

HB

330

HFIN

FILE

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 330(JUD)
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to providing alcoholic BRU Criminal Division
beverages to a person under 21 years of age." Component 1st-4th Judicial Districts: Criminal
 Sponsor House Judiciary Committee by Request Appeals/Special Litigation
 Requester House Judiciary Committee Component No. 2198-99:2201/03/61/79

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 330 creates a new class C felony. The new crime would be providing an alcoholic beverage to someone under 21, if the recipient of the alcoholic beverage then injures or causes the death of another person while under the influence of that alcoholic beverage.

The Department of Law anticipates little fiscal impact to the Criminal Division from passage of this bill.

Prepared by: Joan M. Kasson
 Division: Attorney General's Office
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General
 Agency: Department of Law

Phone (907) 465-5370
 Date/Time 2/8/02 3:25 PM
 Date 2/8/2002

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSHB 330(JUD)
(H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
Title: "An Act relating to providing alcohol
to a minor...." BRU: Legal and Advocacy Services
Sponsor: House Judiciary by Request Component: Public Defender Agency
Requester: (H) JUD Component No.: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING

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
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
TOTAL

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

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

Prepared by: Barbara Brink, Director
Division: Public Defender Agency
Approved by: Jim Duncan, Commissioner
Agency: Department of Administration

Phone: (907) 334-4416
Date/Time: 2/11/02 8:17 AM
Date: 2/11/2002

ANALYSIS CONTINUATION

This legislation would increase the penalty from an A misdemeanor to a C felony for furnishing alcohol to a person under 21 years of age if the person under 21 who receives the alcohol injures or causes the death of another person and the injury or death occurs while the person under 21 was under the influence of the alcohol received. This bill is broadly worded to include any "injury." With such broad language it is likely to have a fiscal impact on the Agency, by increasing the workload of attorneys. Increasing the charge from a misdemeanor to a felony increases the workload, however it is not possible to determine what percentage of cases that the Agency currently represents people charged with furnishing alcohol to persons under 21, resulted in the person under 21, who received the alcohol, injuring another person. There is no way to gather that information therefore an indeterminate fiscal note is submitted. The Agency has serious concerns regarding determinations of what constitutes an "injury" as well as determinations of causation when time and intervening or superseding factors exist.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 330(JUD)
 (H) Publish Date: 2/13/02

Revision Date/Time (Note if correction): _____ Dept. Affected: Corrections
 Title "An Act relating to providing alcoholic beverages to a person under 21 years of age." BRU Administration and Operations
 Sponsor House Judiciary Committee Component All
 Requester House Judiciary Committee Component No. 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	***	***	***	***	***	***

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

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type—Do not abbreviate)						
TOTAL	***	***	***	***	***	***

Estimate of any current year (FY2002) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill would make it a C felony for someone to provide alcohol to a person under the age of 21 and the person who receives the alcohol injures or causes the death of another person while under the influence of the provided alcohol.

This bill could have a significant impact on the Department of Corrections as it is currently written. Injury is a very broad term and could be interpreted to mean someone who has been punched in the nose. We have no way of knowing how broadly it would be interpreted or how difficult it would be to prosecute, nor do we know how often an injury is involved in these cases. We do know it occurs. Anytime misdemeanants are elevated to felons, not only are sentences likely to increase, but probation also becomes a requirement and an additional fiscal impact.

Prepared by: Candace Brower
 Division: Commissioner's Office
 Approved by: Margaret Pugh, Commissioner
 Agency: Department of Corrections

Phone 465-4652
 Date/Time 2/8/02 4:09 PM
 Date 2/8/02

Amended in 12

CS FOR HOUSE BILL NO. 330(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/13/02
Referred: Finance

Sponsor(s): HOUSE JUDICIARY COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to providing alcoholic beverages to a person under 21 years of age."

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

3 * Section 1. AS 04.16.051(d) is amended to read:

4 (d) A person acting with criminal negligence who violates this section is guilty
5 of a class C felony if

6 (1) [.] within the five years preceding the violation, the person has
7 been previously convicted under

8 (A) [(1)] this section; or

9 (B) [(2)] a law or ordinance of this or another jurisdiction with
10 clements substantially similar to this section; or

11 (2) the person who receives the alcoholic beverage negligently
12 causes serious physical injury to or the death of another person while ^{Actual} under the
13 influence of the alcoholic beverage received in violation of this section; in this
14 paragraph,

15 (A) "negligently" means acting with civil negligence; and

1

(B) "serious physical injury" has the meaning given in

2

AS 11.81.900.

