; 2nd within 5 yrs.: \$600-1000 and 90 days to 12 mos.; 3rd: \$1000-5000 and 120 days to 12 mos. mandatory
HAWAII	291-4	.10% BAC	1st: 14 hr. minimum alcohol abuse rehab program including education and counseling or comparable program approved by court; subsequent: may be required pending evaluation by substance abuse counselor	1st: 90 days (court can make it 30 days total prohibition and 60 days only for work and rehab); 2nd: 1 yr. absolute prohibition; 3rd: 1-5 yrs.	1st: \$150-1000 and/or min. 48 hrs. jail and/or 72 hrs. community service; 2nd within 5 yrs.: \$500-1000 and min. 48 hrs. jail or min. 80 hrs. community service; 3rd within 5 yrs.: \$500-1000 and 10-180 days jail
IDAHO	18-8004, et seq.	.10% BAC	Alcoholic evaluation (own expense) approved facility; if necessary, an alcoholic treatment program best suited for individual	1st: mandatory up to 180 days (defendant may request for necessary privilege-work and family health needs); 2nd: mandatory 6 mos. after getting out of jail and possibly an additional time up to 1 yr.; 3rd: 1-5 yrs. (no privileges at all)	1st: up to \$1000 and/or up to 6 mos.; 2nd within 5 yrs.: mandatory fine up to \$2000 and jail 10 days to 1 yr.; 3rd within 5 yrs.: felony, jail up to 5 yrs. and may be fined up to \$5000

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
ILLINOIS	625 ILCS 5/11-501, <i>et seq.</i>	.10% BAC; less than .05% at test; presumed not to have required BAC at time of driving; .05%-.10% at test; no presumption of guilt but take it with other evidence; .10% at test; guilty	Professional evaluation to determine if there is abuse problem and extent; defendant pays cost; program must be approved/licensed by Dept. of Alcohol and Substance Abuse	Up to 1 yr.	1st: Class A misdemeanor; jail up to 1 yr., 2nd within 5 yrs.; mandatory min. 48 hrs. jail or min. 10 days community service; 3rd: Class 4 felony, 1-3 yrs. prison
INDIANA	9-30-5-1, <i>et seq.</i>	.10% BAC	No	1st: 90 days to 2 yrs.; 2nd 10 or more yrs. ago: 90 days to 2 yrs.; 2nd 5-10 yrs. ago: 6 mos. to 2 yrs.; 2nd within 5 yrs.: 1-2 yrs.	1st: Class A misdemeanor; 2nd within 5 yrs.: min. 5 days jail or min. 80 hrs. community service in addition to Class D felony (min. 2 yrs.) and may be fined up to \$10,000
IOWA	3213.1, <i>et seq.</i>	.10% BAC	2nd offense: must undergo substance abuse evaluation prior to sentencing; 3rd offense or if evaluation recommends treatment: may be required to commit to treatment	1st: 180 days; 2nd within 6 yrs.: 1 yr.	1st: serious misdemeanor, \$500-1000 and min. 48 hrs. jail, may perform up to 200 hrs. community service in lieu of fine if court allows; 2nd: aggravated misdemeanor, min. \$750 and min. 7 days jail; 3rd: Class D felony, min. \$750 and 30 days to 1 yr. jail
KANSAS	8-1008, 1014, 1557	.10% BAC at time of test	Presentence alcohol and drug evaluation conducted by community-based alcohol and drug safety action program, supervision and monitoring of all convicted persons	1st: 30 days or upon completion of required treatment program (whichever is longer); subsequent: 1 yr. or upon completion of required treatment program (whichever is longer)	1st: \$200-500 and 48 hrs. to 6 mos. jail or 100 hrs. community service; 2nd: \$500-1000 and 90 days to 1 yr. jail; 3rd: \$1000-2500 and 90 days to 1 yr. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
KENTUCKY	189A.010, <i>et seq.</i>	No limit per se, "while under the influence of alcohol"	1st offense: 90 day alcohol or substance abuse program can lessen driver suspension from 6 mos. to 30 days	1st: 6 mos.; 2nd: 1 yr.; 3rd: 2 yrs.	1st: \$250-500 or 48 hrs. to 30 days jail or 2-30 days community labor; 2nd within 5 yrs.: \$350-500 and 7 days to 6 mos. jail and may get 10 days to 6 mos. community labor in addition to jail term; 3rd within 5 yrs.: \$500-1000 and 30 days to 12 mos. jail and may get 10 days to 1 yr. community labor in addition to jail term
LOUISIANA	14:98; 32:414	.10% BAC	Rehabilitation provided for 1st and 2nd offense, includes screening procedure to determine portion of program which may be applicable and appropriate for individual offender	1st: 60 days	1st: \$125-500 and 10 days to 6 mos. jail; 2nd: \$300-500 and 30 days to 6 mos. jail; 3rd: up to \$1000 and 1-5 yrs. jail; 4th: hard labor 10-30 yrs.
MAINE	Tit. 29 §1312	.10% BAC	1st: Education program conducted by Dept. of Human Services; 2nd: education program conducted by Dept. of Human Services and where required by Dept. of Human Services, alcohol or rehab program	1st: 30 days or successful completion of educational program, whichever is longer; 2nd: 1 yr. (may be reduced to 6 mos. on successful completion of educational program)	1st: up to \$1000 and up to 90 days jail; 2nd: \$250-2000 and 24 hrs. to 6 mos. jail
MARYLAND	Transp. 16-205; 16-212; 21-902; 27-101	"While intoxicated or while under the influence of a controlled dangerous substance"	Driver Improvement Program and Alcohol Education Program required	1st: up to 60 days ; 2nd within 3 yrs.: up to 120 days	1st: up to \$1000 and/or up to 1 yr. jail; 2nd within 3 yrs.: up to \$1000 and/or 48 hrs. to 2 yrs. jail, may also receive min. 80 hrs. community service; 3rd within 3 yrs.: up to \$2000 and/or up to 3 yrs. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
MASSACHUSETTS	Ch. 90 §24	No limit per se	1st offense: appropriate to defendant with his/her consent as a condition of probation upon written finding that appropriate and adequate treatment is available to defendant and defendant would benefit and safety of public would not be endangered; minimum 14 days in residential alcohol treatment program	1st: 1 yr.; 2nd: 2 yrs.; 3rd: 5 yrs.; after 2 yrs. can apply for new license on limited basis on grounds of hardship and present/past violation dealt with and under control	1st: \$100-1000 and/or up to 2 yrs. jail; 2nd within 6 yrs.: \$300-1000 and 7 days to 2 yrs. jail; 3rd within 6 yrs.: \$500-1000 and 60 days to 2 yrs. jail
MICHIGAN	MCL 9.2325	.10% BAC	Screening and assessment to determine the likely benefit from rehabilitation. court may order person to participate and successfully complete one or more rehab programs	1st: 6 mos. to 2 yrs. (can get restricted license); 2nd: revoked; 3rd: revoked	1st: \$100-500 and/or up to 90 days jail and costs of prosecution and community service up to 45 days; 2nd within 7 yrs.: \$200-1000 and either 10-90 days community service and up to 1 yr. jail or up to 90 days community service and 48 hrs. to 1 yr. jail; 3rd within 10 yrs.: \$500-5000 and/or 1-5 yrs. jail
MINNESOTA	169.121, et seq.	.10% BAC within 2 hrs. of time of driving	Alcohol problem assessment in counties of more than 10,000 population and report made to court including recommendation as to treatment or rehab program	1st: min. 30 days; 2nd within 5 yrs.: min. 90 days and until court has certified treatment/rehabilitation has been successfully completed; 3rd within 5 yrs.: min. 1 yr. and until rehab completed; 4th within 5 yrs.: min. 2 yrs. and until rehab completed	2nd within 5 yrs.: gross misdemeanor, min. 30 days jail or 8 hrs. community service for each jail day; 3rd within 10 yrs.: gross misdemeanor, min. 30 days jail or 8 hrs. community service for each jail day
MISSISSIPPI	63-11-30	.10% BAC	1st: required alcohol safety education program; subsequent: may participate	1st: 90 days or successful completion of program, whichever is longer; 2nd: 2 yrs. (can be reduced after successful completion of program); 3rd: 5 yrs. (eligible for reinstatement after 3 yrs.); 4th: 5 yrs.	1st: \$250-1000 and/or up to 24 hrs. jail; 2nd within 5 yrs.: \$600-1000 and 48 hrs. to 1 yr. jail or 10 days to 1 yr. community service; 3rd within 5 yrs.: \$800-1000 and 30 days to 1 yr. jail; 4th within 5 yrs.: \$2000-5000 and 90 days to 5 yrs. jail

