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SETTING LIMITS, SAVING LIVES

THE CASE FOR .08 BAC LAWS

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SECTION 1

Introduction

Overview of the Problem

Impaired driving is the most frequently committed violent crime in America. Every 33 minutes, someone in this country dies in an alcohol-related crash. In the time it takes you to read this booklet, someone else will die needlessly.

For many years, we were making good progress. Due to the tireless efforts of many organizations and citizens around the country, alcohol-related traffic deaths decreased significantly. In the last decade, alcohol-related fatalities dropped from 23,630 in 1988 to 15,935 in 1998, according to the National Highway Traffic Safety Administration (NHTSA).

This 33% drop in alcohol-related deaths is generally attributed to:

- STRONGER LAWS,
- TOUGHER ENFORCEMENT, AND
- GOOD CONSUMER EDUCATION.

Americans better understand the impaired driving problem, fewer are driving after drinking, and more are getting caught when they do.

While alcohol-related fatalities have decreased the past three years (after an increase in 1995),

alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. Only about 5% of all crashes involve the use of alcohol, but 38% of fatal crashes do.

15,935 deaths in one year is 15,935 grieving families too many. But the carnage doesn't end there. In addition to these tragic deaths, another one million people are injured in alcohol-related traffic crashes annually. And these crashes cost society over \$45 billion every year for things like:

- EMERGENCY AND ACUTE HEALTH CARE COSTS,
- LONG-TERM CARE AND REHABILITATION,
- POLICE AND JUDICIAL SERVICES,
- INSURANCE,
- DISABILITY AND WORKERS' COMPENSATION,
- LOST PRODUCTIVITY, AND
- SOCIAL SERVICES FOR THOSE WHO CANNOT RETURN TO WORK AND SUPPORT THEIR FAMILIES.

Just one alcohol-related fatality is estimated to cost society \$950,000. Each alcohol-related injury averages \$20,000. Eventually, we all bear the costs of these deadly actions, through taxpayer supported services and programs, higher insurance costs and even higher prices on goods and services, since employers pick up about half the costs associated with motor vehicle crashes.

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TERMINOLOGY

THE PHRASE "DRUNK DRIVING," WHILE STILL COMMON IN EVERYDAY LANGUAGE AND COMPLETELY UNDERSTANDABLE, IS NOT USED AS A LEGAL TERM SINCE MANY DRIVERS WHO ARE PART OF THE PROBLEM DO NOT EXHIBIT VISIBLE OUTWARD SIGNS OF DRUNKENNESS. "IMPAIRED DRIVING" IN GENERAL MEANS DRIVING WHILE ABILITIES ARE IMPAIRED BY ALCOHOL OR DRUGS. "DRIVING WHILE INTOXICATED" (DWI) OR "DRIVING UNDER THE INFLUENCE" (DUI) MEANS DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS. IN GENERAL, THIS BOOKLET WILL USE THE TERM "IMPAIRED DRIVING" TO DESCRIBE THE OVERALL PROBLEM AND "DWI" TO DESCRIBE THE CRIME OF DRIVING WHILE OVER THE LEGAL LIMIT OR UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS.

We Know What Works

We know what works to reduce the incidence of impaired driving—a combination of:

- EFFECTIVE LAWS,
- STRONG ENFORCEMENT, AND
- HIGHLY VISIBLE PUBLIC INFORMATION AND EDUCATION.

The successes of the past two decades can be attributed to all of these factors combining to change people's behavior. We've made some real progress, thanks to grassroots organizations, citizen activists, national highway safety and public health groups, concerned legislators and other elected leaders, involved industries and millions of people with plain old common sense.

"One for the road" used to be the standard and the antics of a drunk used to be considered funny. Now we've made some changes in the way we look at impairment. Many of us have changed our behavior as well, either by moderating our drinking if we must drive or designating a driver before alcohol is consumed. Party hosts are more cautious and guests look out for one another. And the hospitality industry has made a commitment to training servers to recognize the signs of impairment.

Impaired driving has been reduced since the early 80's, but it is still an enormous problem. There is more we can do, and it all begins with effective laws.

Key Laws That Every State Needs

There are four key laws that have been proven effective in the fight against impaired driving (see chart, "State Anti-Impaired Driving Laws," page 6). It is important to understand what each is and how it works, both alone and together with other laws.

Illegal per se — An illegal *per se* law makes it illegal in and of itself to drive with an alcohol concentration measured at or above the

established illegal level. Forty-eight states have established a *per se* law (the exceptions are Massachusetts and South Carolina). In 31 of those states, the legal limit is .10% blood alcohol concentration (BAC) *per se*. That means it is against the law to drive a motor vehicle if you have a BAC of .10 or more, whether or not you exhibit visible signs of intoxication. Seventeen other states and DC have established .08 BAC as the legal limit (see chart, "States with BAC *Per Se* Laws," page 4).

Administrative license revocation (ALR) — An ALR law gives state officials the authority to suspend administratively the license of any driver who fails or refuses to take a BAC test. Notice of the suspension is given immediately, although a temporary permit is usually issued. The permit is valid from 7-45 days, depending on the state. During that time, the accused person can appeal through administrative channels. If no appeal is filed, the license is then automatically suspended for a prescribed period of time. Suspensions range from seven days to six months for first-time offenders, again depending on the state, and are longer for repeat offenders. ALR laws do not replace criminal prosecution, and their constitutionality has been consistently upheld whenever challenged. As of late 1999, 40 states had ALR laws.

Zero tolerance — Zero tolerance laws make it illegal for drivers under age 21 to drive with any measurable amount of alcohol in their system, regardless of the BAC limit for older drivers. Since it is illegal in every state for those under 21 to purchase or publicly possess alcoholic beverages, it makes sense that no amount of alcohol should be tolerated for drivers under that age. Many states have set the limit for underage drivers at .02 BAC. This helps reduce legal challenges that claim mouthwash, gum or cold medicine are somehow responsible for a positive but very low BAC reading (there is no evidence that such substances affect the standard breath analysis tests when they are

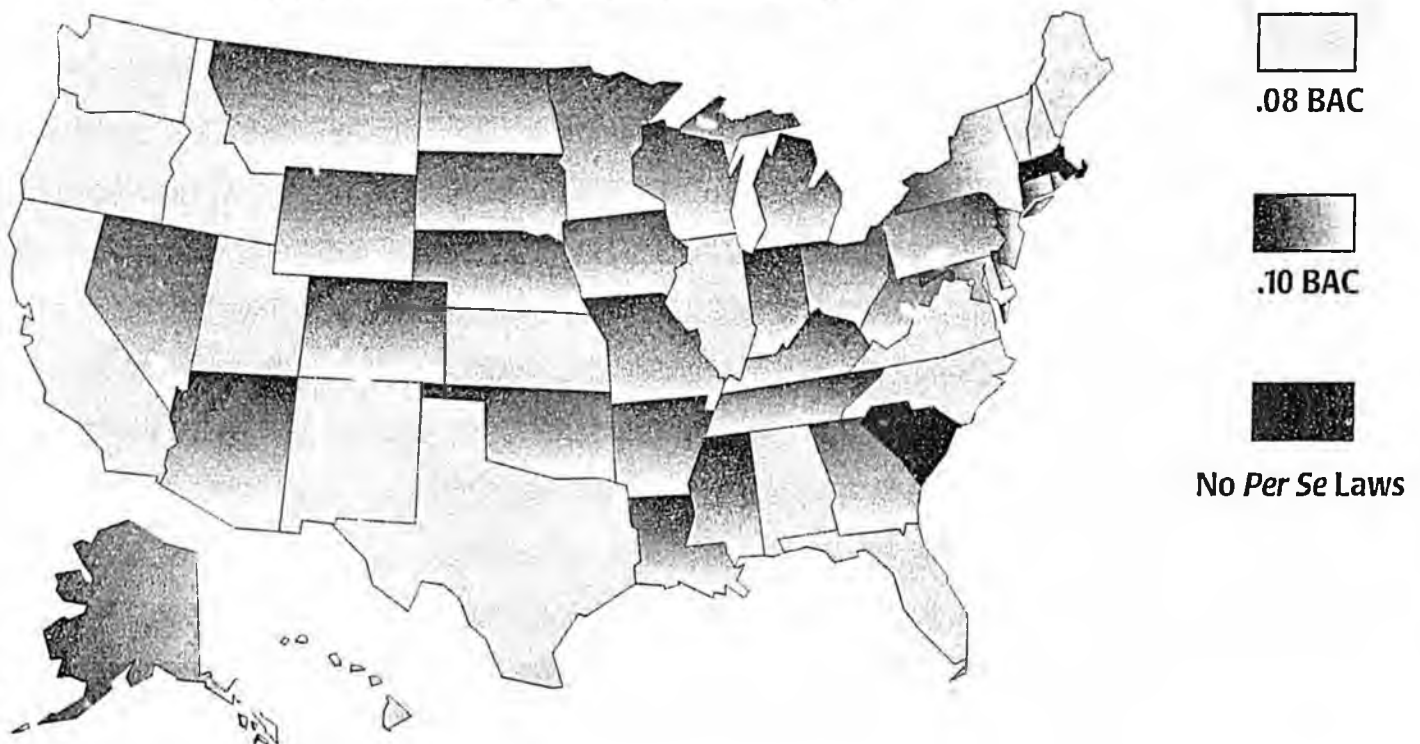
conducted properly or that other challenges about the accuracy of alcohol detection equipment are valid). As of late 1999, all 50 states plus DC had zero tolerance laws for youth. States that did not have zero tolerance laws for youth by 1998 faced a federal sanction of the withholding of highway construction funds.