ALASKA STATE LEGISLATURE

HOUSE JUDICIARY COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Scott Ogan, Vice-Chairman
Representative John Coghill
Representative Jeannette James
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4990
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Heather M. Nobrega
Counsel to Committee

Sponsor Statement for HB 330

The House Judiciary Committee was requested to introduce this bill by Mothers Against Drunk Driving. HB 330 creates tougher penalties for adults who furnish alcohol to minors, who then go on to cause injury or death.

On July 9, 2001, Anchorage Police Officer Justin Wollam, and three others were killed when driver Robert Esper crossed the median of the Glenn Highway, and collided head-on with Officer Wollam's patrol car during the early hours of the morning. Esper was suspected of driving while intoxicated.

It was later discovered that Robert Esper, age 19, had a blood alcohol level of .091. The legal limit, at the time of the accident, was .10 BAC, but has since been lowered to .08 BAC. In investigating the events leading up to the tragic and deadly accident, police discovered that Esper, and his underage friends, had been drinking at a party where alcohol was provided by two adults, Ronald Frank and Michael Hunter.

Frank and Hunter were arrested and charged with multiple counts of contributing to the delinquency of a minor, and furnishing alcohol to a minor. Both are class A misdemeanors subject to imprisonment of not more than one year, and a fine of no more than \$5000. Frank pled to two counts of furnishing, and Hunter pled to one count of furnishing. They are scheduled to be sentenced on February 20.

HB 330 would increase the penalty, for an adult who furnishes a minor alcohol, to a class C felony, if the minor causes death or physical injury while under the influence of the alcohol that was furnished by the adult. A class C felony carries a sentence of not more than five years, and a fine of no more than \$50,000.

It is important that those individuals like Ronald Frank and Michael Hunter, who purchase alcohol for minors, be appropriately punished when those minors go on to hurt or kill someone while under the influence of alcohol. HB 330 creates those appropriate penalties and is intended to further dissuade adults from supplying alcohol to minors.

The committee urges your support of this bill.

adn.com

Anchorage Daily News

Second man to be charged in fatal crash

FOUR DEAD:31-year-old bought alcohol for party, police say.

By Lucas Wall
Anchorage Daily News

(Published: July 25, 2001)

Anchorage police Tuesday cited a second man for providing alcohol to teens at a July 8 party before the fatal car crash that killed an Anchorage police officer and three teenagers.

Michael Hunter, 31, will be charged with two counts of contributing to the delinquency of a minor and two counts of furnishing alcohol to a minor, according to police. He received a summons to appear in court Aug. 28.

Hunter's phone is disconnected, and he could not be reached.

Detective Everett Robbins said Hunter picked up two girls the evening of July 8 and brought them to the trailer owned by his wife, Leona, in the 7100 block of Lake Otis Parkway. Leona Hunter was working that night and hired the girls to come over and clean the trailer, Robbins said. Contrary to earlier reports, the girls were not baby-sitting that night. Robbins said they were scheduled to baby-sit for Leona Hunter the next day.

She left money for the girls at the trailer, which Robbins said they gave to Michael Hunter, asking him to buy them alcohol. Hunter went to a nearby Tesoro station, Robbins said, where he bought alcohol and brought it back to the trailer. The Hunters are separated, he said, and Michael Hunter returned to his trailer to sleep.

Police arrested Ronald Frank, 30, two weeks ago and charged him with five counts of furnishing alcohol to a minor and four counts of contributing to the delinquency of a minor. He remains at the Sixth Avenue Correctional Center in lieu of \$8,000 bail. Frank and Hunter are friends, Robbins said, and they attended a barbecue together the afternoon of July 8.

Robbins said Hunter has been cooperative and admitted to buying alcohol for the girls. Hunter wasn't jailed, he said, because he wasn't at the party at the trailer later that night.