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Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
MISSOURI	577.012, (b)9	.10% BAC	1st: Court may order participation and successful completion of alcohol or drug-related traffic offender education or rehab program which meets standards established by Dept. of Public Safety and Dept. of Mental Health	Upon failure to submit to breath test	1st: Class C misdemeanor, \$50 mm. and/or up to 3 mos. jail; 2nd within 3 yrs.: Class A misdemeanor, 7 days to 6 mos. jail; 3rd within 3 yrs.: Class D felony, 45 days to 1 yr. jail
MONTANA	61-5-200, 205; 61-8-406, 722	.10% BAC	Defendant shall complete alcohol information course at alcohol treatment program approved by Dept. of Corrections & Human Services which may include alcohol or drug treatment or both if considered necessary by counselor conducting program	Up to 1 yr. per offense	1st: \$100-500 and up to 10 days jail; 2nd: \$300-500 and 48 hrs. to 30 days jail; 3rd: \$500-1000 and 48 hrs. to 6 mos. jail
NEBRASKA	28-106; 39-669.07, <i>et seq.</i>	.10% BAC	None	1st: 6 mos (if judge orders suspension of sentence or probation, 60 days from time of order); 2nd within 10 yrs.: 1 yr. (if judge orders suspension of sentence or probation, 6 mos. from time of order); 3rd within 10 yrs.: 15 yrs. (if judge orders suspension of sentence or probation, 1 yr. from time of order)	1st: \$200-500 and 7-30 days jail; 2nd: \$500 and 30 days jail; 3rd: \$500 and 3-6 mos. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
NEVADA	484.379, <i>et seq.</i>	.10% BAC	1st or 2nd within 7 yrs.: may apply to undergo program of treatment for alcoholism or drug abuse for at least one yr. if classified by physician/counselor as alcoholic or drug abuser; if defendant pays costs and has served jail sentence: 1st: must do educational course on alcohol and substance abuse		1st: \$200-1000 and 2 days to 6 mos. jail or 48 hrs. community service (jail sentence can be lessened if defendant participates in rehab program); 2nd within 7 yrs.: \$500-1000 and 10 days to 6 mos. jail; 3rd within 7 yrs.: \$2000-5000 and 1-6 yrs. jail; in addition to any penalty, civil penalty of \$35 paid to court
NEW HAMPSHIRE	263:65-a; 265.82	.10% BAC	Yes, Impaired Driver Intervention Program: must successfully complete to get license back; must be approved by director of Office of Alcohol and Drug Abuse Prevention and commissioner	1st: 60 days to 2 yrs.; 2nd: 3 yrs.; 3rd: Indefinite, min. 3 yrs.	1st: up to \$1000; 2nd within 7 yrs.: up to \$1000 and 7 days to 6 mos. jail; 3rd within 7 yrs.: up to \$1000 and 7 days to 6 mos. jail
NEW JERSEY	39:4-50	.10% BAC	Screening evaluation referral program and fee requirements of Div. of Alcoholism's Intoxicated Driving Programs Unit and 12-48 hrs. in two consecutive days in Intoxicated Driver Resource Center and a program of alcohol education and highway safety as proscribed by director of Div. of Motor Vehicles	6 mos. to 1 yr.; 2nd: 2 yrs.; 3rd: 10 yrs.	1st: \$250-400 and up to 30 days jail; 2nd within 10 yrs.: \$500-1000, 30 days community service, and 48 hrs. to 90 days jail; 3rd within 10 yrs.: \$1000 and min. 180 days jail; up to 90 days of jail can be exchanged for community service

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
NEW MEXICO	66-5-29; 66-8-102	.10% BAC	May be required by court to enroll in screening program to determine level of abuse and recommendation of treatment, if necessary; must complete any recommended treatment program required by court: 1st offense: can attend driver rehab program as a deferred sentence	1 yr. (on 1st offense suspension can be avoided by attending driver rehab program)	1st: \$300-500 and/or 30-90 days jail; 2nd within 5 yrs.: up to \$1000 and/or 90 days to 1 yr. jail; 3rd or more within 5 yrs.: up to \$1000 and min. 6 mos. jail
NEW YORK	VEH. & TRAF. 1192(2)	.10% BAC	Court may require attendance at single session of "victims impact program"	1st: 6 mos.; 2nd within 10 yrs.: 1 yr.	1st: \$350-500 and/or up to 1 yr. jail; 2nd: \$500-5000 and/or min. 1 yr. jail, Class E felony
NORTH CAROLINA	20-138.1. 179	.10% BAC at time of test	Assessment may be required for alcoholism and substance abuse and appropriate treatment if necessary	1st: 1 yr.; 2nd within 3 yrs.: 4 yrs. (conditionally restored after 2 yrs.); 3rd with most recent within 5 yrs.: permanent (conditionally restored after 3 yrs.)	1st: up to \$1000 and 7 days to 12 mos. jail; subsequent within 7 yrs.: \$2000 and 14 days to 24 mos. jail
NORTH DAKOTA	39-06-31; 39-08-01	.10% BAC at time of test given within 2 hrs. of driving	Order for addiction evaluation by appropriate licensed addiction treatment program with appropriate treatment if necessary	1 yr. or period as recommended by trial court	1st: Class B misdemeanor, min. \$250; 2nd within 5 yrs.: Class B misdemeanor, min. \$500 and min. 4 days jail or 10 days community service; 3rd within 5 yrs.: Class A misdemeanor, \$1000 and min. 60 days jail; 4th within 7 yrs.: Class A misdemeanor, \$1000 and 180 days jail
OHIO	3793.10; 4507.16; 4511.19	.10% BAC	1st: Driver's Intervention Program (in suspended jail sentence); rehab may be required in sentences	1st: 60 days to 3 yrs.; 2nd within 5 yrs.: 120 days to 5 yrs.; 3rd within 5 yrs.: 180 days to 10 yrs.	1st: \$150-1000 and 3 days to 6 mos. jail; 2nd within 5 yrs.: \$150-1000, 10 days to 6 mos. jail; 3rd within 5 yrs.: \$150-1000 and 30 days to 1 yr. jail
OKLAHOMA	Tit. 47 §§6-205.1, 11-902	.10% BAC at time of test	Dept. of Mental Health Treatment Program may be required upon evaluation	1st: 90 days; 2nd within 5 yrs.: 1 yr.; 3rd within 5 yrs.: 3 yrs.	Up to \$1000 and 10 days to 1 yr. jail; subsequent within 10 yrs.: up to \$2500 and 1-5 yrs. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
OREGON	161.615, <i>et seq.</i> ; §13.010, <i>et seq.</i>	.08% BAC	Mandatory complete exam by court approved agency/organization to determine whether individual has a problem condition involving alcohol or controlled substances; complete a treatment program if exam shows it necessary; if none necessary, then complete alcohol and drug information program.	1st: 1 yr.; 2nd within 5 yrs.; 3 yrs.; 3rd within 5 yrs.: 3 yrs.	1st: Class A misdemeanor, up to \$2500, up to 1 yr. jail, fees for programs; 2nd: <u>impound vehicle in addition to above</u>
PENNSYLVANIA	Tit. 75 1548; 1532; 3731	.10% BAC	2nd or subsequent offense within 5 yrs.: evaluation to determine if person needs or would benefit from treatment for alcohol or drug abuse; may order treatment if necessary	12 mos.	1st.: min. \$300 and min. 48 hr. jail
RHODE ISLAND	27-21	.10% BAC	1st: attendance required at special course on DWI or under the influence of controlled substance and/or alcoholic or drug treatment for individual; 2nd: drug and alcohol treatment	1st: 3-6 mos.; 2nd: 1-2 yrs.	1st: \$100-300 and 10-60 hrs. community service and/or up to 1 yr. jail; 2nd within 5 yrs.: \$400 and 10 days to 1 yr. jail; 3rd: in addition to 2nd offense penalties, may have car seized and sold by State of Rhode Island and proceeds going to general fund; in addition anyone convicted under this section pays highway assessment fine of \$500
SOUTH CAROLINA	56-5-2930, <i>et seq.</i>	"Under influence of intoxicating liquors"	Successful completion of Alcohol and Drug Safety Action Program certified by South Carolina Commission on Alcohol and Drug Abuse prior to reinstatement of license	1st: 6 mos.; 2nd within 10 yrs.: 1 yr.; 3rd within 10 yrs.: 2 yrs.; 4th within 10 yrs.: 3 yrs.; 5th within 10 yrs.: permanent	1st: \$200 and 48 hrs. to 30 days jail or 48 hrs. public service; 2nd within 10 yrs.: \$2000-5000 and 48 hrs. to 1 yr. jail or min. 10 days public service; 3rd within 10 yrs.: \$3500-6000 and 60 days to 3 yrs. jail; 4th within 10 yrs.: 1-5 yrs. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
SOUTH DAKOTA	32-23-1, <i>et seq.</i>	10% BAC	1st: required if .17% BAC; court-ordered evaluation	1st: min. 30 days to 1 yr.; 2nd: min. 1 yr.; 3rd: min. 1 yr. (unconditional); 4th: min. 2 yrs.	1st: \$1000 and/or 1 yr. jail; 2nd within 5 yrs.: \$1000 and/or 1 yr. jail; 3rd within 5 yrs.: \$2000 and/or 2 yrs. jail; 4th: Class 5 felony, 5 yrs. jail and may impose fine of \$5000
TENNESSEE	55-10-401, 403	"Under the influence"	2nd offense: may be required to participate in court-approved inpatient alcohol and drug treatment program	1st: 1 yr.; 2nd: 2 yrs.; 3rd: 3-10 yrs.	1st: \$250-1000 and 48 hrs. to 11 mos. 29 days jail; 2nd within 10 yrs.: \$500-2500 and 45 days to 11 mos. 29 days jail; 3rd: \$1000-5000 and 120 days to 11 mos. 29 days jail
TEXAS	Tex. Rev. Civ. Stat. Art. 67011-1	10% BAC	Evaluation	1st: 90-365 days; 2nd or 3rd: 180 days to 2 yrs.	1st: \$100-2000 and 72 hrs. to 2 yrs. jail; 2nd: \$300-2000 and 15 days to 2 yrs. jail; 3rd: \$500-2000 and 30 days to 2 yrs. jail or 60 days to 5 yrs. state penitentiary
UTAH	41-6-44	.08% BAC	1st: assessment and educational series at a licensed alcohol rehab facility; 2nd: same as above and treatment at court's discretion; 3rd: same as above and treatment at alcohol rehab facility is mandatory; 4th: treatment required	1st: 90 days; subsequent within 6 yrs. of prior conviction: 1 yr.	1st: Class B misdemeanor, up to \$1000 and 48-240 hrs. jail or 24-50 hrs. community service; 2nd within 6 yrs.: up to \$1000 and 240-720 hrs. jail or 80-240 hrs. community service; 3rd within 6 yrs.: 720-2160 hrs. jail or 240-720 hrs. community service; if prior two convictions were both after 4/23/90, then: \$1000-2500 and 240-2160 hrs. jail or 240-720 hrs. community service; 4th within 6 yrs.; if all after 4/23/90, \$1000-5000 and 720-2160 hrs. jail or 240-720 hrs. community service
VERMONT	1201, <i>et seq.</i>	.08% BAC	1st: alcohol assessment screening-therapy program or driver rehab if necessary at court's discretion; 2nd completion of therapy program at court's discretion	1st: 90 days; 2nd: 18 months; 3rd: 3 yrs.; 4th: life	1st: max. \$750 and/or up to 2 yrs. jail; 2nd: up to \$1500 and/or 48 hrs. to 2 yrs. jail; 3rd: up to \$2500 and/or up to 5 yrs. jail