.08 BAC – .08 establishes a lower limit to define intoxication for all drivers. Lowering the BAC limit to .08 sets the illegal limit at a point at which driving skills are proven to be compromised. At .08 BAC, all drivers, even experienced ones, show impairment in driving ability. For the great majority, there is serious deterioration in driving performance at .08. Although virtually all highway safety groups and transportation safety agencies support .08, only 17 states, plus DC have adopted such laws as of late 1999. Some organizations in the alcohol and hospitality industries vigorously oppose .08 legislation whenever it is proposed.

In addition to these four key laws, the National Safety Council and the National Highway Traffic Safety Administration (along with many other organizations and agencies) encourage other anti-impaired driving steps such as:

- THE USE OF SOBRIETY CHECKPOINTS AND SATURATION PATROLS BY LAW ENFORCEMENT AGENCIES COUPLED WITH HIGH LEVELS OF PUBLICITY;
- INCREASED ENFORCEMENT FOR UNDERAGED DRINKING AND DRIVING;
- GRADUATED DRIVER LICENSING PROGRAMS FOR NEW, YOUNG DRIVERS;
- THE USE OF DESIGNATED DRIVER AND SAFE RIDE PROGRAMS;
- RESPONSIBLE SERVER PROGRAMS;
- CONSUMER EDUCATION; AND
- CONTINUED RESEARCH TO FIND NEW AND BETTER WAYS TO COMBAT IMPAIRED DRIVING.

States With BAC *per se* Laws



"State Anti-Impaired Driving Laws"

STATE	BAC per se level	ALR	Zero Tolerance*	.08 BAC
Alabama
Alaska
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
Dist. of Col.
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hamp.
New Jersey
New Mexico
New York
N. Carolina
N. Dakota
Ohio
Oklahoma
Oregon
Pennsylv.
Rhode Isl.
S. Carolina
S. Dakota
Tennessee
Texas
Utah
Vermont
Virginia
Washington
W. Virginia
Wisconsin
Wyoming
TOTAL	48	40+DC	50+DC	17 STATE + DC

*Zero tolerance is defined as .02 or less for all drivers under age 21.

SECTION 2

What is .08?

Measuring Impairment

The amount of alcohol in a person's body is measured by the weight of the alcohol in a certain volume of blood. This is called the blood alcohol concentration, or "BAC." Because the volume of blood varies with the size of a person, BAC establishes an objective measure to determine levels of impairment.

The measurement is based on grams per deciliter (g/dl), and in most states a person is considered legally intoxicated if his or her BAC is .10 g/dl or greater; that is, alcohol makes up one-tenth of one percent of the person's blood.

A driver's BAC can be measured by testing the blood, breath, urine or saliva. Breath testing is the primary method used by law enforcement agencies. Preliminary breath testing can be performed easily during a roadside stop using a hand-held

device carried by police officers. It is non-invasive and can even be performed while the person is still in his or her vehicle.

Evidentiary breath testing equipment is evaluated for precision and accuracy by NHTSA. Test instruments approved by NHTSA as conforming to specifications are accurate within plus or minus .005 of the true BAC value.

State BAC Levels

All states but two (Massachusetts and South Carolina) have established BAC *per se* levels. Seventeen of those states plus the District of Columbia have set that level at .08 (Alabama, California, Florida, Hawaii, Idaho, Illinois, Kansas, Maine, New Hampshire, New Mexico, North Carolina, Oregon, Texas, Utah, Virginia, Vermont and Washington). For more state-specific data, see the chart "The State of the States," on next page.

**"A DRINK IS A
DRINK IS A DRINK"**

**1 DRINK EQUALS 14
OUNCES OF ALCOHOL.
THIS IS THE
APPROXIMATE AMOUNT
FOUND IN:
ONE SHOT OF DISTILLED
SPIRITS, OR ONE CAN
OF BEER, OR ONE GLASS
OF WINE.**

“The State of the States”

BECAUSE THE VOLUME OF BLOOD VARIES WITH THE SIZE OF A PERSON, BAC ESTABLISHES AN OBJECTIVE MEASURE TO DETERMINE LEVELS OF IMPAIRMENT.

STATE	BAC PER SE LEVEL	# OF FATALITIES (1998)	PERCENT ALCOHOL-RELATED
Alabama	.08	1,071	38
Alaska	.10	71	44
Arizona	.10	980	43
Arkansas	.10	625	31
California	.08	3,494	38
Colorado	.10	328	37
Connecticut	.10	329	43
Delaware	.10	115	39
Dist. of Col.	.08	54	51
Florida	.08	2,824	33
Georgia	.10	1,569	32
Hawaii	.08	120	47
Idaho	.08	265	34
Illinois	.08	1,393	43
Indiana	.10	978	39
Iowa	.10	449	36
Kansas	.08	493	35
Kentucky	.10	858	33
Louisiana	.10	922	46
Maine	.08	192	28
Maryland	.10	606	34
Massachusetts	-	406	47
Michigan	.10	1,367	39
Minnesota	.10	650	43
Mississippi	.10	948	37
Missouri	.10	1,169	45
Montana	.10	237	44
Nebraska	.10	316	38
Nevada	.10	361	49
New Hamp.	.08	128	47
New Jersey	.10	743	36
New Mexico	.08	426	45
New York	.10	1,498	24
N. Carolina	.08	1,596	32
N. Dakota	.10	92	47
Ohio	.10	1,422	33
Oklahoma	.10	755	33
Oregon	.08	538	43
Pennsylv.	.10	1,481	42
Rhode Isl.	.10	74	48
S. Carolina	-	1,002	30
S. Dakota	.10	165	41
Tennessee	.10	1,216	41
Texas	.08	3,577	50
Utah	.08	350	14
Vermont	.08	104	37
Virginia	.08	935	37
Washington	.08	660	46
W. Virginia	.10	354	41
Wisconsin	.10	714	42
Wyoming	.10	154	44
U.S. Total		41,471	38

SECTION 3

Effect of BAC on Traffic Crashes

The Effect of Alcohol on Ability

With each drink consumed, a person's blood alcohol concentration increases. Although the outward appearances vary, virtually all drivers are substantially impaired at .08 BAC. Laboratory and on-road research shows that the vast majority of drivers, even experienced drivers, are significantly impaired at .08 with regard to critical driving tasks such as braking, steering, lane changing, judgment and divided attention. In a recent study of 168 drivers, every one was significantly impaired with regard to at least one measure of driving performance at .08 BAC. The majority of drivers (60-94%) were impaired at .08 BAC in any one given measure. This is regardless of age, gender, or driving experience (see chart, "BAC and Impairment," at right).

The risk of being in a motor vehicle crash also increases as the BAC level rises. The risk of being in a crash rises gradually with each BAC level, but then rises very rapidly after a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their system.