"He wasn't promoting the party as Ronny had done," Robbins said. "He claims he wasn't aware of the party. He was thinking (the two girls) were just going to be home for the evening."

The party was attended by several other youths. After leaving the party with six others, 19-year-old Robert Esper drove erratically through the city for about half an hour before crashing head-on into a police car driven by officer Justin Wollam on the Glenn Highway. The crash killed the officer, Esper, and two other teens.

With Hunter's arrest, police are starting to wind down the criminal investigation into the crash.

"There are no other suspects we're looking at this time," Robbins said.

A separate internal investigation into how police handled the attempts to stop Esper continues.

Reporter Lucas Wall can be reached at lwall@adn.com or 907 257-4321.

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Arrest made in collision

RONALD FRANK Man is to face charges in providing alcohol to teens

By LUCAS WALL
Anchorage Daily News

Police on Thursday arrested a 30-year-old Anchorage man they say provided alcohol Saturday night to a group of youths including those involved in a fatal head-on collision with Anchorage police officer Justin Wollam.

Ronald Frank will be charged with seven counts of contributing to the delinquency of a minor and one count of reckless endangerment. He was in the Sixth Avenue Correctional Center under \$8,000 bail Thursday night.

Detective Everett Robbins said Frank cooperated with police after his arrest and acknowledged buying the alcohol for minors at a liquor store sometime after 10 p.m. Sunday.

Frank was convicted of driving while intoxicated in August, according to state records.

Robert Esper, the driver of the 1985 Chevy Blazer that collided with Wollam's patrol car, had attended a party that night with several other youths and drank liquor and other alcoholic beverages provided by Frank. Robbins told reporters Thursday evening the party took place at a residence on a street in Old Park.

ADN 13 July 2001

CRASH: Man arrested

Continued from A-1... facing Frank is a Class A misdemeanor when the officer attempted to pull him over. Police are awaiting toxicology results to determine if he was intoxicated.

Esper dropped off three passengers near Arctic Boulevard and Garnet Street. Two were apprehended by police. The third fled, but police announced Thursday he has turned himself in.

Brian Nichols, 18, has not been charged in connection with Monday's incident because he has outstanding juvenile warrants, he was taken to McLaughlin Youth Center.

Esper continued driving erratically, ending up north of the Glenn Highway, where he collided head-on with Wollam's patrol car just before 7 a.m.

Wollam, 28, and Esper were killed, as well as two of the special passengers.

Frank deserves some blame for what happened, Robbins said. He provided the alcohol to minors, which caused this deadly tragedy.

Robbins said he can't yet answer many questions about details of Frank's actions on the party because detectives are still interviewing people who were involved.

Some of the minors were taken to Alaska State House with Frank and will be held there while he is in custody.

Wollam's body was in a closed casket draped with an American flag, on which lay flowers and photos of Wollam in uniform and with his wife, Kristy, and 4-year-old daughter, Kristin. Police officers at the funeral flanked the coffin.

A public memorial service for Wollam is scheduled for 2 p.m. today at Anchorage Bay Temple, 6401 E. Northern Lights Blvd. Overflow parking will be at Baxter Elementary School, 2991 Baxter Road. Shuttle buses will begin running at 1 p.m. to ferry mourners to the temple. The service will be broadcast live on television channels 13 and 20 as well as radio station KATB, 89.3 FM.

Following the service, a procession of police cars will accompany Wollam's body west on Northern Lights Boulevard to Ted Stevens Anchorage International Airport. His body will be returned to his hometown of Danbury, Texas.

Mourners should expect delays of about 15 minutes as interstates are blocked to allow the procession to pass.

Today in honor of Wollam, he is the seventh person killed in the line of duty.

Wollam's family, friends and co-workers gathered downtown at Evergreen Memorial Chapel for his visitation. Wollam's body was in a closed casket draped with an American flag, on which lay flowers and photos of Wollam in uniform and with his wife, Kristy, and 4-year-old daughter, Kristin. Police officers at the funeral flanked the coffin.

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Mourners should expect delays of about 15 minutes as interstates are blocked to allow the procession to pass. Today in honor of Wollam, he is the seventh person killed in the line of duty.

Esper was drinking, toxicology confirms

■ .091: Reading short of legal limit, but driving warranted charges, police say.