(Continued)

Table 8: Drunk Driving—Continued

State	Code Section	BAC Legal Limit	Rehabilitation Required?	Driver's License Suspension?	Other Penalties
VIRGINIA	18.2-266(i), <i>et seq.</i>	.10% BAC	Alcohol Safety Action Program for 1st or 2nd offense at court's discretion	1st: 1 yr.; 2nd within 10 yrs.; 3 yrs.; 3rd within 10 yrs.: 3 yrs.	2nd within 10 yrs.: \$200-2500 and 1 mo. to 1 yr. jail; 3rd: \$500-2500 and 2 mos. to 1 yr. jail
WASHINGTON	46.61.502 (1), 515	.10% BAC	1st: alcohol information course or more intensive treatment program as determined by court; 2nd: diagnostic evaluation by alcoholism agency approved by Dept. of Social & Health Services	1st: 90 days; 2nd within 5 yrs.: 1 yr.; 3rd within 5 yrs.: 2 yrs.	1st: \$250-1000 and 24 hrs. to 1 yr. jail; 2nd within 5 yrs.: \$500-2000 and 7 days to 1 yr. jail
WEST VIRGINIA	17C-5-2	.10% BAC	Motor Vehicle Alcohol Test and lock program upon revocation of license	1st: min. 6 mos.; 2nd: 10 yrs.; 3rd: life	1st: \$100-500 and 1 day to 6 mos. jail; 2nd: \$1000-3000 and/or 6 mos. to 1 yr. jail; 3rd: \$3000-5000 and/or 1-3 yrs. jail
WISCONSIN	343.30; 346.63  †	.10% BAC	Not mentioned	1st: 6-9 mos.; 2nd within 5 yrs.: 1 yr. to 18 mos.; 3rd or more within 5 yrs.: 2-3 yrs.	1st: \$150-300; 2nd within 5 yrs.: \$300-1000 and 5 days to 6 mos. jail; 3rd within 5 yrs.: \$600-2000 and 30 days to 1 yr. jail; 4th within 5 yrs.: \$600-2000 and 60 days to 1 yr. jail; 5th within 5 yrs.: \$600-2000 and 6 mos. to 1 yr. jail
WYOMING	31-5-233; 31-7-127	.10% BAC	No	3rd conviction within 5 yrs.: 3 yrs.	1st: up to \$750 and/or up to 6 mos. jail; 2nd within 5 yrs.: \$200-750 and 7 days to 6 mos. jail

**DIVISION OF LEGAL SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA**

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

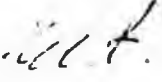
130 Seward Street, Suite 409  
Juneau, Alaska 99801-2105

**MEMORANDUM**

February 14, 1995

**SUBJECT:** Sectional Summary of HB 159.

**TO:** Representative Brian Porter

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

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

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

**Section 1.** Allows a person under age 21 to be arrested by a peace officer, without a warrant, for illegal possession, consumption, or control of an alcoholic beverage.

**Section 2.** Allows a court to include the cost of an ignition interlock device as a part of a fine imposed for convictions of driving while intoxicated or refusal to take a breath test.

**Section 3.** Technical amendment.

**Section 4.** Makes certain driving with a revoked license offenses a class C felony and imposes certain license sanctions.

**Section 5.** Technical amendment.

**Section 6.** Amends the definition of "previous conviction" for purposes of determining the penalty applicable to a driving while intoxicated or refusal to take a breath test conviction.

**Section 7.** Makes a third driving while intoxicated conviction a class C felony, if it is the person's third or greater conviction within five years. Imposes a minimum fine, minimum jail time, and prohibits probation or suspended imposition of sentence unless the minimum imprisonment is served. Requires revocation of the offender's driver's license, allows imposition of certain probation or parole conditions and allows forfeiture of the motor vehicle or aircraft used in the offense.

Representative Brian Porter  
February 14, 1995  
Page 2

**Section 8.** Technical amendment.

**Section 9.** Technical amendment.

**Section 10.** Makes a third refusal to take a breath test conviction a class C felony, if it is the person's third or greater conviction within five years. Imposes a minimum fine, a minimum jail time, and prohibits probation or suspended imposition of sentence unless the minimum imprisonment is served. Requires revocation of the offender's driver's license, allows imposition of certain probation or parole conditions and allows forfeiture of the motor vehicle or aircraft used in the offense.

**Section 11.** Applicability section.

**Section 12.** Effective date.

MFF:klb:glc  
95-067.klb

# Alaska State Legislature

Representative Brian S. Porter



CHAIRMAN  
HOUSE JUDICIARY COMMITTEE

MEMBER  
HOUSE LABOR & COMMERCE COMMITTEE  
SELECT COMMITTEE ON LEGISLATIVE ETHICS

MEMBER  
FINANCE SUBCOMMITTEES  
DEPARTMENT OF LAW  
DEPARTMENT OF PUBLIC SAFETY  
COURTS

SESSION:  
STATE CAPITOL, ROOM 118  
JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-4830  
FAX: (907) 465-3834

INTERIM:  
718 W. 4TH AVE., SUITE 640  
ANCHORAGE, AK 99501-2133  
PHONE: (907) 258-8197  
FAX: (907) 258-5510

**DISTRICT 20**

**Sponsor Statement**

for

**HB 159 DWI LAWS**

It's a **crime** that drunken driving remains a misdemeanor in our state no matter how many times a person is convicted. At some point - a repeat conviction should become a felony.

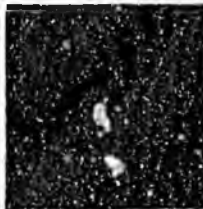
HB 159 *DWI Laws/ Minor In Possession* provides law enforcement and prosecutors with the tools they need to combat the significant highway safety problems with drunk drivers. This legislation would render drunk driving a **felony on the third offense within a five year period** and require a minimum sentence of 120 days with a \$5000.00 fine upon conviction.

HB 159 also gives the court the option of ordering a person to take **antabuse or a similar drug** as a condition of parole or probation. These drugs are intended to prevent the consumption of alcohol.

**The most frequent violent crime in the country is drunk driving.** A study published by the Alaska Department of Transportation and Public Facilities said alcohol was a factor in 982 accidents statewide in 1993. In the same year, 49 Alaskans died in 37 alcohol or drug related accidents.

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 drunk driving are almost five times more likely to be involved than those with no record**, according to the National Highway Transportation Safety Administration.

Driving is a privilege granted by the state that can be conditioned upon consent to reasonable terms. HB 159 would give Alaska one of the toughest drunk driving statutes in the nation and send a clear message that Alaskans will no longer tolerate persons who drive drunk.



# ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662 • FAX (907) 561-2063

February 13, 1995

The Honorable Brian Porter  
Chairman, House Judiciary Committee  
Alaska State Legislature  
State Capitol (MS 300)  
Juneau, Alaska 99801-1182

Re: House Bill 158

Dear Representative Porter:

The Alaska State Medical Association and its member physicians strongly support the passage of House Bill 158.

Liability insurance costs are out of control. Physician insurance liability premiums significantly restrict access to health care, particularly in high risk medical specialties like obstetrics. About 60% of family physicians, who used to provide about two thirds of obstetrical care in rural areas, have discontinued the practice of obstetrics because of these concerns. About 40% of OB-GYN's have restricted their obstetrical practices.

Liability concerns can convert a "caring" doctor-patient relationship into one which is less trusting and may even become adversarial. Liability concerns lead to physicians ordering additional documenting X-rays and tests for protection in case there is litigation. Partly because of liability concerns, physicians now practice in an extraordinarily stressful environment. Unfortunate outcomes, which are for the most part simply endemic risks of life now lead to courtroom challenges to their professional competence and personal integrity.