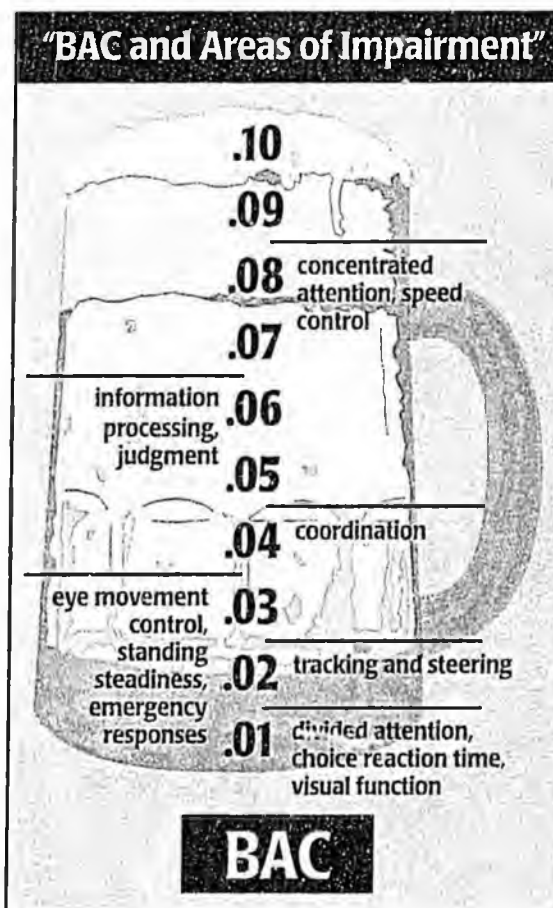
A recent study found that the risk of being killed in a single vehicle crash at .08 to .099 BAC ranged from 11 times the risk at .00 BAC for older drivers to 52 times the risk at .00 BAC for young male drivers.

.08 Sets a Reasonable Limit

Setting the BAC limit at .08 is a reasonable response to the problem of impaired driving. This is not a couple of beers after work or a glass or two of wine with dinner. At .08, everyone is impaired to the point that driving skills are degraded. Most states that have lowered their

BAC to .08 have found a measurable drop in impaired driving crashes and fatalities, as have many countries that have adopted .08 (see chart, "BAC Levels in Other Countries," on page 10). .08 also serves to deter driving after drinking. Crash statistics show that even heavy drinkers, who account for a high percentage of DWI arrests, are less likely to drink and drive because of the general deterrent effect of .08. At the same time, lowering the BAC limit to .08 makes it possible to convict seriously impaired drivers whose BAC levels are now considered marginal because they are at or just over .10.

**SETTING THE BAC
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SECTION 4

The Case for .08 BAC Laws

.08 Laws Work

The effect of California's .08 law was analyzed by NHTSA, which found that 81% of the driving population knew that the BAC limit was stricter (from a tremendously successful public education effort). The state experienced a 12% reduction in alcohol-related fatalities, although some of this can be credited to the new administrative license revocation law. The state also experienced an increase in DUI arrests.

The second multi-state analysis of the effect of lowering BAC levels to .08 was conducted recently by Ralph Hingson, Sc.D., a professor at Boston University's School of Public Health and Chairman of the school's Social and Behavioral Sciences Department, along with two other researchers. The results of their study were reported in the September 1996 issue of the *American Journal of Public Health*, a peer-reviewed journal.

Hingson compared the first five states to lower their BAC limit to .08 (California, Maine, Oregon, Utah and Vermont) with five nearby states that retained the .10 limit. Overall, the .08 states experienced a 16% reduction in the proportion of fatal crashes with a fatally injured driver whose BAC was .08 or higher, as well as an 18% reduction in such crashes with a fatally injured driver whose BAC was .15 or higher.

The immediate significance of these findings is that, not only did the .08 BAC laws reduce the overall incidence of alcohol fatalities, but also reduced fatalities at the higher BAC levels. The effect on extremely impaired drivers (the "problem drinking drivers") was even greater than the overall effect.

The study concluded that if all states lowered their BAC limits to .08, alcohol-related highway deaths would decrease by 500-600 per year.

In a NHTSA analysis of these five states (Johnson and Fell, 1995), significant reductions in alcohol-related fatal crashes were found in 4 out of the 5 states ranging from 4% to 40% when compared to the rest of the states with .10 BAC laws.

Impaired Driving Affects Us All

About two out of every five Americans will be involved in an alcohol-related crash at some time in their lives, and many of them will be innocent victims. There is no such thing as a drunk driving accident. Virtually all crashes involving alcohol could have been avoided if the impaired person were sober.

As BAC levels rise, so does the risk of being involved in a fatal crash. Recent research has shown that, in single vehicle crashes, the relative fatality risk for drivers with BACs between .08 and .099 is at least eleven times greater than for drivers with a BAC of zero and is 52 times greater for young males.

A RECENT COMPARISON STUDY (COVERING ALL 50 STATES) ANALYZED THE EFFECTS OF .08 BAC AND OTHER LAWS OVER A 16 YEAR PERIOD. THE STUDY ESTIMATED THAT .08 BAC LAWS HAD AN 8% EFFECT IN REDUCING FATAL CRASHES INVOLVING DRIVERS AT BOTH HIGH BACs AND LOWER BACs. IT ESTIMATES THAT IF ALL 50 STATES HAD .08 BAC LAWS IN EFFECT IN 1997 AN ADDITIONAL 590 LIVES WOULD HAVE BEEN SAVED.

States Have the Responsibility

In the United States, BAC limits are set by states. The limit of .10 found in most states is the highest in the industrialized world (see chart, "BAC Levels in Other Countries, on next page).

An eleven state study also examined the effects of .08 BAC (and ALR) laws. It found that .08 BAC legislation was associated with reductions in alcohol-related fatalities, alone or in conjunction with ALR laws, in seven of the eleven states studied. In five of these states (VT, KS, NC, FL, NM), implementation of the .08 BAC law itself was associated with significantly lower rates of alcohol-related fatalities. These results take into account any pre-existing downward trends the states were already experiencing, due to other factors such as the presence of other laws, use of sobriety checkpoints, etc. In two states (CA and VA), significant reductions were associated with the combination of .08 BAC and ALR laws, implemented within 6 months of each other. This study also found evidence of reduced alcohol (beer) consumption in several states following implementation of .08 laws.

The third study analyzed the effects of a .08 BAC law implemented in 1993 in North Carolina, a state which had already been experiencing a sharp decline in alcohol-related fatalities since 1987. This study concluded that there was little clear effect of the lower BAC limit. Results from various analyses suggested that some portion

of the reductions may have been associated with the law but the magnitude of these effects was not sufficient to make this conclusion.

In aggregate, these three recent studies provide additional support for the premise that .08 BAC laws help to reduce alcohol-related fatalities, particularly when they are implemented in conjunction with other impaired driving laws and programs. Nearly all of the findings of these and previous studies show changes that suggest that .08 BAC legislation (as well as .10 BAC laws and ALR laws) have contributed to the trend toward reduced alcohol-related crashes and fatalities that have been experienced across the nation.

NHTSA, the federal agency charged with the safety of motor vehicles and our nation's highway safety, has long supported .08 state laws. In a 1992 Report to Congress, the agency recommended that all states lower their illegal *per se* limit to .08 for all drivers 21 years and



above. (NHTSA supports zero tolerance for drivers under the legal drinking age – see Section 1 for more information.) Numerous other federal agencies with an interest in public health and safety issues, as well as dozens of private sector organizations, support NHTSA's call for universal .08 state laws (see box, "Who Supports .08 BAC Laws?," page 13).

Why Some States Don't Have .08

As a public policy to deter impaired driving, .08 has lagged behind other countermeasures such as *per se*, administrative license revocation and zero tolerance for those under 21. Nearly all states have *per se*, the vast majority have ALR and all have zero tolerance.

But the passage of new .08 laws have been few and far between, despite consistent evidence that they work, because some organizations in the alcohol and hospitality industries oppose any and all such proposals at the state level. This is both sad and ironic, since these industries have not only been strong supporters of many other anti-impaired driving laws, but have also been crucial partners in getting safety messages out to hard-to-reach audiences.

Promotions such as designated driver programs and sober ride/call-a-cab efforts showcase their concern, generate enormous goodwill from the general public and raise awareness. It is tragic that some of the same companies and trade associations that have launched excellent server training programs, public information campaigns and other efforts to reduce impaired driving so vigorously oppose legislation when it comes to .08 (see box, "What the Hospitality Industry Can Do," on page 18).

A recently released report by the General Accounting Office (GAO), which reviewed the currently available .08 BAC studies stated that, while the evidence of impact of .08 BAC laws is not conclusive, "there are...strong indications that

"Who Supports .08 BAC Laws?"

