

**HB**

**462**

# Alaska State Legislature

Representative Brian S. Porter



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**DISTRICT 20**

## MEMORANDUM

TO: Senator Robin Taylor, Chair  
Senate Judiciary Committee

FROM: Rep. Brian Porter, Chair  
House Judiciary Committee

SUBJECT: HB 462, Drunk Driving: Evidence & Sentencing

DATE: March 27, 1996

I respectfully request a hearing for HB 462 be scheduled in your committee at your earliest convenience.

In creating the felony driving while intoxicated and refusal offenses last session, the law was inadvertently changed to require the court to automatically impose all suspended time on felony offenses who fail to complete treatment (ch. 80, SLA 1995). This automatic imposition of all suspended time for those offenders creates legal and practical problems.

Legally, mandating that all suspended time be imposed for only one class of criminal offenders may violate the constitutional guarantee of Equal Protection of the Law. Practically, the ultimate goal is to curtail the practice of drinking and driving. Some offenders require more than one exposure to a treatment program before it becomes effective. This is often accomplished by imposing a portion of the suspended jail time followed by a forced return to treatment.

This bill amends the law to give the sentencing court the discretion to decide how much of the suspended term the defendant should serve for failure to complete a treatment program.

Thank you for your consideration.

# Alaska State Legislature

Representative Brian S. Porter



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**DISTRICT 20**

## *Sponsor Statement*

### HB 462. Drunk Driving: Evidence & Sentencing

The bill would change a part of the sentencing scheme for persons convicted of felony driving while intoxicated or refusal to take a breath test. A sentencing court may order a defendant convicted of DWI or breath test refusal to receive inpatient treatment as a condition of the sentence.

Normally, if the defendant fails to complete treatment the court may impose some or all of the suspended jail time. However, in creating the felony driving while intoxicated and refusal offenses last session, the law was inadvertently changed to require the court to automatically impose all suspended time on felony offenders who fail to complete treatment ( ch. 80, SLA 1995). This automatic imposition of all suspended time for those offenders creates legal and practical problems.

Legally, mandating that all suspended time be imposed for only one class of criminal offenders may violate the constitutional guarantee of Equal Protection of the Law. Practically, the ultimate goal is to curtail the practice of people drinking and driving. Some offenders require more than one exposure to a treatment program before it becomes effective. This is often accomplished by imposing a portion of the suspended jail time followed by a forced return to treatment. This bill amends the law to give the sentencing court the discretion to decide how much of the suspended term the defendant should serve for failure to complete a treatment program.



The bill additionally amends Rule 6(r)(1) of the Alaska Rules of Criminal Procedure to allow prior convictions of driving while intoxicated and breath test refusal to be presented at the grand jury proceedings by hearsay evidence. Because grand jury presentations must occur within 10 days after arrest, there is not sufficient time to obtain certified judgments of prior convictions, particularly if the convictions are from another jurisdiction. This court rule amendment is necessary in order to ensure that repeat offenders from out of state are not treated more leniently than Alaskans.

Finally, the bill amends Rule 32.1 of the Alaska Rules of Criminal Procedure to provide that a presentence investigation by the Department of Corrections is not required in most cases in which a person is convicted of felony driving while intoxicated or breath test refusal. Offenders convicted of driving while intoxicated and breath test refusal have been sentenced successfully for many years without the benefit of a presentence investigation. The bill would require that a presentence report be prepared for a repeat felony offender convicted of driving while intoxicated or breath test refusal.

# LEGAL SERVICES

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Juneau, Alaska 99801-2105

## MEMORANDUM

February 26, 1996

**SUBJECT:** Sectional Summary of HB 462.

**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 court to impose part or all of the remaining portion of a suspended sentence for driving while intoxicated, if the convicted person fails to meet required alcohol rehabilitation treatment conditions.

**Section 2.** Allows a court to impose part or all of the remaining portion of a suspended sentence for refusing to take a chemical breath test, if the convicted person fails to meet required alcohol rehabilitation treatment conditions.

**Section 3.** Technical amendment to allow certain hearsay evidence in a felony prosecution to be presented to the grand jury.

**Section 4.** Allows hearsay evidence of prior convictions to be presented to the grand jury, in a felony prosecution for driving while intoxicated under AS 28.35.030(n) or refusal to take a chemical breath test under AS 28.35.032(p).

**Section 5.** Technical amendment regarding pre-sentence investigations by the Department of Corrections.

**Section 6.** Provides that unless the defendant is subject to a presumptive term of imprisonment, a pre-sentence investigation by the Department of Corrections is not required for a person convicted of felony driving while intoxicated or felony refusal to take a chemical breath test.