The current laws benefit lawyers more than injured patients. We recommend no limit whatsoever on a patient's right to recover out-of-pocket losses, such as medical expenses, lost wages and rehabilitation costs. Everyone is entitled to full compensation for their actual losses. But the current compensation system for non-economic damages such as pain and suffering has no limitations, and this has put the system out of control. When injured patients currently receive less than a third of the liability premium. The system needs to be fixed.

We believe HB 158 is good step toward making the liability system work better for all injured Alaskans.

Sincerely,

Raymond Schalow  
Executive Director

# ALASKA CIVIL LIBERTIES UNION

An Affiliate of the American Civil Liberties Union  
P O Box 201844 Anchorage, AK 99520-1844  
Phone: 1-907-258-0044 Fax: 1-907-258-0288

February 16, 1995

The Honorable Brian Porter  
Chair, Judiciary Committee  
Alaska State House of Representatives  
State Capitol Building, Room 118  
Juneau, AK 99801-1182

Re: House Bill 159

Dear Representative Porter:

I am writing to you on behalf of the Board of Directors and members of the Alaska Civil Liberties Union (AKCLU) to express concerns about House Bill 159 which is currently pending before the House Judiciary Committee.

There are several sections of HB 159 which concern us: (1) the section which permits the expansion of warrantless arrests and lowering the standard for an arrest from probable cause to reasonable cause; (2) the section granting judges the authority to impose as a condition of probation or parole that a person consume drugs; and (3) the section imposing felony sanctions for the offense of driving with a suspended license. Each of these sections raise civil liberties concerns, some of which also pose constitutional problems.

Section 1 of HB 159 would permit the police to arrest citizens on a finding of "reasonable cause" to believe that a minor has been possessing or consuming drugs or alcohol, or that the person is on release for certain charges. The AkCLU's position on the matter of arrest is that unless a police officer is an eyewitness to a crime, the only appropriate standard by which the officer may take persons into custody is under the strict standard of probable cause. It is our position that the arresting officer must have probable cause to believe that a felony has been committed or that the officer has personally observed a misdemeanor offense. Allowing an officer to interfere with the liberty of a person the officer has "reasonable cause" to suspect has committed an offense is of grave concern to the AkCLU. Such a law would allow a peace officer an excess of speculative discretion that is out of harmony with the right of an individual to proceed with whatever activity they are involved in without interference by the police.

The bill proposed would also permit officers to arrest young people they suspect have been consuming drugs or alcohol, even when

no other criminal activity is involved. Lowering the standards required for an arrest is unjustified, especially when the only "crime" involved is the status crime of consuming alcohol and being under the age of 21.

We have heard no substantive arguments justifying an erosion of the probable cause standard for arrest, a standard that has been with us since the Bill of Rights was adopted over 200 years ago.

We believe that this change affords too much speculative authority to the police and too much authority to complaining witnesses. Alaska law already allows broad authority for police officers to make misdemeanor arrests without having witnessed a crime (e.g. domestic assaults, driving while intoxicated). It would be an extremely dangerous trend to allow the police even greater authority.

Alaska citizens are already at risk for false arrest under the current law. There is currently a problem of persons being arrested on the word of a "victim" who, on further investigation, turns out to have been the perpetrator. As you know, there is no recourse available to the person wrongfully arrested. Even if the criminal case against the arrested person is ultimately dismissed, that person has already suffered the grave inconvenience of being arrested and the damage to the person's reputation suffered by the arrest. We strenuously oppose any further expansion of police authority by eroding the probable cause standard. Our democracy requires that the rights of the individual be considered and the authority of the state be curbed.

The AkCLU also has a concern about section 1(n)(4) of HB 159 which permits a judge to order, as a condition of probation or parole, that a person take a drug or drugs intended to prevent the consumption of alcohol. We are not opposed to this condition in all circumstances; there may very well be instances when a probationer or parolee would benefit from such a condition and, in fact, ask that such a condition be imposed.

However, we oppose any provision which allows the judge to impose such a condition without recourse for the person to reject the condition. We believe that a person should not be required to ingest a drug or drugs against his or her will. A simple change to the bill could remedy this situation. For example: "May order a condition of probation or parole that the person, with his or her consent, take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage . . . ." The ingestion of any drug is a serious matter. Good medical practice alone would require a determination of whether the person might be allergic to such a drug, or may suffer from related side effects.

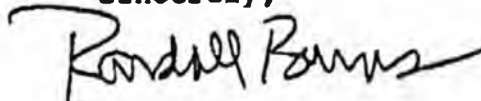
Lastly, we are concerned with Section 4 of HB 159, which increases the punishment for driving with a suspended license to a Class C felony. There is a growing problem in Alaska of persons being convicted for the crime of driving with a suspended license. On first blush it may appear that persons who drive with suspended licenses are menaces who deserve harsh punishment. In reality, however, some people are citizens who want to follow the law but are not able to legally reinstate their licenses after losing them through a revocation proceeding. A person who has had his or her license revoked is required to purchase high risk SR-22 insurance. This insurance is exorbitantly expensive in Alaska and many Alaskans cannot afford it.

Furthermore, most areas of Alaska do not have adequate public transportation systems. People usually rely on cars to get to work. Often people want to get their licenses properly reinstated but are not able to afford to do so. They find themselves in the position of having to choose between driving to a job to support themselves and their families, or quitting because they are not properly licensed. Of course, this is not true of all persons who drive without reinstating their licenses, but it is true of many.

The AkCLU believes that as a society we should consider whether an increase in criminal sanctions is necessarily the best way of addressing social problems. We believe that it does not make good sense to increase the penalties for driving with a suspended license to a Class C felony. Merely increasing the criminal sanctions does not address the underlying problem of why some persons are choosing to break this law. Persons who are convicted of driving with a suspended license are not necessarily posing a danger to the community -- they may be driving to work or driving in a safe manner. Imposing felony level sanctions on what is basically innocuous behavior is misguided. It would be better to regulate insurance rates so that persons who have lost their license can afford to become reinstated.

We appreciate your attention to these concerns and ask that you seriously consider the changes we have suggested.

Sincerely,



Randall Burns  
Executive Director

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: \_\_\_\_\_ Dept. Affected: Corrections  
 Title: An Act possession and consumption of alcohol BRU: Statewide programs  
 and DWI \_\_\_\_\_ Component: CC Dir.'s office/CRCs  
 Sponsor: Rep. Porter  
 Requester: Rep. Porter COMPONENT SERIAL NO. 1382

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	243.9	253.0	259.5	269.2	273.3	283.6
TRAVEL						
CONTRACTUAL	836.8	836.8	836.8	836.8	836.8	836.8
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>1,080.7</b>	<b>1,089.8</b>	<b>1,096.3</b>	<b>1,106.0</b>	<b>1,110.1</b>	<b>1,120.4</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	1,080.7	1,089.8	1,096.3	1,106.0	1,110.1	1,120.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>1,080.7</b>	<b>1,089.8</b>	<b>1,096.3</b>	<b>1,106.0</b>	<b>1,110.1</b>	<b>1,120.4</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill would make a third or subsequent conviction of DWI or refusal to submit to a chemical test under AS 28.33.031 a class C felony and sets minimum sentences. It also makes DWRL based on conviction under the new Class C felony sections a class C felony. The minimum sentence under this bill exceeds the current minimum only for the third and fourth offenses.

261 people will be convicted of a third offense annually and will be sentenced to an additional 60 days imprisonment. They will serve 40 of these days after statutory goodtime. 53 offenders will be convicted of a fourth offense and will serve an additional 80 days.

261 X 40 = 10,440 additional prisoner days  
 53 X 80 = 4,240 additional prisoner days

CONTINUED ON NEXT PAGE:

Prepared by: Jerry Shriner Phone: 465-4640  
 Division: Commissioner's Office Date: 2/15/95  
 Approved by Commissioner: Margaret M. Pugh Date: 2/15/95  
 Agency: Department of Corrections

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FISCAL NOTE

HB 159

2/14/95

page 2

This totals 14,680 bed days or 41 additional beds on an annual basis. With rare exception this class of prisoners would be housed in a treatment facility or CRC.

The average cost of a CRC bed is \$57 per day or \$20,805 per year.

$$14,680 \times \$57 = \$836.8 \text{ thousand.}$$

If fifth and subsequent convictions resulted in more than the minimum sentence or if the minimum sentence is greater than the average sentence under the current sentencing practices, there would be additional costs. At this time sufficient data is not available to address this issue.

Recent experience shows that after the second offense covered by this bill, the ability to collect either from the individual or to attach their permanent fund to offset these costs falls precipitously and no program receipts are expected.

As a felony, each conviction would require a pre-sentence investigation and report prepared by a probation officer, as well as additional time in court. The department's standard for this process is 18 hours per pre-sentence report. 330 individuals would be convicted of a felony under this bill, even though some would not receive a longer sentence.

$$330 \text{ PSIs} \times 18 \text{ hours} = 5,940 \text{ total hours.}$$

Allowing for vacation and sick leave we can expect a probation officer position to devote 1,875 hours to pre-sentence investigations annually.

$$5,940 / 1,875 = 3.2 \text{ position equivalents.}$$

Four probation officer positions and one clerical person have been included to support the required investigation and report function and a one time cost for equipment at \$5,000 per staff person has been included.