The following organizations support a BAC limit of .08 or lower:

ADVOCATES FOR HIGHWAY AND AUTO SAFETY
 ALLSTATE INSURANCE
 AMERICAN ALLIANCE FOR RIGHTS AND RESPONSIBILITIES
 AMERICAN ASSOCIATION OF MOTOR VEHICLE ADMINISTRATORS
 AMERICAN ASSOCIATION OF NEUROLOGICAL SURGEONS
 AMERICAN AUTOMOBILE ASSOCIATION
 AMERICAN AUTOMOBILE MANUFACTURERS ASSOCIATION
 AMERICAN COALITION FOR TRAFFIC SAFETY
 AMERICAN INSURANCE ASSOCIATION
 AMERICAN MEDICAL ASSOCIATION
 AMERICAN SPINAL CORD INJURY ASSOCIATION
 AMERICAN SPINAL INJURY ASSOCIATION
 AMERICAN TRUCKING ASSOCIATIONS
 ASSOCIATION FOR THE ADVANCEMENT OF AUTOMOTIVE MEDICINE
 CENTER FOR SUBSTANCE ABUSE PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
 DAIMLER-CHRYSLER CORPORATION
 FEDERAL HIGHWAY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
 FORD MOTOR COMPANY
 INSURANCE INFORMATION INSTITUTE
 INSURANCE INSTITUTE FOR HIGHWAY SAFETY
 INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
 KEMPER INSURANCE GROUP
 MOTHERS AGAINST DRUNK DRIVING (MADD)
 NATIONAL ASSOCIATION OF GOVERNORS' HIGHWAY SAFETY REPRESENTATIVES
 NATIONAL COMMISSION AGAINST DRUNK DRIVING
 NATIONAL COMMITTEE ON UNIFORM TRAFFIC LAWS AND ORDINANCES
 NATIONAL DISTRICT ATTORNEYS ASSOCIATION
 NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION
 NATIONAL INSTITUTE FOR ALCOHOL ABUSE AND ALCOHOLISM
 NATIONAL SAFETY COUNCIL
 NATIONAL SHERIFFS' ASSOCIATION
 NATIONWIDE INSURANCE
 OPERATION LIFESAVER
 REMOVE INTOXICATED DRIVERS
 STUDENTS AGAINST DESTRUCTIVE DECISIONS (SADD)
 USAA INSURANCE
 U.S. DEPARTMENT OF JUSTICE
 U.S. SURGEON GENERAL

.08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives.”

We commend GAO for reaching the sound and accurate conclusion that a .08 blood alcohol concentration (.08 BAC) law can be an important component of a state’s overall highway safety program. We agree that highway safety research shows that the best countermeasure against drunk driving is a combination of laws, including .08 BAC, sustained public education, and vigorous enforcement and we agree that there are strong indications the .08 BAC laws, when added to existing laws and programs, are associated with reductions in alcohol-related fatalities.

With regard to whether the studies are “conclusive,” it must be pointed out that all research is equivocal and therefore, by that definition,

inconclusive. In context, however, particularly with the addition of the recently released studies conducted by NHTSA, the evidence is consistent and convincing that, in most states where .08 BAC laws have been added to existing impaired driver control efforts, they have been associated with reductions in alcohol-related fatalities.

The Time is Now

Recent research by NHTSA and past studies by the Boston University School of Public Health and the California Department of Motor Vehicles have shown impaired driving reductions already attributable to .08, as well as the potential for saving additional lives if all states adopted .08 BAC laws. Not only would deaths and injuries go down, but costs would as well. Alcohol-related crashes cost society \$45 billion every year, not including pain, suffering and lost quality of life. For more information on these enormous costs, see the fact sheet “Economic Issues” in the appendix.

SECTION 5

Myths about .08 BAC

Myths about .08 abound, many proliferated by those who actively oppose .08 laws. Here are a few of the commonly heard myths, countered by research-based facts from the National Highway Traffic Safety Administration, academic and scientific institutions, and credible private sector organizations such as Mothers Against Drunk Driving.

MYTH:

"If you lower the BAC limit to .08, it means I can't even have a couple of drinks with my dinner."

FACT: While there is no "safe" amount of alcohol for drivers, most people can drink moderately and drive legally when the illegal *per se* limit is set at .08. A 170-pound male typically would have to consume more than four drinks in one hour on an empty stomach to reach a BAC of .08. A 135-pound female typically would have to consume three drinks in the same time frame.

MYTH:

"I know when I'm 'too drunk to drive' – I don't need to be concerned about my blood alcohol concentration."

FACT: Your driving skills can be seriously compromised even when your behavior is not observably "drunk." Alcohol causes impairment in reaction time, attention, tracking, comprehension and other skills essential for safe driving. Even when attempting to drive carefully, an impaired driver cannot compensate for those reduced abilities. In addition, alcohol affects your ability to judge whether or not you are impaired.

MYTH:

"The American public does not support .08 because most people have no idea how much alcohol it would take to put them over the legal limit."

FACT: According to several national surveys, most Americans would not drive after having two or three drinks in one hour, an amount that would put them below .08. Most people know how much alcohol it takes to impair their driving ability and they accept lower limits such as .08 for adults.

MYTH:

".08 BAC legislation will not affect problem drinker drivers who have high BAC levels."

FACT: The latest research shows that .08 laws not only reduce the incidence of impaired driving at lower BACs, they also reduce the incidence of impaired driving at high BACs over .10 (Voas and Tippetts, 1999). A .08 law serves as a general deterrent to drinking and driving, sends a message that the state is getting tougher on impaired driving, and makes people think twice about getting behind the wheel after they've had too much to drink. .08 is a key part of a complete package to reduce impaired driving. While problem drinker drivers do account for a significant part of the DWI problem, most fatally injured drinking drivers (70-80%) had no prior alcohol-related offenses. A comprehensive anti-impaired driving program must use all available laws and programs to reduce DWI.

A .08 LAW SERVES AS A GENERAL DETERRENT TO DRINKING AND DRIVING, SENDS A MESSAGE THAT THE STATE IS GETTING TOUGHER ON IMPAIRED DRIVING, AND MAKES PEOPLE THINK TWICE ABOUT GETTING BEHIND THE WHEEL AFTER THEY'VE HAD TOO MUCH TO DRINK.

MYTH:

"Lowering the BAC limit to .08 places an unnecessary strain on the law enforcement community by forcing officers to monitor the behavior of currently legal drivers and pay less attention to the real problem, repeat offenders and those with high BACs."

FACT: Lowering the *per se* limit to .08 does not place an unnecessary strain on police. Officers still must have probable cause to stop and test drivers to determine if they are impaired. A .08 law will actually make it easier for police to arrest drivers at .10 or .11 BACs because these are no longer "borderline" cases.

MYTH:

"If you start arresting people driving with a .08 BAC, you will clog up the court system."

FACT: In the largest state, California, the .08 law has had little impact on the state's judicial system. No increases have been reported in the proportion of arrested drivers who plead guilty, request jury trials or appeal convictions. .08 is a deterrent to impaired driving, especially when coupled with other effective anti-DWI measures. Anything that reduces the incidence of DWI reduces the overall burden on society, including the judicial system.

MYTH:

".08 is just the first step toward even lower BACs and eventually another attempt at prohibition."

FACT: Widely accepted public health research has identified .05 as the BAC level at which driving

skills begin to deteriorate. Because of this, some organizations — most notably the American Medical Association — officially support .05 as the safest limit. However, safety professionals generally do not believe such laws would have any reasonable chance politically in this country. Even those organizations that have adopted such policies accept .08 as the best reasonable and acceptable compromise that will save lives, prevent injuries and reduce costs to society. The notion that safety organizations seek a return to prohibition is unfounded.

MYTH:

"The United States General Accounting Office (GAO) says .08 BAC laws do not work."

FACT: The GAO report actually stated the following: "Overall, the evidence does not conclusively establish that .08 BAC laws, by themselves, result in reductions in the number or severity of alcohol-related crashes." They went on to say: "There are, however, strong indications that .08 BAC laws in combination with other drunk driving laws (particularly licence revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives." Of course, .08 BAC laws do not save lives by "themselves". They must be publicized as enforced and work in combination with the other laws of the state. The evidence shows that, in aggregate, when states adopt .08 BAC laws, they can save lives, especially in combination with administrative licence revocation laws which 40 states already have.

SECTION 6

Consumer Education and Public Support

Polls Support Anti-DWI Efforts

The American public overwhelmingly supports legislation and programs to curb impaired driving. In a poll conducted for Mothers Against Drunk Driving (MADD), the Gallup Organization found that the vast majority of the American public considers drunk driving the number one major highway safety problem and most support tough laws and sanctions to reduce impaired driving.