By LUCAS WALL
Anchorage Daily News

Toxicology results released by police Wednesday show the 19-year-old man who crashed head-on into an Anchorage police officer last month had a blood-alcohol content of .091.

Police initially suspected Robert Esper was driving while intoxicated when an offi-

cer attempted to stop him about 3:20 a.m. July 9 near the 7200 block of Lake Otis Parkway. Esper and nine other teens had attended a get-together at a nearby trailer that night where alcohol was present.

"Based on his initial driving behavior and his erratic driving, the officer suspected he was a drunken driver," said Detective Everett Robbins. "This confirms her initial observations."

See Back Page, ESPER



Robert Esper was the driver of the Chevrolet Blazer that killed officer Justin Wollam and three teens, including himself July 9.



ERIK HILL / Anchorage Daily News

Flowers, stuffed animals, birthday balloons, religious tokens and other items adorn the Glenn Highway memorials to crash victims Makayla Lewis, Robert Esper, Heidi Weilbacher and officer Justin Wollam on Tuesday.

ESPER: Teenager had .091 blood-alcohol level

Continued from A-1

Esper fled from police for more than half an hour before ending up running into officer Justin Wollam on the wrong side of the Glenn Highway. Wollam, Esper and two passengers in Esper's Chevrolet Blazer, Makayla Lewis and Heidi Weilbacher, died.

Police reported Weilbacher, 14, had a blood-alcohol content of .088. No alcohol was found in Lewis' blood, and none of the teenagers tested positive for drug use.

Robbins said if police had stopped Esper that night, he could have been charged with DWI even though he was slightly below the presumptive legal limit of .10. Drivers are considered impaired if their BAC is higher than .04, Everett said, and if they are driving in a dangerous manner they can still be considered intoxicated even if they haven't reached .10. People's alcohol tolerance levels are different,

I'm sorry for all the losses. I wish it could have been handled better totally so there wouldn't have been any losses.

Teenager's father, Robert Esper

he said, and that affects how they drive after drinking. The Legislature, under threat of losing federal funds, this year lowered the state's presumptive legal limit for DWI to .08. Esper would have been considered legally drunk under the new standard, which takes effect Sept. 1.

All those legalisms aside, Everett said, "minors shouldn't

have any alcohol at all." Ronald Frank and Michael Hunter have been charged with providing the alcohol to the minors and contributing to their delinquency that night. The district attorney's office is still reviewing the case against the two men and further charges are possible, Robbins said.

Esper's father, Robert, said he didn't have much to say about Wednesday's release.

"I'm sorry for all the losses," he said. "I wish it could have been handled better totally so there wouldn't have been any losses."

Police have been criticized by some, including 15-year-old Ashley Shetters and her mother, for their handling of the attempt to stop Esper that night. Shetters was one of three teens who got out of Esper's Chevrolet Blazer in a trailer park before the crash.

Robbins said the account of events Shetters gave in an interview with the Daily News

last week is a little different than the statement she gave police after the crash. Her account is more exaggerated than what she originally told police, Robbins said, and conflicts with what 15-year-old Savannah Fielding told police. Fielding is the only person who survived the crash.

"Her story doesn't jive exactly with what Shetters is saying," Robbins said. "There's conflicting information, and I'm going to leave it at that. What am I going to say? She's entitled to her own opinion. There's more than just one person's statement here, and you have to weigh it all out."

Robbins would not discuss what Fielding told police about the events leading up to the collision. Fielding's family has declined to speak publicly about that night.

Reporter Lucas Wall can be reached at lwall@adn.com or 257-4321.



Mothers Against Drunk Driving • Juneau Chapter
211 Fourth St. Suite 102 • Juneau, AK 99801

January 22, 2002

HOUSE BILL NO. 330 "An Act relating to providing alcoholic beverages to a person under 21 years of age." BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA: * **Section 1.** AS 04.16.051(d) is amended to read: (d) A person acting with criminal negligence who violates this section is guilty of a class C felony if **(1)** [,] within the five years preceding the violation, the person has been previously convicted under **(A)** [(1)] this section; or **(B)** [(2)] a law or ordinance of this or another jurisdiction with elements substantially similar to this section; or **(2) the person under 21 years of age who receives the alcoholic beverage injures or causes the death of another person and the injury or death occurs while the person under 21 years of age was under the influence of an alcoholic beverage received in violation of this section.**

Mothers Against Drunk Driving (MADD) supports House Bill Number 330. MADD supports laws, which save lives from injuries or death due to drunk driving.