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...classifying certain offenses...driving while  
intoxicated...failure to submit to a chemical test...as felonies..." BRU: Prosecution  
 Sponsor: Representative Porter Component: Third Judicial District  
 Requester: Representative Porter COMPONENT SERIAL NO. 0087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	218.5	218.5	218.5	218.5	218.5	218.5
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	28.2	28.2	28.2	28.2	28.2	28.2
SUPPLIES	11.4	11.4	11.4	11.4	11.4	11.4
EQUIPMENT	30.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>294.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>

CAPITAL EXPENDITURES						
----------------------	--	--	--	--	--	--

CHANGE IN REVENUES ( )						
------------------------	--	--	--	--	--	--

**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	294.1	264.1	264.1	264.1	264.1	264.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>294.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes several changes in state laws regarding alcoholic beverages, driving while intoxicated, driving while license suspended, and refusal to submit to a chemical test.

First, the bill amends AS 12.25.030(b) to make it clear that a peace officer may arrest a person under 21 years of age without a warrant when the peace officer has reasonable cause to believe that the person knowingly possessed, consumed or controlled alcoholic beverages in violation of AS 04.16.050. This provision overrules a recent court decision, and restores past practice. Therefore, this change will not have a fiscal impact.

Second, the bill increases the penalty for a third or subsequent driving while intoxicated conviction from a class A misdemeanor to a class C felony, except that only convictions occurring within five years preceding the date of the present offense may be included. A court would be required to impose a minimum term of

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/16/95  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/16/95  
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SSSB 4

ANALYSIS CONTINUATION:

imprisonment of 120 days for a third conviction and 240 days for a fourth or subsequent conviction. A minimum fine of \$5,000 would be imposed for a third or subsequent conviction. A court would not be permitted to suspend execution of sentence or grant probation except on the condition that a person serve the minimum sentence of imprisonment. And, a court would not be permitted to suspend imposition of sentence.

Currently, a third conviction results in a minimum sentence of sixty days imprisonment and a fine of not less than \$1,000. A fourth conviction results in a minimum period of imprisonment of 120 days and a fine of not less than \$2,000. A fifth conviction results in a minimum of 240 days imprisonment and a fine of not less than \$3,000. And a sixth conviction results in not less than 360 days of imprisonment and a fine of not less than \$4,000. The crime of driving while intoxicated, whatever the number of offenses, is a class A misdemeanor under existing law, and the counting of offenses for purposes of increasing the sentence covers a ten year span. Consequently, the existing penalties would remain in place for repeat offenders if the third or subsequent offense occurred between the sixth and the tenth year after the first offense.

Third, the bill raises the penalty for a third or subsequent refusal to submit to a chemical test from a class A misdemeanor to a class C felony, under the identical circumstances (three or more convictions within five years), and imposes identical minimum sentences.

Finally, the bill would also make it a class C felony if a person drives a motor vehicle while their license was revoked as a result of a felony conviction for driving while intoxicated or refusal to submit to a chemical test. Under current law, driving while a license is suspended or revoked is a class A misdemeanor. We note that the felony DWLS provision is triggered by a prior felony. The state's presumptive sentencing laws require a sentence of two years of imprisonment upon a second felony conviction.

During the past three years an average of 330 defendants have been convicted of three or more DWI/Refusal violations within five years. Based upon the department's DWI/Refusal conviction rate, approximately 400 additional felony level DWI/Refusal cases will be referred to the department for prosecution. Of this number, about 380 cases will be taken to the grand jury for indictment. The department currently handles about 4,000 felonies annually. Thus, raising this large a number of misdemeanor offenses to felony offenses represents a substantial increase in our workload, because of the additional effort required to process a felony case. This includes grand jury proceedings, motion practice, pre-sentence reports, 12-person juries, and sentencing hearings. None of these additional processes are required for the prosecution of misdemeanors. We also note, that although these cases are to be processed as felonies, the minimum sentence provisions are still those that attend misdemeanor offenses. Moreover, the increase in jail time (nearly 80% or 260 of 330 convictions are for third-time offenders) is bound to result in tougher defenses and more defendants going to trial, rather than pleading guilty. This will be of particular concern to felony defendants because of the consequences of presumptive sentencing.

Therefore, because of the large increase in felony processing, the department will have to add two Attorney III positions, one each in Anchorage, and Palmer where the largest number of offenses occur. Additionally, because of the higher level of activity one Legal Secretary I position will have to be added at both Anchorage and Palmer.

FISCAL NOTE

BILL NO. HB 159

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

ANALYSIS CONTINUATION:

FISCAL ANALYSIS

Component Location Job Title	<u>Third Jud. District (0087)</u>				<u>TOTAL</u>
	<u>Anchorage Attorney III</u>	<u>Anchorage Leg. Sec. I</u>	<u>Palmer Atty III</u>	<u>Palmer Leg. Sec. I</u>	
Personal Services	71.7	36.1	74.1	36.6	218.5
Travel	3.0	0.0	3.0	0.0	6.0
Contractual	8.6	6.0	7.6	6.0	28.2
Supplies	3.3	2.4	3.3	2.4	11.4
Equipment	<u>6.5</u>	<u>8.5</u>	<u>6.5</u>	<u>8.5</u>	<u>30.0</u>
Total	93.1	53.0	94.5	53.5	294.1

01/24/95

14:59:24.3

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW

SCENARIO: 3

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

UNAUTH PCH	JOB CLASS TITLE	T S	LOCATION NAME	R D S C U	R&S HOS DUDG	SALARY	PREM PAY	DENES	PER.SERV. COSTS	G. F. AMOUNT
30	ATTORNEY III		F ANCHORAGE	A XE AA 22A	12	53304	0	10385	71609.90	

## JUSTIFICATION:

position will be needed to handle an increased felony load when the penalty for driving while intoxicated (or sing to take a chemical test) for the ~~fourth~~ or more is raised from a class A misdemeanor to a class C felony.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	8600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS	93009.90	71609.90
-------------	----------	----------

## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	71689.90
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TOTAL FUNDING	71609.90
---------------	----------

31	LEGAL SECRETARY I		F ANCHORAGE	A GG 2A 10A	12	24756	0	11367	36123.82	
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## JUSTIFICATION:

position will be needed to handle an increased felony load when the penalty for driving while intoxicated (or sing to take a chemical test) for the ~~fourth~~ or more is raised from a class A misdemeanor to a class C felony.

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	6000.00
SUPPLIES COSTS	2400.00
EQUIPMENT COSTS	8500.00
OTHER COSTS	0.00

TOTAL COSTS	53023.82	36123.82
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## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	36123.82
----------------------------	----------

TOTAL FUNDING	36123.82
---------------	----------

## COMPONENT TOTALS:

FULL TIME NEW POSITIONS	2	TOTAL PERSONAL SERVICES	107013.80
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	146113.80
OTHER.....	0		

====

NUMBER OF NEW POSITIONS IN COMPONENT:

2

FUNDING DATA: G.F. & G.F. MATCH:	107013.80
OTHER FUNDS:	0.00

TOTAL FUNDING:	107013.80
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02/14/95

09:46:00.8

## PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE:

1

DEPARTMENT OF LAW

SCENARIO: 2

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
3/026		ATTORNEY III		P DILLINGHAM	A	XE	III	22A	6	33900	0	9722	43623.54	
*** JUSTIFICATION: Substantial increases in the penalties for commercial fishing violations will result in more vigorous defense by defendants and will increase the number of trials significantly.												TRAVEL COSTS	3500.00	
												CONTRACTUAL COSTS	5000.00	
												SUPPLIES COSTS	1200.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	59023.54	43623.54
*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS													43623.54	
												TOTAL FUNDING	43623.54	
3/059		ATTORNEY III		F ANCHORAGE	A	XE	AA	22A	12	53304	0	18385	71689.98	
*** JUSTIFICATION: This position will be needed to handle an increased felony caseload if state criminal mischief laws are amended to raise the penalty for joyriding from a class A misdemeanor to a class C felony.												TRAVEL COSTS	3000.00	
												CONTRACTUAL COSTS	8600.00	
												SUPPLIES COSTS	3300.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	93089.98	71689.98
*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS													71689.98	
												TOTAL FUNDING	71689.98	
3/067		ATTORNEY III		F PALMER	A	XE	BB	22A	12	55260	0	18873	74133.41	
*** JUSTIFICATION: This position will be required to handle the additional legal actions required to prosecute third-time DWI/refusal prosecutions as felonies rather than misdemeanors. This includes securing grand jury indictments and overcoming tougher defense due to the substantially increased penalties.												TRAVEL COSTS	3000.00	
												CONTRACTUAL COSTS	7600.00	
												SUPPLIES COSTS	3300.00	
												EQUIPMENT COSTS	6500.00	
												OTHER COSTS	0.00	
												TOTAL COSTS	94533.41	74133.41
*** FUNDING DETAIL: 1004 GENERAL FUND RECEIPTS													74133.41	
												TOTAL FUNDING	74133.41	
3/068		LEGAL SECRETARY I		F PALMER	A	GG	2A	10A	12	25140	0	11463	36603.52	
*** JUSTIFICATION: This position will be required to handle the additional legal actions required to prosecute third-time DWI/refusal prosecutions as felonies rather than misdemeanors. This includes securing grand jury												TRAVEL COSTS	0.00	
												CONTRACTUAL COSTS	6000.00	
												SUPPLIES COSTS	2400.00	
												EQUIPMENT COSTS	8500.00	

02/14/95

09:46:01.3

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 2

DEPARTMENT OF LAW

SCENARIO: 2

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTN PCN	JOB CLASS TITLE	T S	LOCATION NAME	R B C U	S	R&S BUDG	MOS	SALARY	PREM PAY	BENES	PER.SERV. COJTS	O. F. AMOUNT
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indictments and overcoming a tougher defense due to the substantially increased penalties.