All of the approaches to deal with impaired driving do well in public opinion polls, but the programs that have received more attention in the media and other public forums — ALR, zero tolerance, sobriety checkpoints and vehicle confiscation for repeat offenders — poll higher than .08. The likely reason is that people do not understand the technical aspects of how BACs are determined and what .08 means in real terms. When it comes to their own tolerance for alcohol and their own abilities, however, the American public is certain: most say they would not drive after consuming two or three drinks in one hour.

.08 is a Public Health Policy

The challenge for .08 supporters is to help people make a connection between their own common sense and the public policy that would define impaired driving as .08. Clearly, the more people know about the problem and the potential solutions, the more they support changes to bring about those solutions. .08 is a key part of any public health initiative that aims to reduce society's burden from impaired driving.

Supporters of .08 have many allies and resources to call upon, both at the national level and in the states. A list of resource organizations is included in the appendix.

Help is Available

Federal and State Governments and several private sector organizations hold workshops, publish idea samplers and planners, and offer other helpful organizing tools that may help .08 supporters achieve their public policy goals.

“What You Can Do”

Around the country, voluntary efforts are underway by concerned citizens who support adoption of .08 BAC laws. To become part of the activities in your state:

FIND OUT YOUR STATE'S BAC LIMIT, AND WHETHER THERE IS AN ILLEGAL PER SE LAW, BY CALLING YOUR GOVERNOR'S HIGHWAY SAFETY REPRESENTATIVE, YOUR LOCAL SAFETY COUNCIL OR YOUR LOCAL MADD CHAPTER (SEE RESOURCE SECTION);

IF YOUR STATE DOESN'T HAVE AN ILLEGAL PER SE LAW OF .08, CONTACT EXISTING GRASSROOTS AND GOVERNMENT ORGANIZATIONS INVOLVED IN PREVENTION EFFORTS TO FIND OUT HOW YOU CAN HELP;

JOIN OR HELP FORM A COALITION TO SUPPORT LEGISLATIVE EFFORTS IN YOUR STATE TO LOWER THE BAC LIMIT;

SPREAD THE WORD ABOUT THE IMPORTANCE OF .08 LAWS, THROUGH NEWSLETTER ARTICLES, PRESS RELEASES, CONFERENCES, SPEECHES TO LOCAL ORGANIZATIONS, ETC.; COOPERATE WITH STATE HIGHWAY AND PUBLIC HEALTH AGENCIES TO DRAW ATTENTION TO YOUR EFFORT;

LET YOUR GOVERNOR AND STATE LEGISLATORS KNOW ABOUT THE EFFECTIVENESS OF .08 LAWS IN SAVING LIVES AND TAXPAYER DOLLARS.

A MADD/GALLUP POLL FOUND THAT THE VAST MAJORITY OF THE AMERICAN PUBLIC CONSIDERS DRUNK DRIVING THE NUMBER ONE MAJOR HIGHWAY SAFETY PROBLEM AND MOST SUPPORT TOUGH LAWS AND SANCTIONS TO REDUCE IMPAIRED DRIVING.

Contact information on these and other organizations is available in the appendix. Here are just a few suggestions:

Campaign Safe and Sober – The National Highway Traffic Safety Administration publishes a quarterly planner with useful facts, tips and suggestions for state and community-based highway safety programs, particularly in the area of impaired driving, occupant protection and speed. For copies of past planners or to receive future quarterly planners, contact your NHTSA Regional Administrator.

Drunk and Drugged Driving (3D) Prevention Month Program Planner – The annual 3D planner is chock full of ideas and helpful information on organizing grassroots efforts around the December 3D Month as well as other times of the year. The planner is produced by NHTSA in cooperation with a national coalition of anti-drunk driving organizations and is available through your NHTSA Regional Administrator.

Mothers Against Drunk Driving – MADD offers many resources to local activists through chapters in every state, including Impaired Driving Issues Workshops, publications and training materials, victim support services, and community programs such as Project MADD Ribbon, Operation Prom/Graduation and Team Spirit. Contact your local MADD chapter or the national office.

National Safety Belt Coalition – Although not directly involved in impaired driving issues, the Coalition and its parent organization, the National Safety Council, have published several useful books for local organizers, including *Patterns for Partnerships – A Guide to Creating and Nurturing Grassroots Coalitions* and *Building Traffic Safety Partnerships – A Guide for State Highway Safety Professionals to Work with Local Government Associations*.

“What the Hospitality Industry Can Do”

The restaurant and hospitality industries have plenty of incentives to bring customers into their establishments while helping reduce the risk of impaired driving. Here are some of the ideas many establishments already have used successfully:

PROMOTING DESIGNATED DRIVER PROGRAMS BY PROVIDING FREE OR REDUCED-PRICE NON-ALCOHOLIC BEVERAGES AND FOOD TO DESIGNATED DRIVERS;

PROMOTING NON-ALCOHOLIC BEVERAGES AND WINES;

PROVIDING FREE RIDES HOME TO DRIVERS WHO APPEAR IMPAIRED (OR PARTICIPATING IN AND PROMOTING FREE RIDE PROGRAMS SPONSORED BY SAFETY GROUPS, TAXI COMPANIES, ETC.);

ENGAGING IN RESPONSIBLE ALCOHOL SERVICE BY TRAINING SERVERS, MAKING FOOD AVAILABLE TO PATRONS, NOT SERVING INTOXICATED CUSTOMERS, OR THOSE UNDER THE AGE OF 21.



SECTION 7

Law Enforcement

Enforcing .08

One of the arguments used against .08 is the impact on the law enforcement and judicial system. However, when the largest state, California, lowered the BAC limit to .08, there was little impact on court administrators or judges.

The main impact in California has been on prosecutors' decisions concerning whether or not cases should be filed. Previously, those arrested for DWI with BACs below .12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about .10 BAC. No increases were reported in the proportion of DWI defendants pleading guilty, requesting jury trials, or appealing convictions.

Quick and Easy Testing

Modern breath analysis equipment is easy to use during a roadside stop, whether the legal limit is .08 or any other limit. The devices are small enough and inexpensive enough that every patrol car on traffic duty can be equipped with one. Law enforcement officers can administer the test quickly and easily, without the driver even leaving the car. If the preliminary breath test shows the person is not impaired, motorists can be on their way and police can continue their duties. .08 does not change the fact that law enforcement officers can conduct these roadside tests quickly and easily.

Law Enforcement Supports .08

.08 is supported by law enforcement organizations, including two of the largest: the International Association of Chiefs of Police and the National Sheriffs' Association. These organizations and others like them would not support a law that is unenforceable, ineffective or burdensome on police officers.

Treatment Can Help

Medical treatment programs for repeat offenders – and sometimes even first time offenders – have become an increasingly popular part of the sentencing process. Some states require certain treatments while others recommend but do not require them.

This leads to concern that programs will be overcrowded with long waiting lists. Most safety organizations recommend that impaired driving programs be self-supporting. Fines and fees paid by offenders should cover the cost of all sentencing, including treatment for alcoholism or alcohol abuse. This reduces the burden on taxpayers while helping to ensure that offenders get the help they need.

Medical treatment for impaired drivers, whether required by law or ordered at the discretion of a judge, correctly positions impaired driving as a public health problem. .08 laws do not contribute to burdens on society but help to identify those with a problem and get them into programs to reduce the chance they will eventually kill or injure themselves or someone else.

**.08 IS SUPPORTED
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INEFFECTIVE OR
BURDENSOME ON
POLICE OFFICERS.**

SECTION 8

Summary

.08 is Reasonable

.08 is a reasonable BAC level. A .08 BAC is not reached with a couple of beers after work or a glass or two of wine with dinner. The public supports .08, and surveys show that most people would not drive after consuming two or three drinks.

.08 Works

As a public health initiative and a traffic safety policy, .08 works and works well, especially in combination with other laws and programs. A .08 BAC *per se* law will:

- INCREASE THE ARREST AND CONVICTION RATES FOR IMPAIRED DRIVERS AT .10 AND ABOVE;
- RAISE THE PERCEIVED RISK OF ARREST FOR DRIVING AFTER DRINKING;
- IMPROVE PUBLIC AWARENESS ABOUT HOW MUCH ALCOHOL IT TAKES TO BE DANGEROUSLY IMPAIRED; AND
- BRING THE U.S. CLOSER TO *PER SE* LIMITS OF MOST INDUSTRIALIZED NATIONS.