Representative Brian Porter

February 26, 1996

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Section 7. Applicability clause.

Section 8. Effective date.

MFF:glc

96-126.glc

(3) The presentment shall not mention the names of individuals. The presentment shall not be filed with the court, nor shall it be kept by the court beyond the time that the grand jury is discharged.

(4) When the presentment is made the court shall give such instructions on the law as it considers necessary.

(p) **Defense Witnesses.** Although the grand jury has no duty to hear evidence on the behalf of the defendant, it may do so.

(q) **Sufficiency of Evidence.** When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses. An indictment shall not be found nor a presentment made upon the statement of a grand juror unless such grand juror is sworn and examined as a witness. The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.

(r) **Admissibility of Evidence.**

(1) Evidence which would be legally admissible at trial shall be admissible before the grand jury. In appropriate cases, however, witnesses may be presented to summarize admissible evidence if the admissible evidence will be available at trial. Except as stated in subparagraphs (2) and (3), hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

(2) In a prosecution for an offense under AS 11.41.410 — 11.41.440 or 11.41.455, hearsay evidence of a statement related to the offense, not otherwise admissible, made by a child who is the victim of the offense may be admitted into evidence before the grand jury if

(i) the circumstances of the statement indicate its reliability;

(ii) the child is under 10 years of age when the hearsay evidence is sought to be admitted;

(iii) additional evidence is introduced to corroborate the statement; and

(iv) the child testifies at the grand jury proceeding or the child will be available to testify at trial.

(3) Hearsay evidence related to the offense, not otherwise admissible, may be admitted into evidence before the grand jury if

(i) the individual presenting the hearsay evidence is a peace officer involved in the investigation; and

(ii) the hearsay evidence consists of the statement and observations made by another peace officer in the course of an investigation; and

(iii) additional evidence is introduced to corroborate the statement.

(4) If the testimony presented by a peace officer under paragraph (3) of this section is inaccurate because of intentional, grossly negligent, or negligent misstatements or omissions, then the court shall dismiss an indictment resulting from the testimony if the defendant shows that the inaccuracy prejudices substantial rights of the defendant.

(5) In this section "statement" means an oral or written assertion or nonverbal conduct if the nonverbal conduct is intended as an assertion.

(s) **Discharge and Excuse.** A grand jury shall serve until discharged by the presiding superior court judge of the judicial district but no grand jury may serve more than 4 months, unless for good cause such period is extended. At any time for cause shown the presiding judge may excuse a juror either temporarily or permanently and may impanel an alternate juror in place of the juror excused. In order to vote on the proposed bill, the alternate juror must be present during the presentation of all evidence related to that case.

(t) **Delegation of Duties.** Whenever a superior court is sitting other than where the presiding judge is sitting, or the presiding judge is unavailable, the presiding judge may delegate duties under this rule to another judicial officer. However, the presiding judge may delegate duties under Criminal Rule 6.1 only to another superior court judge.

(u) **Telephonic Testimony.**

(1) A witness may participate telephonically in grand jury proceedings if the witness is not a victim and the witness:

(A) would be required to travel more than 50 miles to the situs of the grand jury; or

(B) lives in a place from which people customarily travel by air to the situs of the grand jury.

(2) A witness who is not entitled to participate telephonically under subparagraph (1) may participate telephonically with approval of the presiding judge of the judicial district, or the presiding judge's designee. A motion to allow telephonic testimony under this subparagraph may be ex parte and shall be accompanied by an affidavit of the prosecuting attorney that states the reason telephonic testimony is requested.

(3) If a witness participates telephonically in grand jury proceedings, after the witness is sworn, the prosecuting attorney shall require the witness to

(A) state the location from which the witness is testifying; and

of another is not improper in determining a sentence to be imposed against the accused. *Burleson v. State*, Op. No. 1222, 1 P2d 1195 (Alaska 1975).

The supreme court's function, in a sentence appeal, is to ascertain whether the trial court was clearly mistaken in imposing the particular sanction. *Burleson v. State*, Op. No. 1222, 543 P2d 1195 (Alaska 1975).

Sentencing court must unequivocally bring home to defendant that he has right to make a statement in his own behalf and to present any information in mitigation of punishment. *Natras v. State*, Op. No. 1314, 554 P2d 399 (Alaska 1976).