OTHER COSTS 0.00

TOTAL COSTS 53503.52 36603.52

\*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36603.52

TOTAL FUNDING 36603.52

\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS 3  
 PART TIME/SEASONAL NEW POSITIONS 1  
 NON PERMANENT NEW POSITIONS 0  
 OTHER..... 0  
 \*\*\*\*

TOTAL PERSONAL SERVICES 226050.45

TOTAL COSTS INC. ASSOC COSTS 300950.45

NUMBER OF NEW POSITIONS IN COMPONENT: 4

FUNDING DATA: G.F. & G.F. MATCH: 226050.45

OTHER FUNDS: 0.00

TOTAL FUNDING: 226050.45

# FISCAL NOTE

STATE OF ALASKA

BILL NO. HB 159

1995 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: DWI Laws/minors in possession BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Representative Porter  
 Requestor: (H) Judiciary COMPONENT SERIAL NO. 0799

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

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	59.4	59.4	59.4	59.4	59.4	59.4
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>
<b>CAPITAL EXPENDITURES</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CHANGE IN REVENUES ( )</b> <small>Revenue Code</small>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	59.4	59.4	59.4	59.4	59.4	59.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>

Estimate of current year (FY 95) impact: \$ -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

ANALYSIS: (Attach a separate page if necessary.)  
 See attached analysis.

Prepared By: Francis C. Allan Phone: 269-5691  
 Division: Alaska State Troopers Date: 02/13/95  
 Approved by Commissioner: *Ronald L. Otte* Date: 2-16-95  
 Agency: Ronald L. Otte, Dept. of Public Safety

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Budget Section  
 Div. of Admin. Services  
 Dept. of Public Safety  
 2/16/95

ANALYSIS  
HB 159

This legislation will allow for the arrest of minors for violations of liquor laws, establishes Class C felonies for third time offenders of Driving While Intoxicated (DWI) or Breath Test Refusal and for Driving With License Revoked (DWLR) if the license was revoked as a result of a felony DWI or Breath Test Refusal Conviction. This fiscal note is intended to provide sufficient State Trooper clerical support time to meet the increased demands resulting from this bill.

Section 1 of the bill allowing for the warrantless arrest of minors for alcohol violations addresses the impact of recent court interpretations that ruled that law enforcement officers must obtain an arrest warrant before an arrest of this type can be made. This statute change will allow the police to continue past practices in enforcement of the alcohol laws as they pertain to minors. Therefore this change will have no financial impact.

Sections 5, 7 and 10 relating to the establishment of Class C felonies for third time DWI, Breath Test Refusal and or certain DWLR convictions will financially impact the Alaska State Troopers.

Although precise statistics can not be made available within the time frame necessary for this fiscal note response, approximately 400 DWI arrests per year are believed to be made for third time offenders. Of these, 380 go to grand jury and approximately one-third, or 127 of the grand jury cases involve the State Troopers.

The assumptions upon which this fiscal note are based are discussed below:

1) It is estimated that approximately 127 cases of this type per year will be investigated by the Alaska State Troopers.

2) Felony cases require evidentiary hearings and grand jury hearings that are not required had the cases been misdemeanors. Virtually all DWI arrests take place on swing or grave yard shifts, but all evidentiary and grand jury hearings take place during the day, causing Trooper time to be either overtime and/or on call out.

3) Felony cases average the following additional effort:

4 to 8 hours for grand jury and/or hearings  
2 to 3 hours of clerical support time (transcriptions, etc.)  
10 to 20% of felonies go to trial - 16 to 24 hours

This bill contains a provision that would create a felony offense of Driving with a Revoked License (DWRL), if the revocation was for a felony conviction of DWI. While a statistical analysis at this time is not available, it is possible that in the future this provision of the bill could have a fiscal impact on the Alaska State Troopers.

Currently, Troopers arrest about 2,000 persons per year for DWLR and related offenses. If a significant number of these became felony offenses, increased trooper costs for grand jury and other related activities could impact the Division in the future. These costs are not included in this fiscal note since no firm basis exists on which to make a projection.

Costs other than personal services are not material and are not included in this fiscal note.

**Division of Alaska State Troopers  
Analysis  
House Bill 159**

	FY96	FY97	FY98	FY99	FY00	FY01
<u>Personal Services:</u>						
A) Grand Jury/Hearings 127 cases x 6 hour average x \$46.75 (*1)	35,624					
B) Clerical Support 127 cases x 2.5 hour average x \$18.98 (*2)	6,026					
C) Trials 19 cases x 20 hour average x \$46.75 (*1)	17,765					
<b>TOTAL PERSONAL SERVICES</b>	<b>59,415</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>	<b>59.4</b>

\*1 - Overtime hourly cost for a State Trooper, Range 76, Step D/E - (See PACS Scenario #1, PCN 1371.)

\*2 - Hourly cost for an Administrative Clerk II, Range 8, Step A - (See PACS Scenario #1, PCN 1444.)

# FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 159

Revision Date: \_\_\_\_\_ Dept. Affected: Department of Law  
 Title: "...classifying certain offenses...driving while  
intoxicated...failure to submit to a chemical test...as felonies..." BRU: Prosecution  
 Sponsor: Representative Porter Component: Third Judicial District  
 Requester: Representative Porter COMPONENT SERIAL NO. 0087

**Expenditures/Revenues** (Thousands of Dollars)

OPERATING EXPENDITURES	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01
PERSONAL SERVICES	218.5	218.5	218.5	218.5	218.5	218.5
TRAVEL	6.0	6.0	6.0	6.0	6.0	6.0
CONTRACTUAL	28.2	28.2	28.2	28.2	28.2	28.2
SUPPLIES	11.4	11.4	11.4	11.4	11.4	11.4
EQUIPMENT	30.0					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>294.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	294.1	264.1	264.1	264.1	264.1	264.1
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>294.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>	<b>264.1</b>

Estimate of any current year (FY95) cost: \$ 0.0

**POSITIONS**

FULL-TIME	4.0	4.0	4.0	4.0	4.0	4.0
PART-TIME						
TEMPORARY						

**ANALYSIS:** (Attach a separate page if necessary)

This bill makes several changes in state laws regarding alcoholic beverages, driving while intoxicated, driving while license suspended, and refusal to submit to a chemical test.

First, the bill amends AS 12.25.030(b) to make it clear that a peace officer may arrest a person under 21 years of age without a warrant when the peace officer has reasonable cause to believe that the person knowingly possessed, consumed or controlled alcoholic beverages in violation of AS 04.16.050. This provision overrules a recent court decision, and restores past practice. Therefore, this change will not have a fiscal impact.

Second, the bill increases the penalty for a third or subsequent driving while intoxicated conviction from a class A misdemeanor to a class C felony, except that only convictions occurring within five years preceding the date of the present offense may be included. A court would be required to impose a minimum term of

Prepared by: Richard I. Peques, Director Phone: 465-3672  
 Division: Administrative Services Division Date: 2/16/95  
 Approved by Commissioner: Bruce M. Botelho, Attorney General Date: 2/16/95  
 Agency: Department of Law

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FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. SSSB 4

ANALYSIS CONTINUATION:

imprisonment of 120 days for a third conviction and 240 days for a fourth or subsequent conviction. A minimum fine of \$5,000 would be imposed for a third or subsequent conviction. A court would not be permitted to suspend execution of sentence or grant probation except on the condition that a person serve the minimum sentence of imprisonment. And, a court would not be permitted to suspend imposition of sentence.

Currently, a third conviction results in a minimum sentence of sixty days imprisonment and a fine of not less than \$1,000. A fourth conviction results in a minimum period of imprisonment of 120 days and a fine of not less than \$2,000. A fifth conviction results in a minimum of 240 days imprisonment and a fine of not less than \$3,000. And a sixth conviction results in not less than 360 days of imprisonment and a fine of not less than \$4,000. The crime of driving while intoxicated, whatever the number of offenses, is a class A misdemeanor under existing law, and the counting of offenses for purposes of increasing the sentence covers a ten year span. Consequently, the existing penalties would remain in place for repeat offenders if the third or subsequent offense occurred between the sixth and the tenth year after the first offense.

Third, the bill raises the penalty for a third or subsequent refusal to submit to a chemical test from a class A misdemeanor to a class C felony, under the identical circumstances (three or more convictions within five years), and imposes identical minimum sentences.

Finally, the bill would also make it a class C felony if a person drives a motor vehicle while their license was revoked as a result of a felony conviction for driving while intoxicated or refusal to submit to a chemical test. Under current law, driving while a license is suspended or revoked is a class A misdemeanor. We note that the felony DWLS provision is triggered by a prior felony. The state's presumptive sentencing laws require a sentence of two years of imprisonment upon a second felony conviction.