.08 Could Save Your Life

If every state adopted a .08 *per se* law, hundreds of lives could be saved every year, with thousands of injuries prevented and millions of dollars saved. But even more important would be all the extra birthday candles that would get blown out, the graduation ceremonies that would be attended, the weddings that would be celebrated and the millions of everyday smiles that would be exchanged.

No one will ever know if they or one of their loved ones will be the next victim of impaired driving, just as no one will ever know if they are the one who was spared thanks to good public policy. .08 is sensible, reasonable and effective. It's time to adopt .08 in every state.

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APPENDIX A

Facts on The Impaired Driving Problem

According to the US Department of Transportation's Fatality Analysis Reporting System and the National Highway Traffic Safety Administration's National Center for Statistical Analysis:

- In 1998, 41,471 people were killed in highway crashes. Another 3 million were injured. These crashes cost society \$150 billion every year.
- Of those killed on our highways in 1998, 15,935 died in alcohol-related crashes (38%).
- Approximately one million people are injured in alcohol-related traffic crashes annually.
- Alcohol involvement is the single greatest factor in motor vehicle deaths and injuries. While about 5% of all crashes involve the use of alcohol, 38% of fatal crashes do.
- Anti-impaired driving efforts work. From 1988 to 1998, alcohol-related fatalities dropped 33%. This drop is generally attributed to stronger laws, tougher enforcement, and good consumer education.
- Among all drivers involved in fatal crashes in 1998, 23% had been drinking.
- Many states now are lowering the BAC defining impaired driving from .10 to .08. A BAC as low as .02 has been shown to affect driving ability and crash likelihood.
- The probability of a crash increases significantly at .05 and even more rapidly at .08.
- Among drivers with BACs above .15 on weekend nights, the likelihood of death in a single-vehicle crash is more than 380 times higher than it is for nondrinking drivers.
- The highest proportion of driver deaths involving BACs at or above .08 in 1998 occurred in passenger vehicles. The group of drivers with the lowest proportion was tractor-trailer drivers.
- In 1998, 29 percent of all fatal crashes during the week were alcohol-related, compared to 52 percent on weekends. For all crashes, the alcohol involvement rate was 5 percent during the week and 12 percent during the weekend.
- The highest rates of drivers involved in fatal crashes in 1998 with BACs at or above .10 were recorded for drivers 21-24 years old (28 percent), followed by ages 25-34 (24 percent) and 35-44 (21 percent).

Facts on the Economic Issues

According to the National Highway Traffic Safety Administration:

- In 1998, 41,471 people were killed in highway crashes. Another 3 million were injured.
- Motor vehicle crashes cost society \$150 billion each year in emergency and acute health care costs, long-term care and rehabilitation, police and judicial services, insurance, disability and workers compensation, lost productivity, and social services for those who cannot return to work and support their families.
- Alcohol-related crashes cost society over \$45 billion every year. Just one alcohol-related fatality is estimated to cost society about \$950,000. Each alcohol-related injury averages about \$20,000.
- Almost a quarter of first-year medical costs for persons hospitalized as a result of a crash are paid by tax dollars, about two-thirds through Medicaid and one-third through Medicare.
- Employers pay for approximately half the cost of motor vehicle crashes, through insurance, disability, worker's compensation, and lost productivity. Eventually, we all bear the costs through tax-payer supported services and programs, higher insurance costs, and higher prices on goods and services.

According to a 1994 study by economist Ted R. Miller of the National Public Services Research Institute:

- *The indirect costs of alcohol-related crashes (pain, suffering and lost quality of life) increase the toll for alcohol-related crashes to \$134 billion a year.*
- *Alcohol-related crashes cost society \$1.00 per drink or \$2.20 per ounce of alcohol consumed. This figure includes drinks consumed in the home.*
- *Crash costs are \$5.54 for every mile driven drunk. This includes \$2.34 to people other than the drunk driver. By comparison, crash costs are \$.10 per mile driven while sober.*
- *Alcohol-related crashes account for 19% of auto insurance payments in 1993 (a decline from 26% in 1990).*
- *A drunk driving crash costs each innocent victim \$36,000. Comparable crime costs per victim are: assault – \$30,000; robbery – \$16,000; motor vehicle theft – \$4,000. Yet, the drunk driving crash is the only one of these crimes that is often not considered a felony upon the first offense.*

The Facts About .08

- A law making .08 BAC the legal limit is a reasonable, sensible approach to the problem of impaired driving.
- .08 laws increase the arrest and conviction rates for impaired drivers at .10 and above while raising the perceived risk of arrest for driving after drinking.
- .08 laws raise public awareness about how much alcohol it takes to be dangerously impaired.
- Most other industrial nations already set their legal limit at .08 or lower.
- Supporters of .08 BAC laws include federal and state agencies, consumer and victim's organizations, highway safety groups, law enforcement organizations, medical and public health groups, insurance companies and other business interests, and many others.
- According to a recent poll by the Gallup Organization for Mothers Against Drunk Driving, 97% of Americans believe drunk driving is a major highway safety problem.
- If every state had adopted a .08 *per se* law in 1997, instead of the 15 states that had .08 laws, an additional 590 lives could have been saved, according to a recent study conducted by researchers at the Pacific Institute for Research and Evaluation.
- It takes about 3-4 drinks in one hour on an empty stomach to reach a .08 BAC. This does not affect the casual, social drinker who may have a couple of beers after work or a glass or two of wine with dinner once in a while.
- On average, alcohol metabolizes in the body and dissipates from the blood at a rate of about .015 BAC per hour.
- At .08, virtually all drivers are impaired to the point that critical driving skills such as reaction time, attention, tracking, and comprehension are degraded.

What You Can Do About Impaired Driving

Mothers Against Drunk Driving (MADD) offers the following suggestions to help fight impaired driving:

- *Your best defense against a drunk driver is to wear your safety belt and be sure children are properly secured in child safety seats.*
- *Be a responsible host. Serve food and have non-alcoholic drinks available. Don't let your guests drive after drinking alcohol and never serve alcohol to someone under the age of 21.*
- *Write letters to the editor of local newspapers expressing your concern over drunk driving and underage drinking in your community.*
- *Never ride in a car operated by someone who has been drinking - call a cab or ask a friend to drive you home.*
- *Support measures to strengthen drunk driving and victims rights laws by contacting elected officials.*
- *Report drunk drivers immediately to area law enforcement from a car phone or pay phone with the license plate number, description of the vehicle, and the direction in which it was traveling. Keep a safe distance from anyone driving erratically and do not try to intervene yourself.*

If you or someone you love becomes the victim of a drunk driving crash, call 800-GET-MADD or your local MADD chapter for victim assistance and support.

APPENDIX B

Resources

The Federal Government

The National Highway Traffic Safety Administration (NHTSA), an agency of the US Department of Transportation, is responsible for anti-impaired driving and other highway safety programs. NHTSA maintains statistics and fact sheets, and provides information to the media, grassroots organizations, other government agencies, and the general public. Check out their homepage on the World Wide Web (<http://www.nhtsa.dot.gov>) for more information about the agency's services and publications, as well as highway safety facts.

NHTSA also has ten regional offices to serve the safety community and the general public. The NHTSA regional administrator that serves your state is a great resource for those working to fight impaired driving.

NHTSA Region I

(Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont)

Volpe National Transportation Systems Center
Kendall Square, Code 903
Cambridge, MA 02142
Phone 617/494-3427
Fax 617/494-3646

NHTSA Region II

(New Jersey, New York, Puerto Rico, Virgin Islands)

222 Mamaroneck Avenue, Suite 204
White Plains, NY 10605
Phone 914/682-6162
Fax 914/682-6239

NHTSA Region III

(Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

10 South Howard Street, Suite 4000
Baltimore, MD 21201
Phone 410/962-0077
Fax 410/962-2710

NHTSA Region IV

(Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

Atlanta Federal Center
61 Forsyth Street, Suite 17T30
Atlanta, GA 30303
Phone 404/562-3739
Fax 404/562-3763

NHTSA Region V

(Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

19900 Governor Drive, Suite 201
Olympia Fields, IL 60461
Phone 708/503-8822
Fax 708/503-8991

NHTSA Region VI

(Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Indian Nations)

819 Taylor Street, Room 8A38
Fort Worth, TX 76102
Phone 817/334-3653
Fax 817/334-8339

NHTSA Region VII

(Iowa, Kansas, Missouri, Nebraska)

901 Locust Street
Kansas City, MO 64106
Phone 816/329-3900
Fax 816/329-3910

NHTSA Region VIII

(Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

555 Zang Street, 4th Floor
Lakewood, CO 80228
Phone 303/969-6917
Fax 303/969-6294

NHTSA Region IX

(Arizona, California, Hawaii, Nevada, American Samoa, Guam, Northern Mariana Islands)