Actual consideration of police contacts will not invalidate sentence if from the record or by witnesses' testimony the court is aware of the circumstances and outcome of the contacts. *Buchanan v. State*, Op. No. 2553, 561 P2d 1197 (Alaska 1977).

Sentencing court may rely on psychiatric report which explains police contacts in reaching a diagnosis. *Buchanan v. State*, Op. No. 1316, 561 P2d 1197 (Alaska 1977).

Mere awareness by sentencing court of other police contacts will not serve to invalidate an otherwise valid sentence. *Buchanan v. State*, Op. No. 1316, 561 P2d 1197 (Alaska 1977).

Sentencing judge may consider instances of past anti-social behavior, substantiated by supporting information, even though defendant was not charged or convicted. *Nukapigak v. State*, Op. No. 1410, 562 P2d 697 (Alaska 1977).

Question, "Do you have anything you want to say before we impose sentence?" was minimal compliance with allocation requirement of this rule, where defendant was sentenced four years before Supreme Court imposed more stringent sentence. *Natras v. State*, Op. No. 1482, 568 P2d 10 (Alaska 1978).

Trial court's failure to afford defendant the opportunity to make a statement on his own behalf at sentencing hearing was harmless error. *Mohr v. State*, Op. No. 1719, 584 P2d 40 (Alaska 1978).

Under Rule 32(a) the obligation is on the court to afford defendant the opportunity to speak and not on the defendant to request such an opportunity, hence defendant's failure to assert actively his right of allocution did not constitute error. *Mohr v. State*, Op. No. 1719, 584 P2d 40 (Alaska 1978).

Defendant's contention that consideration of his juvenile record by the court imposing sentence violated his right to a fair trial was rejected. *Pratt v. State*, Op. No. 1774, 588 P2d 40 (Alaska 1978).

Despite the fact that defendant spoke at some length under direct examination by his counsel at the sentencing hearing, the court's failure to inform him of his right of allocution rendered resentencing error. *Law v. State*, Op. No. 2301, 624 P2d 40 (Alaska 1981).

In order to establish a claim of racial bias in sentencing, defendant must show that the sentence was probably higher than that which would have been imposed upon a defendant of different race with a like criminal history who committed a similar offense. *Coleman v. State*, Op. No. 2190, 621 P2d 849 (Alaska 1980).

Trial court, in conducting a hearing pursuant to this rule to determine whether mitigating and aggravating factors have been established, may consider evidence previously introduced at the trial. *Wolf v. State*, Op. No. 99, 647 P2d 609 (Alaska App. 1982).

Where defendant was given a chance to exercise his right of allocution just prior to sentencing and did not exercise that right on the ground that he needed more time to prepare, failure of the trial judge to give the defendant more time was not error. *Hastings v. State*, Op. No. 706, 736 P2d 1157 (Alaska App. 1987).

Denial of allocution may be harmless where the defendant is subject to presumptive sentencing, no aggravating or mitigating factors are established, and the totality of the circumstances would not warrant referral to a three-judge panel for sentencing. *Johnson v. State*, Op. No. 858, 762 P2d 493 (Alaska App. 1988).

Trial judge's oversight in denying defendant allocution was harmless beyond a reasonable doubt where the judge had already rejected proposed mitigating factors and possible referral to a three-judge panel for sentencing. *Johnson v. State*, Op. No. 858, 762 P2d 493 (Alaska App. 1988).

### Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling.** At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and shall order a presentence investigation by the Department of Corrections. If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

#### (b) Presentence Investigation and Report.

(1) The Department of Corrections shall prepare and deliver the report of the presentence investigation not less than 30 days before the presentencing hearing. The report shall contain any prior criminal conviction and any finding of delinquency of the defendant and such information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior as may be helpful in imposing sentence or in granting probation or in the correctional treatment of the defendant, and such other information as may be required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100-.150.

The report shall be submitted to the judge, the state's attorney, and the attorney for the defendant; the defense attorney shall not be prohibited from providing a full copy to the defendant unless the judge enters on the record findings why providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public.

Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(2) In the event the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order such a report made prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(3) Notwithstanding subparagraph (b)(2), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

**(c) Notice of Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, and Other Information to be Relied on at Sentencing.** (1) Within ten days after receipt of the presentence report, each party shall file:

(A) notice of any aggravating or mitigating factors, pursuant to AS 12.55.155, or extraordinary circumstances, pursuant to AS 12.55.165, on which it intends to rely, supported by a written statement outlining, as an offer of proof, the evidence that counsel contends establishes each aggravating or mitigating factor or extraordinary circumstance; and

(B) a memorandum giving notice of any evidence which the party intends to rely on at sentencing which was not previously presented at a prior proceeding in the case, in the notice described in (c)(1)(A), or in the presentence report. If the party intends to present additional witnesses, the memorandum shall include a list of these witnesses and a brief summary of their anticipated testimony. The memorandum need not give notice of matters to be mentioned in a defendant's allocution or a victim's oral statement.