House Bill 330 will make the sale of alcohol to minors a felony, thereby increasing fines and jail time.

House Bill 330, by becoming law, will send a message out to Alaskans that our children are valuable and if harmed, severe consequence will occur. House Bill 330 supports and joins Alaskans in their attempt to change the current accepted norm of underage drinking.

Sincerely,

Cindy Cashen
Volunteer

Subject: [Fwd: HB 329 and 330]

Date: Mon, 21 Jan 2002 10:40:27 -0900

From: Representative Norman Rokeberg <Representative_Norman_Rokeberg@legis.state.ak.us>

Organization: Alaska State Legislature

To: Heather_Nobrega@legis.state.ak.us

For our files.

Janet

Subject: HB 329 and 330

Date: Sun, 20 Jan 2002 16:29:45 -0800

From: "David W. Rochford" <rochfor@concentric.net>

To: <Representative_Norman_Rokeberg@Legis.state.ak.us>

CC: "MADD Anchorage Chapter" <madd@corecom.net>

Dear Representative Rokeberg

I am writing in support of HB 329 and 330.

I am a police officer with the Anchorage Police Department and have 30 years of police experience (20 years with APD).

HB329

I agree that chemical testing should be required for all persons arrested as the bill describes. It would also be helpful if this requirement extended to all drivers involved in a collision which involved death or an injury which required medical treatment. Also, there should be a requirement that treating physicians inform law enforcement if a person being treated has alcohol or drugs in their system, and what the reported level or concentration is. This requirement would only apply if the person being treated was the driver of a motor vehicle, or is the suspect in a crime. Many people are injury while driving while intoxicated and are never prosecuted. The reason is that police officers are often not in a position to make a determination as to the suspect's state of sobriety by virtue of the fact that the person is receiving emergency treatment or is in surgery and can not be observed by the officer until it is too late. I have personally seen suspects fake unconsciousness to avoid detection of alcohol impairment by me.

Additionally, the wording "controlled substance" should be replaced with "any drug" or better yet, "any substance that impairs...". The problem with "controlled substance" is that it requires that the substance appear on the state's list of controlled substances. There are many substances that impair driving which are not on this list. Toluene, paint thinner, and gasoline fumes are primary examples. No matter how complete a list is, someone will get intoxicated on something that was overlooked on the list and escape prosecution. The other problem with using the "controlled substance" wording is that it requires that a specific drug be identified and named. This is not always possible. We may be able to prove to a jury that the driver is impaired by an unknown substance, or a substance we suspect, but we can not convict with out a blood test which is positive for a controlled substance. Even then, there may be a problem proving that the controlled substance detected in the blood was the drug or substance causing the impairment. This wording seriously needs to be changed.

The law was recently changed to allow law enforcement to obtain a search warrant for a person's blood in a DWI case if we can articulate drug involvement. This law has been a great help and I have already obtained search warrants and obtained valuable evidence using this law. However, a law like California enacted would be even more helpful. California extended the implied consent law to include a blood and/or urine testing if the arresting officer suspects drug use, and articulates the suspicion in his

police report. This would save valuable time lost while applying for a search warrant. Some drugs clear from the blood stream quickly and the time spent getting a warrant could make the difference between getting a positive blood test and a negative one. Also, such a law should include blood AND urine, since we cannot know ahead of time if the drugs will be found in the blood or urine or both blood and urine.

Also, I should put in a pitch for the Drug Recognition Program which I spoke of at the DWI training you attended at the APD training center. The laws pertaining to driving under the influence of drugs are useless without having officers trained to enforce these laws. This program still has not been established here in Alaska.

I also support HB 330

The tragic death of my friend and co worker, Justin Wollam, is testimony enough of the need for this law. If an adult knew he might be charged with a felony, he might reconsider providing alcohol to minors.

Respectfully,
Dave Dochford
Anchorage P.D.