201 Mission Street, Suite 2230
San Francisco, CA 94105
Phone 415/744-3089
Fax 415/744-2532

NHTSA Region X*(Alaska, Idaho, Oregon, Washington)*

3140 Jackson Federal Building
 915 Second Street
 Seattle, WA 98174
 Phone 206/220-7640
 Fax 206/220-7651

Two other federal agencies are also good sources of information:

National Clearinghouse for Alcohol and Drug Information
Center for Substance Abuse Prevention
 US Department of Health and Human Services
 PO Box 2345
 Rockville, MD 20847-2345
 Phone: 800/729-6686
 Web site: <http://www.health.org>

National Transportation Safety Board
 490 L'Enfant Plaza, SW
 Washington, DC 20594
 Phone: 202/314-6000
 Web site: <http://www.nts.gov>

State Governments

Each governor appoints a highway safety representative to manage the state's highway safety program, including administration of the federal Highway Safety Community Grant program. The governor's representative also serves as a liaison between the governor and the highway safety community. These professionals and their staffs are a great resource on all highway safety issues, particularly impaired driving. The governor's representatives have a national organization in Washington:

National Association of Governors' Highway Safety Representatives
 750 First Street, NE, Suite 720
 Washington, DC 20002
 Phone: 202/789-0942
 Fax: 202/789-0946

The following are the offices of the governors' highway safety representatives:

Alabama Department of Economic & Community Affairs
Law Enforcement/Traffic Safety Division
 PO Box 5690
 Department of Economic & Community Affairs
 401 Adams Avenue, Suite 580
 Montgomery, AL 36103-5690
 Phone: 334/242-5803
 Fax: 334/242-0712

Highway Safety Planning Agency
 Alaska Department of Public Safety
 PO Box 111200
 Juneau, AK 99811-1200
 Phone: 907/465-4374
 Fax: 907/463-5860

Governor's Representative/Commissioner of Public Safety
American Samoa Government
 PO Box 1086
 Pago Pago, AS 96799
 Phone: 011-684-633-1111
 Fax: 011-684-633-5111

Governor's Office of Community and Highway Safety
Arizona Department of Public Safety
 3030 North Central, Suite 1550
 Phoenix, AZ 85012
 Phone: 602/255-3216
 Fax: 602/255-1265

Highway Safety Program
Arkansas Highway & Transportation Department
 PO Box 2261
 11300 Baseline Road
 Little Rock, AR 72203
 Phone: 501/569-2648
 Fax: 501/569-2651

Office of Traffic Safety California Business, Transportation, & Housing Agency
 7000 Franklin Boulevard, Suite 440
 Sacramento, CA 95823
 Phone: 916/262-0990
 Fax: 916/262-2960

Colorado Office of Transportation Safety
Department of Transportation
 Headquarters Complex
 4201 East Arkansas Avenue
 Denver, CO 80222
 Phone: 303/757-9381
 Fax: 303/757-9439

Division of Highway Safety
Connecticut Department of Transportation
 2800 Berlin Turnpike
 PO Box 3,7546
 Newington, CT 06131-7546
 Phone: 860/594-2363
 Fax: 860/594-2374

Office of Highway Safety
Delaware Department of Public Safety
 PO Box 1321
 Dover, DE 19903-1321
 Phone: 302/739-3295
 Fax: 302/739-5995

Transportation Safety Branch
DC Department of Public Works
 2000 14th Street, NW, 7th Floor
 Washington, DC 20009
 Phone: 202/939-8018
 Fax: 202/939-7185

Safety Office Florida Department of Transportation

605 Suwannee Street, MS 53
Tallahassee, FL 32399-0450
Phone: 904/488-3546
Fax: 904/922-2935

Georgia Governor's Office of Highway Safety

1 Park Tower
34 Peach Tree Street, Suite 1600
Atlanta, GA 30303
Phone: 404/656-6996
Fax: 404/651-9107

Highway Safety Coordinator

Guam Department of Public Works
PO Box 2950
Agana, GU 96910
Phone: 011-671-646-3211
Fax: 011-671-649-3733

Operator Assisted Calls: 01-671-646-3211**Motor Vehicle Safety Office**

Hawaii Department of Transportation
601 Kamokila Boulevard, Suite 511
Kapolei, HI 96707
Phone: 808/692-7650
Fax: 808/692-7665

Office of Highway Safety

Idaho Transportation Department
PO Box 7129, 3311 West State Street
Boise, ID 83707-1129
Phone: 208/334-8101
Fax: 208/334-3858

Division of Traffic Safety

Illinois Department of Transportation
PO Box 19245
3215 Executive Park Drive
Springfield, IL 62794-9245
Phone: 217/782-4972
Fax: 217/782-9159

Indiana Governor's Council on Impaired and Dangerous Driving

150 West Market Street, Suite 330
Indianapolis, IN 46204
Phone: 317/232-1299
Fax: 317/232-5150

Indian Highway Safety Program

Bureau of Indian Affairs
Department of the Interior
PO Box 2006
Albuquerque, NM 87103
Phone: 505/248-5053
Fax: 505/248-5064

Governor's Traffic Safety Bureau

Iowa Department of Public Safety
307 East 7th Street
Des Moines, IA 50319-0248
Phone: 515/281-3907
Fax: 515/281-6190

Kansas Bureau of Traffic Safety

Thacher Building, 2nd Floor
217 S.E. 4th
Topeka, KS 66603-3504
Phone: 913/296-3756
Fax: 913/291-3010

Highway Safety Standards Branch

Kentucky State Police Headquarters
919 Versailles Road
Frankfort, KY 40601
Phone: 502/695-6356
Fax: 502/573-1634

Highway Safety Commission

Louisiana Department of Public Safety
PO Box 66336
Baton Rouge, LA 70896
Phone: 504/925-6991
Fax: 504/922-0083

Bureau of Highway Safety

Maine Department of Public Safety
164 State House Station
Augusta, ME 04333
Phone: 207/624-8756
Fax: 207/624-8768

Northern Mariana Islands

Department of Public Safety
PO Box 791
Saipan, M.P. 96950
Phone: 011-670-034-6505
Fax: 011-670-234-8531

Office of Traffic & Safety

Maryland State Highway Administration
7491 Connelley Drive
Hanover, MD 21076
Phone: 410/787-5822
Fax: 410/787-5823

Massachusetts Governor's Highway Safety Bureau

100 Cambridge Street, Room 2104
Boston, MA 02202
Phone: 617/727-5073
Fax: 617/727-5077

Michigan Office of Highway Safety Planning

4000 Collins Road, PO Box 30633
Lansing, MI 48909-8133
Phone: 517/333-5291
Fax: 517/333-5756

Office of Traffic Safety

Minnesota Department of Public Safety
Town Square, Suite 100-B
444 Cedar Street
St. Paul, MN 55101-2128
Phone: 612/296-3804
Fax: 612/297-4844

Highway Safety Office

Mississippi Department of Public Safety
PO Box 23039
401 North West Street, 8th Floor
Jackson, MS 39225-3039
Phone: 601/359-7842
Fax: 601/359-7832

Missouri Division of Highway Safety

PO Box 104808
Jefferson City, MO 65110-4808
Phone: 573/751-7643
Fax: 573/634-5977

Highway Traffic Safety
Montana Department of Justice
 P.O. Box 201001
 2701 Prospect Avenue, Room 109
 Helena, MT 59620-1001
 Phone: 406/444-3412
 Fax: 406/444-7303

Office of Highway Safety
Nebraska Department of Motor Vehicles
 PO Box 94612
 301 Centennial Mall South
 Lincoln, NE 68509-4789
 Phone: 402/471-3900
 Fax: 402/471-3865

Office of Traffic Safety Nevada Department of
Motor Vehicles & Public Safety
 555 Wright Way
 Carson City, NV 89711-0900
 Phone: 702/687-3243
 Fax: 702/687-5328

New Hampshire Highway Safety Agency
 Pine Inn Plaza
 117 Manchester Street
 Concord, NH 03301
 Phone: 603/271-2131
 Fax: 603/271-3790

Division of Highway Traffic Safety
New Jersey Dept. of Law & Public Safety, CN 048
 225 East State Street
 Trenton, NJ 08625
 Phone: 609/633-9300
 Fax: 609/633-9020