During the past three years an average of 330 defendants have been convicted of three or more DWI/Refusal violations within five years. Based upon the department's DWI/Refusal conviction rate, approximately 400 additional felony level DWI/Refusal cases will be referred to the department for prosecution. Of this number, about 380 cases will be taken to the grand jury for indictment. The department currently handles about 4,000 felonies annually. Thus, raising this large a number of misdemeanor offenses to felony offenses represents a substantial increase in our workload, because of the additional effort required to process a felony case. This includes grand jury proceedings, motion practice, pre-sentence reports, 12-person juries, and sentencing hearings. None of these additional processes are required for the prosecution of misdemeanors. We also note, that although these cases are to be processed as felonies, the minimum sentence provisions are still those that attend misdemeanor offenses. Moreover, the increase in jail time (nearly 80% or 260 of 330 convictions are for third-time offenders) is bound to result in tougher defenses and more defendants going to trial, rather than pleading guilty. This will be of particular concern to felony defendants because of the consequences of presumptive sentencing.

Therefore, because of the large increase in felony processing, the department will have to add two Attorney III positions, one each in Anchorage, and Palmer where the largest number of offenses occur. Additionally, because of the higher level of activity one Legal Secretary I position will have to be added at both Anchorage and Palmer.

FISCAL NOTE

STATE OF ALASKA  
1995 LEGISLATIVE SESSION

BILL NO. HB 159

ANALYSIS CONTINUATION:

FISCAL ANALYSIS

Component Location Job Title	Third Jud. District (0087)				<u>TOTAL</u>
	<u>Anchorage Attorney III</u>	<u>Anchorage Leg. Sec. I</u>	<u>Palmer Atty III</u>	<u>Palmer Leg. Sec. I</u>	
Personal Services	71.7	36.1	74.1	36.6	218.5
Travel	3.0	0.0	3.0	0.0	6.0
Contractual	8.6	6.0	7.6	6.0	28.2
Supplies	3.3	2.4	3.3	2.4	11.4
Equipment	<u>6.5</u>	<u>8.5</u>	<u>6.5</u>	<u>8.5</u>	<u>30.0</u>
Total	93.1	53.0	94.5	53.5	294.1

01/24/95

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

DEPARTMENT OF LAW

SCENARIO: 3

BRU NAME: PROSECUTION

PCN	UNAUTD PCN	JOB CLASS TITLE	Y S	LOCATION NAME	R D S C U	R&S MOS DUDG	SALARY	PREM PAY	DENES	PER.SERV. COSTS	G. F. AMOUNT
#030		ATTORNEY III		F ANCHORAGE		A XE AA 22A 12	53304	0	10385	71689.90	

## \*\* JUSTIFICATION:

Is position will be needed to handle an increased felony  
 workload when the penalty for driving while intoxicated (or  
 refusing to take a chemical test) for the fourth or more  
 times is raised from a class A misdemeanor to a class C  
 felony.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	8600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS	93009.98	71689.98
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## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	71689.98
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TOTAL FUNDING	71689.98
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#031		LEGAL SECRETARY I		F ANCHORAGE		A GG 2A 10A 12	24756	0	11367	36123.82	
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## \*\* JUSTIFICATION:

Is position will be needed to handle an increased felony  
 workload when the penalty for driving while intoxicated (or  
 refusing to take a chemical test) for the fourth or more  
 times is raised from a class A misdemeanor to a class C  
 felony.

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	6000.00
SUPPLIES COSTS	2400.00
EQUIPMENT COSTS	8500.00
OTHER COSTS	0.00

TOTAL COSTS	53023.82	36123.82
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## \*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS	36123.82
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TOTAL FUNDING	36123.82
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## \*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	2	TOTAL PERSONAL SERVICES	107013.80
PART TIME/SEASONAL NEW POSITIONS	0		
NON PERMANENT NEW POSITIONS	0	TOTAL COSTS INC. ASSOC COSTS	146113.80
OTHER.....	0		

NUMBER OF NEW POSITIONS IN COMPONENT:	2
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FUNDING DATA: O.F. & G.F. MATCH:	107013.80
OTHER FUNDS:	0.00

TOTAL FUNDING:	107013.80
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02/14/95

09:46:00.8

PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 1

DEPARTMENT OF LAW

SCENARIO: 2

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S MOS BUDG	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
03#026		ATTORNEY III		P DILLINGHAM	A	XE	III	22A 6	33900	0	9723	43623.54	

\*\*\*\* JUSTIFICATION:

Substantial increases in the penalties for commercial fishing violations will result in more vigorous defense by defendants and will increase the number of trials significantly.

TRAVEL COSTS	3500.00
CONTRACTUAL COSTS	5000.00
SUPPLIES COSTS	1200.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS 59823.54 43623.54

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 43623.54

TOTAL FUNDING 43623.54

03#059		ATTORNEY III		F ANCHORAGE	A	XE	AA	22A 12	53304	0	18385	71689.90	
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\*\*\*\* JUSTIFICATION:

This position will be needed to handle an increased felony caseload if state criminal mischief laws are amended to raise the penalty for joyriding from a class A misdemeanor to a class C felony.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	8600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS 93089.98 71689.98

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 71689.98

TOTAL FUNDING 71689.98

03#07		ATTORNEY III		F PALMER	A	XE	BB	22A 12	55260	0	18873	74133.41	
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\*\*\*\* JUSTIFICATION:

This position will be required to handle the additional legal actions required to prosecute third-time DWI/refusal prosecutions as felonies rather than misdemeanors. This includes securing grand jury indictments and overcoming a tougher defense due to the substantially increased penalties.

TRAVEL COSTS	3000.00
CONTRACTUAL COSTS	7600.00
SUPPLIES COSTS	3300.00
EQUIPMENT COSTS	6500.00
OTHER COSTS	0.00

TOTAL COSTS 94533.41 74133.41

\*\*\* FUNDING DETAIL:

100% GENERAL FUND RECEIPTS 74133.41

TOTAL FUNDING 74133.41

03#068		LEGAL SECRETARY I		F PALMER	A	GG	2A 10A 12	25140	0	11463	36603.52		
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\*\*\*\* JUSTIFICATION:

This position will be required to handle the additional legal actions required to prosecute third-time DWI/refusal prosecutions as felonies rather than misdemeanors. This includes securing grand jury

TRAVEL COSTS	0.00
CONTRACTUAL COSTS	6000.00
SUPPLIES COSTS	2400.00
EQUIPMENT COSTS	8500.00

02/14/95

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PERSONAL SERVICES EXPENDITURES NEW POSITION DETAIL REPORT

PAGE: 2

DEPARTMENT OF LAW

SCENARIO: 2

COMPONENT #: 6501020300 NAME: THIRD JUDICIAL DISTRICT

BRU NAME: PROSECUTION

PCN	UNAUTH PCN	JOB CLASS TITLE	T S	LOCATION NAME	R C	B U	S	R&S BUFG	HOS	SALARY	PREM PAY	BENES	PER.SERV. COSTS	G. F. AMOUNT
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indictments and overcoming a tougher defense due to the substantially increased penalties.

OTHER COSTS 0.00  
 =====  
 TOTAL COSTS 53503.52 36603.52

\*\*\* FUNDING DETAIL:

1004 GENERAL FUND RECEIPTS 36603.52  
 =====  
 TOTAL FUNDING 36603.52

\*\*\* COMPONENT TOTALS:

FULL TIME NEW POSITIONS	3	TOTAL PERSONAL SERVICES	226050.45
PART TIME/SEASONAL NEW POSITIONS	1	TOTAL COSTS INC./ASSOC COSTS	300950.45
NON PERMANENT NEW POSITIONS	0		
OTHER.....	0		
	=====		

NUMBER OF NEW POSITIONS IN COMPONENT:

4

FUNDING DATA: G.F. & G.F. MATCH: 226050.45  
 OTHER FUNDS: 0.00  
 =====  
 TOTAL FUNDING: 226050.45

FISCAL NOTE

HB 159

2/14/95

page 2

This totals 14,680 bed days or 41 additional beds on an annual basis. With rare exception this class of prisoners would be housed in a treatment facility or CRC.

The average cost of a CRC bed is \$57 per day or \$20,805 per year.

$$14,680 \times \$57 = \$836.8 \text{ thousand.}$$

If fifth and subsequent convictions resulted in more than the minimum sentence or if the minimum sentence is greater than the average sentence under the current sentencing practices, there would be additional costs. At this time sufficient data is not available to address this issue.

Recent experience shows that after the second offense covered by this bill, the ability to collect either from the individual or to attach their permanent fund to offset these costs falls precipitously and no program receipts are expected.

As a felony, each conviction would require a pre-sentence investigation and report prepared by a probation officer, as well as additional time in court. The department's standard for this process is 18 hours per pre-sentence report. 330 individuals would be convicted of a felony under this bill, even though some would not receive a longer sentence.

$$330 \text{ PSIs} \times 18 \text{ hours} = 5,940 \text{ total hours.}$$

Allowing for vacation and sick leave we can expect a probation officer position to devote 1,875 hours to pre-sentence investigations annually.

$$5,940 / 1,875 = 3.2 \text{ position equivalents.}$$

Four probation officer positions and one clerical person have been included to support the required investigation and report function and a one time cost for equipment at \$5,000 per staff person has been included.