(2) Within ten days after receipt of the presentence report, the state shall file:

(A) notice of the prior convictions, if any, on which it intends to rely for presumptive sentencing purposes; and

(B) notice of the amount of restitution, if any, it intends to request, supported by a memorandum or exhibits that establish the basis for the restitution request.

**(d) Disputing Aggravating and Mitigating Factors, Extraordinary Circumstances, Prior Convictions, or Other Information.** (1) Within ten days after receipt of the notices required by paragraph (c), each party shall file:

(A) notice whether the party concedes or disputes each aggravating or mitigating factor or extraordi-

nary circumstance asserted by the opposing party; and

(B) notice of objection to any information in the presentence report or in any other material the judge or opposing party has identified as a source of information to be relied on at sentencing on the ground that such information is insufficiently verified or is inaccurate. For each item a party contests as inaccurate, that party shall submit an affidavit from the party or another witness with personal knowledge outlining the testimony the witness is prepared to provide to refute or to explain the allegation, or a notice that the party has served or attempted to serve a subpoena upon the person who provided the contested information and intends to examine the person at the presentencing hearing.

(2) Within ten days after receipt of the notices required by paragraph (c), the defense shall file:

(A) notice of any objection to any of the prior convictions relied on by the state and a statement of the grounds for the objection as provided in AS 12.55.145(c), which shall be supported by affidavit if the objection is based on facts outside the record; and

(B) notice of any objection to any restitution request and a statement of grounds for the objection.

**(e) Presentencing Hearing.** At the presentencing hearing, the judge shall review the notices filed pursuant to paragraphs (c) and (d). The judge shall enter findings as to undisputed facts. For each allegation a party contends is based on insufficiently verified information, the judge shall determine whether the allegation is sufficiently verified and shall order stricken from the presentence report any allegation the judge finds is not sufficiently verified. The judge shall provide an opportunity for argument and then shall enter conclusions on legal issues that may be resolved without an evidentiary hearing. The judge shall clarify the material disputed facts, so that the parties can be prepared to present witnesses at the sentencing hearing.

(Added by SCO 157 effective February 15, 1973; amended by SCO 218 effective January 15, 1976; by SCO 536 effective October 1, 1982; by SCO 643 effective September 15, 1985; repealed and reenacted by SCO 1136 effective July 15, 1993)

#### Annotations

#### Cases

Sentence of five years' imprisonment for burglary, two of which were suspended, was not clearly mistaken, even though the defendant was 19 years old and it was his first felony offense. *Zurfluh v. State*, Op. No. 2238, 620 P2d 690 (Alaska 1980).

Where defendant was convicted of assault with a dangerous weapon for striking another person in the face with a beer bottle, sentencing court was not clearly mistaken in imposing

ALASKA

DEPARTMENT OF LAW

CRIMINAL DIVISION  
February 27, 1996

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO

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The Hon. Brian Porter, Chairman  
House Judiciary Committee  
House of Representatives  
State Capitol, Room 118  
Juneau, Alaska 99801

Re: House Bill 462

Dear Representative Porter:

This is in response to your request for a legal analysis of HB 462, an act addressing driving while intoxicated offenses, Rules of Criminal Procedure, and providing for an effective date.

HB 462 amends the provisions of AS 28.35.030 and AS 28.35.032 as they relate to the powers and duties of the court if a person fails to complete a program of alcohol rehabilitation authorized by the court, after having been convicted of felony driving while intoxicated or felony refusal to submit to a chemical test. Present law requires the court to impose the entire remaining suspended sentence in these circumstances. Under HB 462, the court would have the discretion to impose either a part or all of the remaining sentence. This discretion would be very useful to the court in encouraging a defendant to return to treatment by having additional time to impose if the defendant again fails to finish the treatment program.

The bill also amends the Alaska Rules of Criminal Procedure to allow hearsay evidence of prior convictions to be used before the grand jury in felony driving while intoxicated and refusal to submit to a chemical test cases. This is particularly important in cases where prior convictions have occurred in other states. Although grand juries must be conducted within 10 days of arrest, it is often very time consuming to obtain certified copies of judgments. The use of criminal records to establish prior offenses would enable the cases to be brought to the grand jury in a timely way.