WORK DRAFT

WORK DRAFT

WORK DRAFT

9-LS0600NF  
Ford  
3/10/95

*Presumptive  
sentencing*

*Rep Porter*

CS FOR HOUSE BILL NO. 159(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:  
Referred:

Sponsor(s): REPRESENTATIVES PORTER, Bunde, Green, Toohy

A BILL

FOR AN ACT ENTITLED

1 "An Act allowing a person under age 21 to be arrested by a peace officer  
2 without a warrant for illegal possession, consumption, or control of alcohol;  
3 relating to the offenses of driving while intoxicated and failure to submit to a  
4 chemical test of breath or blood; and providing for an effective date."

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

6 \* Section 1. AS 12.25.030(b) is amended to read:

7 (b) In addition to the authority granted under (a) of this section, a peace officer  
8 without a warrant may arrest a person when the peace officer has reasonable cause for  
9 believing that the person has committed a crime under, or violated conditions imposed  
10 as a part of the person's release before trial on misdemeanor charges brought under,

11 (1) AS 04.16.050 or another law or ordinance with substantially  
12 similar elements;

13 (2) AS 11.41.270 or AS 11.56.740; or

14 (3) [(2)] AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an

1 ordinance with elements substantially similar to the elements of a crime under  
 2 AS 11.41, AS 11.46.330, or AS 11.61.120, when the victim is a spouse or former  
 3 spouse of the person who committed the crime; a parent, grandparent, child, or  
 4 grandchild of the person who committed the crime; a member of the social unit  
 5 comprised of those living together in the same dwelling as the person who committed  
 6 the crime; or another person who is not a spouse or former spouse of the person who  
 7 committed the crime but who previously lived in a spousal relationship with the person  
 8 who committed the crime or is in or has been in a dating, courtship, or engagement  
 9 relationship with the person who committed the crime.

10 \* Sec. 2. AS 12.55.102(d) is amended to read:

*shall*

11 (d) The court may include the cost of the ignition interlock device as a part  
 12 of the fine required to be imposed against the defendant under AS 28.35.030(b) or (n)  
 13 or 28.35.032(g) or (q).

14 \* Sec. 3. 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 than \$1,000 if  
 23 the person has been previously convicted twice and is not subject to  
 24 punishment under (n) of this section;

25 (D) not less than 120 days and a fine of not less than \$2,000  
 26 if the person has been previously convicted three times and is not subject to  
 27 punishment under (n) of this section;

28 (E) not less than 240 days and a fine of not less than \$3,000 if  
 29 the person has been previously convicted four times and is not subject to  
 30 punishment under (n) of this section;

31 (F) not less than 360 days and a fine of not less than \$4,000 if

1 the person has been previously convicted more than four times and is not  
2 subject to punishment under (n) of this section:

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. 4. AS 28.35.030(m)(4) is amended to read:

13 (4) "previously convicted" means having been convicted in this or  
14 another jurisdiction, within 10 years preceding the date of the present offense, of any  
15 of the following offenses [, OR OF ANOTHER LAW OR ORDINANCE WITH  
16 SUBSTANTIALLY SIMILAR ELEMENTS]; however, convictions for any of these  
17 offenses, if arising out of a single transaction and a single arrest, are considered one  
18 previous conviction:

19 (A) operating a motor vehicle, aircraft, or watercraft while  
20 intoxicated, in violation of this section or in violation of another law or  
21 ordinance with substantially similar elements, except that the other law or  
22 ordinance may provide for a lower level of alcohol in the person's blood  
23 or breath than imposed under (a)(2) of this section:

24 (B) refusal to submit to a chemical test in violation of  
25 AS 28.35.032 or in violation of another law or ordinance with substantially  
26 similar elements: or

27 (C) operating a commercial motor vehicle while intoxicated in  
28 violation of AS 28.33.030 or in violation of another law or ordinance with  
29 substantially similar elements, except that the other law or ordinance may  
30 provide for a lower level of alcohol in the person's blood or breath than  
31 imposed under AS 28.33.030(a)(2).

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\* Sec. 5. AS 28.35.030 is amended by adding a new subsection to read:

(n) A person is guilty of a class C felony if the person is convicted of driving while intoxicated and has been previously convicted two or more times. For purposes of determining if a person has been previously convicted, the provisions of (m)(4) of this section apply, except that only convictions occurring within five years preceding the date of the present offense may be included. Upon conviction the court

(1) shall impose a fine of not less than \$5,000 and a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times; [or more]

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

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

(B) suspend imposition of sentence;

(3) shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181(c);

(4) may order as a condition of probation or parole that the person take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) may also order forfeiture under AS 28.35.036 of the vehicle or aircraft used in the commission of the offense, subject to remission under AS 28.35.037.

\* Sec. 6. AS 28.35.032(f) is amended to read:

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

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\* Sec. 7. AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section

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

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

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

(C) not less than 60 days and a fine of not less than \$1,000 if the person has been previously convicted twice and is not subject to punishment under (q) of this section;

(D) not less than 120 days and a fine of not less than \$2,000 if the person has been previously convicted three times and is not subject to punishment under (q) of this section;

(E) not less than 240 days and a fine of not less than \$3,000 if the person has been previously convicted four times and is not subject to punishment under (q) of this section;

(F) not less than 360 days and a fine of not less than \$4,000 if the person has been previously convicted more than four times and is not subject to punishment under (q) of this section;

(2) the court may not

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

(B) suspend imposition of sentence;

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

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

\* Sec. 8. AS 28.35.032 is amended by adding a new subsection to read:

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1 (q) A person is guilty of a class C felony if the person is convicted under this  
 2 section and has been previously convicted two or more times. For purposes of  
 3 determining if a person has been previously convicted, the provisions of  
 4 AS 28.35.030(m)(4) apply, except that only convictions occurring within five years  
 5 preceding the date of the present offense may be included. Upon conviction,

6 (1) the court shall impose a fine of not less than \$5,000 and a  
 7 minimum sentence of imprisonment of not less than

8 (A) 120 days if the person has been previously convicted twice;

9 (B) 240 days if the person has been previously convicted three

10 times: *(or more)*

11 (C) 360 days if the person has been previously convicted four  
 12 or more times;

13 (2) the court may not

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

17 (B) suspend imposition of sentence;

18 (3) the court shall revoke the person's driver's license, privilege to  
 19 drive, or privilege to obtain a license under AS 28.15.181(c);

20 (4) the court may order as a condition of probation or parole that the  
 21 person take a drug or combination of drugs intended to prevent consumption of an  
 22 alcoholic beverage; a condition of probation imposed under this paragraph is in  
 23 addition to any other condition authorized under another provision of law;

24 (5) the sentence imposed by the court under this subsection shall run  
 25 consecutively with any other sentence of imprisonment imposed on the person; and

26 (6) the court may also order forfeiture under AS 28.35.036, of the  
 27 vehicle or aircraft used in the commission of the offense, subject to remission under  
 28 AS 28.35.037.

29 \* Sec. 9. APPLICABILITY. This Act applies to offenses that are committed on or after  
 30 the effective date of this Act, except that references to previous convictions include  
 31 convictions occurring before, on, or after the effective date of this Act.

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1 \* Sec. 10. This Act takes effect July 1, 1995.

DWI #1

*court*  
(h) They shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an agency authorized by the court to make referrals for rehabilitative treatment or to provide rehabilitative treatment. If a person is convicted of aggravated driving while intoxicated, the court shall order the person to be evaluated by the agency before imposing sentence for the offense.

OK

DWI #2

(j) If a person fails to satisfy the requirements of an authorized agency under (i) of this section, the court,

*felony*  
(1) may impose any portion of a suspended sentence; however, if the person is convicted of aggravated driving while intoxicated, the court shall impose ~~any~~ remaining portion of a suspended sentence;

*the*  
(2) may punish the failure as contempt of the authority of the court under AS09.50.010 or as a violation of a condition of probation; and

(3) shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a driver's license until the requirements are satisfied.

*OK*

DWI #6

(n) A person is guilty of aggravated driving while intoxicated if convicted of driving while intoxicated and has been previously convicted two or more times. For purposes of determining if a person has been previously convicted, the provisions of (m)(4) of this section apply. Upon conviction the court

(1) shall impose a fine of not less than \$5,000, and a term of imprisonment of one year, with a minimum period of time to be served of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve the minimum term of imprisonment under (1) of this subsection and that the person complete rehabilitative treatment recommended by the agency under (h) of this section;

(B) suspend imposition of sentence;

(3) shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS28.15.181.

(4) may order forfeiture under AS28.35.036 of the vehicle or aircraft used in the commission of the offense, subject to remission under AS28.35.037; and

(5) shall order the person to install an ignition interlock device on the person's vehicle before the person's driver's license, privilege to drive, or privilege to obtain a license is restored under AS28.15.181

(6) ~~may~~ (or shall) order the defendant to be on probation for a period authorized under AS12.55.090; during this probationary period

*make generic*



(b) the court may order that the person take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; Note: Here could be listed any other types of long term conditions of probation.

*prob license plates*

(A) Drugs

(B) <sup>followup</sup> treatment if prescribed