Finally, HB 462 amends the Alaska Rules of Criminal Procedure to allow felony driving while intoxicated and refusal to submit to a chemical test cases to proceed to sentencing without a presentence report, unless a presumptive sentence applies to the case. Defendants in these cases have been fairly and efficiently sentenced without a presentence report for many years; the expense and time of preparing a presentence report is not justified unless presumptive sentencing applies.

The Hon. Brian Porter, Chairman  
House Judiciary Committee

February 27, 1996  
Page 2

The Department of Law strongly supports the passage of HB 462. We will be pleased to assist in its progress through the legislature in any way.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Anne D. Carpeneti  
Assistant Attorney General

ADC:rew

# FISCAL NOTE

**STATE OF ALASKA**  
**1996 LEGISLATIVE SESSION**

**BILL NO: HB 462**

Revision Date _____	Dept Affected <u>Public Safety</u>	
Title <u>An Act relating to the offenses of driving while intoxicated and refusal to submit</u>	BRU <u>Motor Vehicles</u>	
Sponsor <u>Rep Porter</u>	Component <u>Driver Services</u>	
Requestor <u>House Transportation</u>	COMPONENT SERIAL NO. <u>0500</u>	

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0
<b>CAPITAL EXPENDITURES</b>	0	0	0	0	0	0
<b>CHANGE IN REVENUES (1006) Revenue Code</b>	0	0	0	0	0	0

**FUNDING: (Thousands of Dollars)**

1002 Federal Receipts						
1003 GE Match						
1004 GE						
1005 GE/Program Receipts						
1006 GE/MHTIA						
Other						
<b>TOTAL</b>	0	0	0	0	0	0

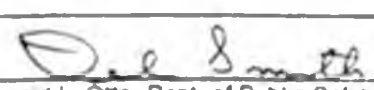
Estimate of current year (FY 96) impact \$ 0

**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)**

This bill has no fiscal impact on Division of Motor Vehicles

Prepared By	<u>Charles R. Hosack</u>	Phone	<u>269-5559</u>
Division	<u>Motor Vehicles</u>	Date	<u>2/26/96</u>
Approved by Commissioner		Date	<u>2/27/96</u>
Agency	<u>Ronald L. Otte, Dept. of Public Safety</u>		

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO: HB 462

Revision Date: \_\_\_\_\_ Dept. Affected: Public Safety  
 Title: Drunk driving, Evidence and Sentencing BRU: Alaska State Troopers  
 Component: Detachments  
 Sponsor: Representative Porter  
 Requestor: H. Transportation COMPONENT SERIAL NO. 0799

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

OPERATING	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CHANGE IN REVENUES ( )</b>	-0-	-0-	-0-	-0-	-0-	-0-
Revenue Code						

**FUNDING: (Thousands of Dollars)**

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

Estimate of current year (FY 96) impact: \$ \_\_\_\_\_

**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.)**

This bill will not have a fiscal impact on the Division of Alaska State Troopers

Prepared By: Lt. Dan Lowden Phone: 465-5505  
 Division: Alaska State Troopers Date: February 28, 1996  
 Approved by Commissioner: *Dan Smith* Date: 2/28/96  
 Agency: Ronald L. Ott, Department of Public Safety

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# FISCAL NOTE

STATE OF ALASKA  
1996 LEGISLATIVE SESSION

BILL NO. HB 462

Revision Date:	<u>12/1/95</u>	Dept. Affected:	<u>Corrections</u>
Title:	<u>"An Act relating to the offenses of driving while intoxicated and refusal to submit to a chemical test..."</u>	BRU:	<u>Statewide Programs</u>
Sponsor:	<u>Representative Porter</u>	Component:	<u>Community Corrections</u>
Requester:	<u>House Transportation</u>	COMPONENT SERIAL NO.	<u>1382</u>

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

OPERATING EXPENDITURES	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02
PERSONAL SERVICES	(104.0)					
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>(104.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</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	(104.0)					
1005 GF/Program receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>(104.0)</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY96) cost: \$ 0.0

**POSITIONS**

FULL-TIME	-2					
PART-TIME						
TEMPORARY						

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

The impact of automatic imposition of a suspended sentence was not previously considered. The more permissive language will not result in reduced costs allocated to incarceration costs in the fiscal note submitted with HB 159 signed by the Governor in 1995.

Rule 32.1(a) as amended in Sec. 5 of this bill will require pre-sentence investigations in 69 cases annually. 261 cases will be subject to the discretion of the trial court judge. It is assumed the court will chose to order a pre-sentence investigation in 50 percent of these cases. This will result in a projected decrease of 130 Pre-sentence investigations annually. Staff will be reduced by two probation officers and personal services will be reduced by \$104.0.

2 PO II X 52.0 annual salary = \$104.0 (decrement)

This decrement assumes that the 5 positions and funding related to HB 159 are annualized and will be funded in FY 97 without this legislation

Prepared by:	<u>Jerry Shriner</u>	Phone:	<u>465-4640</u>
Division:	<u>Office of the Commissioner</u>	Date:	<u>2/12/96</u>
Approved by Commissioner:	<u>Margaret M. Pugh</u>	Date:	<u>2/12/96</u>
Agency:	<u>Department of Corrections</u>		

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DEPARTMENT OF LAW

CRIMINAL DIVISION

April 11, 1996

TONY KNOWLES, GOVERNOR

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The Hon. Robin Taylor  
Alaska State Legislature  
State Capitol, Room 30  
Juneau, AK 99801-1182

Re: HB 462am - "An Act relating to the offense of driving while intoxicated and refusal to submit to a chemical test of breath or blood; amending Rules 6 and 32.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

Dear Senator Taylor:

I spoke with your aide, Joe Ambrose, last week, who suggested that a summary explanation of HB 462am, which has been assigned to the Senate Judiciary Committee, would be helpful to the committee.

HB 462am was introduced to make four relatively minor, but important, changes to the felony driving while intoxicated and refusal to submit to a breathalyzer offenses. These changes are in the nature of "clean up" changes, and address problems that were not recognized last year when the felony offenses for DWI and refusal were adopted.

First, the DWI and refusal statutes presently require a court sentencing a person to refer the person to evaluation and treatment by an authorized alcohol rehabilitation program. An inpatient treatment program may be ordered by the agency if authorized in the court's judgment. The felony provisions passed last year provide that if a person does not complete the inpatient treatment, the court is then required to impose the entire remaining suspended time of imprisonment. HB 462am allows the court the discretion to impose a part or all of the remaining suspended jail time. This discretion is important, as the automatic imposition of all remaining time does not allow the court

to require the person to return to treatment. Experience shows that it often takes more than one attempt at treatment for the treatment to be successful. Further, there may be other factors present which would make the imposition of less than the entire remaining time more appropriate.

Second, the bill clarifies an issue which is presently being litigated in district court in Anchorage. Current law allows convictions in the 10 year period before the current offense to be considered for sentencing purposes in DWI and refusal cases. The felony provisions of both the DWI and refusal offenses provide that only convictions occurring in the five years preceding the present offense may be considered in determining whether the offense is a felony. It is being claimed that the legislature intended, then, that only convictions occurring in the preceding five years may be considered for sentencing purposes. The state's position is that this clearly was not the legislative intent, as the felony provisions reference the definition of "previously convicted", which specifically refers to offenses occurring in the prior 10 years. However, in case the court decides against the state, and to make the intent perfectly clear, HB 462am amends the felony DWI and refusal provisions to provide that the number of offenses in the prior 10 years dictate the sentence.

Third, Sections five and six of HB 462am amend the Alaska Rules of Criminal Procedure to allow that Alaska Public Safety Information Network (APSIN) reports and other computerized criminal history records to be used at the grand jury to establish the prior convictions for DWI and refusal for the felony offense. The reason is to allow people with prior convictions of DWI or refusal from another state to be treated the same as people with prior convictions in Alaska. A felony charge must be brought before the grand jury within 10 days of arrest. This is not enough time to obtain certified copies of judgments from prior offenses from other states. Thus the use of APSIN and NCIC reports is important to establish the prior convictions.

Finally, the bill provides that a presentence investigation is not required for a person convicted of felony DWI or refusal, unless the person is subject to a presumptive sentence. The rationale is that the expense of a presentence investigation is not justified in these cases; people have been sentenced for these offenses for many years without the benefit of a presentence report, and the sentences are not sufficiently different under the new felony provisions to justify them.

The Hon. Robin Taylor  
Alaska State Legislature

April 11, 1996  
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If you have any questions about the bill, please call me any time.

Very truly yours,

BRUCE M. BOTELHO  
ATTORNEY GENERAL

By:

  
Anne D. Carpeneti  
Assistant Attorney General

ADC:jf