Traffic Safety Bureau New Mexico State Highway &
Transportation Department
 PO Box 1149
 Santa Fe, NM 87504-1149
 Phone: 505/827-0429
 Fax: 505/827-0431

New York State Governor's Traffic Safety Committee
 Empire State Plaza, Swan St. Bldg., Room 521
 Albany, NY 12228
 Phone: 518/474-0858
 Fax: 518/473-0041

North Carolina Governor's Highway Safety Program
 215 East Lane Street
 Raleigh, NC 27601
 Phone: 919/733-3083
 Fax: 919/733-0604

Driver Licensing & Traffic Safety
North Dakota Department of Transportation
 608 East Boulevard Avenue
 Bismarck, ND 58505-0700
 Phone: 701/328-2601
 Fax: 701/328-4545

Office of the Ohio Governor's Highway Safety
Representative
 PO Box 182081
 1970 W. Broad Street
 Columbus, OH 43218-2081
 Phone: 614/466-3250
 Fax: 614/466-0433

Highway Safety Office
Oklahoma Department of Public Safety
 3223 N. Lincoln
 Oklahoma City, OK 73105
 Phone: 405/521-3314
 Fax: 405/524-4906

Transportation Safety Section
Oregon Department of Transportation
 555 13th Street, N.E.
 Salem, OR 97310-1333
 Phone: 503/986-4192
 Fax: 503/986-4189

Pennsylvania Bureau of Highway & Traffic Engineering
 555 Walnut Street, 7th Floor, Forum Place
 Harrisburg, PA 17105-2047
 Phone: 717/787-7350
 Fax: 717/783-8012

Traffic Safety Commission
Puerto Rico Department of Public Works
 Box 41289, Minillas Station
 Santurce, PR 00940
 Phone: 809/723-3590
 Fax: 809/727-0486

Rhode Island Governor's Office of Highway Safety
 345 Harris Avenue
 Providence, RI 02909
 Phone: 401/277-3024
 Fax: 401/277-2086

South Carolina Department of Public Safety
Office of Safety & Grants
 5400 Broad River Road
 Columbia, SC 29210
 Phone: 803/896-7896
 Fax: 803/896-8393

South Dakota Office of Highway Safety
 118 West Capital
 Pierre, SD 57501
 Phone: 605/773-4493
 Fax: 605/773-6893

Tennessee Governor's Highway Safety Program
Department of Transportation
 505 Deaderick Street, Suite 600
 James K. Polk State Office Bldg.
 Nashville, TN 37243-0341
 Phone: 615/741-7590
 Fax: 615/741-9673

Traffic Operations Division
Texas Department of Transportation
 125 E. 11th Street
 Austin, TX 78701-2483
 Phone: 512/416-3167
 Fax: 512/416-3349

Utah Department of Public Safety
Highway Safety Office
 5263 South 300 West, Suite 202
 Salt Lake City, UT 84107
 Phone: 801/293-2481
 Fax: 801/293-2498

Governor's Highway Safety Program
Vermont Department of Public Safety
 103 South Main Street
 Waterbury, VT 05671-2101
 Phone: 802/244-1317
 Fax: 802/244-1106

**Virginia Department of Motor Vehicles
Transportation Safety Office**
PO Box 27412
2300 West Broad Street
Richmond, VA 23269
Phone: 804/367-8140
Fax: 804/367-6631

**Governor's Representative
Virgin Islands Office of Highway Safety**
Lagoon Street Complex, Fredricksted
St. Croix, VI 00840
Phone: 809/776-5820
Fax: 809/772-2626

Washington Traffic Safety Commission
PO Box 40944
1000 South Cherry Street
Olympia, WA 98504-0944
Phone: 360/733-6197
Fax: 360/586-6489

**Governor's Highway Safety Program West Virginia
Criminal Justice & Highway Safety Division**
Capito Complex, Building 3, Room 118
Charleston, WV 25301
Phone: 304/558-6080
Fax: 304/558-0391

**Bureau of Transportation Safety
Wisconsin Department of Transportation**
PO Box 7936
4802 Sheboygan Avenue, Room 809
Madison, WI 53707
Phone: 608/266-0402
Fax: 608/267-0441

**Highway Safety Program
Wyoming Transportation Department**
PO Box 1708
Cheyenne, WY 82003-1708
Phone: 307/777-4450
Fax: 307/777-4250

The Private Sector

The National Safety Council, with chapters all over the country, can provide information on a wide range of occupational, home and traffic safety issues. The Council produces dozens of publications and provides services and educational opportunities in these areas.

National Safety Council
1121 Spring Lake Drive
Itasca, IL 60143
Phone: 630/285-1121
Fax: 630/285-1315
Web site: <http://www.nsc.org>

Mothers Against Drunk Driving is a non-profit, grass roots organization with more than 400 chapters nationwide. It "is not a crusade against alcohol consumption;" its focus is "to look for effective solutions to the drunk driving and underage drinking problems, while supporting those who have already experienced the pain of these senseless crimes." To join, find a chapter in your area or for more information, contact the National Office at:

Mothers Against Drunk Driving
511 E. John Carpenter Freeway., #700
Irving, Texas 75062
Phone: 214/744-MADD (6233)
Fax: 972/869-2206/2207
Web site: <http://www.madd.org>

Other private sector groups may be helpful. Here is a list of some of the national organizations that support .08 BAC laws.

Advocates for Highway and Auto Safety
750 First Street, NE, Suite 901
Washington, DC 20002
Phone: 202/408-1711
Web site: <http://www.saferoads.org>

American Automobile Association
1000 AAA Drive
Healthrow, FL 32746
Phone: 407/444-7000
Web site: <http://www.aaa.com>

American Automobile Manufacturers Association
1401 H Street, NW, Suite 900
Washington, DC 20005
Phone: 202/326-5500
Web site: <http://aama.com>

American Coalition for Traffic Safety
1110 N. Glebe Road, Suite 1020
Arlington, VA 22201
Phone: 703/243-7501

American Insurance Association
1130 Connecticut Avenue, Suite 1000
Washington, DC 20036
Phone: 202/828-7100
Web site: <http://www.aiadc.org>

American Medical Association
515 North State Street
Chicago, IL 60610-4379
312/464-5000
Web site: <http://www.ama-assn.org>

Insurance Institute for Highway Safety
1005 North Glebe Road
Arlington, VA 22201
Phone: 703/247-1500
Web site: <http://www.hwysafety.org>

International Association of Chiefs of Police
515 North Washington Street
Alexandria, VA 22314
Phone: 703/836-6767
Web site: <http://www.theiacp.org>

National Commission Against Drunk Driving
1900 L Street NW, Suite 705
Washington, DC 20036
Phone: 202/452-6004
Web site: <http://www.ncadd.com>

Remove Intoxicated Drivers (RID)
PO Box 520
Schenectady, NY 12301
Phone: 518/393-4357
Web site: TBA

Students Against Destructive Decisions (SADD)
PO Box 800
Marlboro, MA 01752
Phone: 508/481-3568
Web site: www.sadd.org

APPENDIX C

Model Law

The Uniform Vehicle Code, published by the National Committee on Uniform Traffic Laws and Ordinances, is a document developed by transportation and highway safety professionals to serve as a guideline for those developing state motor vehicle legislation. Inclusion of this model law here should not be interpreted as a formal endorsement by the National Safety Council or the National Highway Traffic Safety Administration. The entire Uniform Vehicle Code is available on the World Wide Web at <http://www.ncutlo.org>.

CHAPTER 11 - Rules of the Road

ARTICLE IX – SERIOUS TRAFFIC OFFENSES

11-902 – Driving while under the influence of alcohol or drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in such person's blood or breath is 0.08 or more based on the definition of blood and breath units in [Section 11-903(a)(5)].

Optional 1. The alcohol concentration in such person's blood or breath as measured within three hours of the time of driving or being in the actual physical control is 0.08 or more based on the definition of blood and breath units in [Section 11-903]. If proven by a preponderance of evidence, it shall be an affirmative defense to violation of this subsection that the defendant consumed a sufficient quantity of alcohol after the time of driving or actual physical control of a

vehicle and before the administration of the evidentiary test to cause the defendant's alcohol concentration to be 0.08 or more. The foregoing provision shall not limit the introduction of any other competent evidence bearing upon the question whether or not the person violated this section, including tests obtained more than three hours after such alleged violation.

2. Under the influence of alcohol;

3. Under the influence of any other drug or combination of other drugs to a degree which renders such person incapable of safely driving; or

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders such person incapable of safely driving.

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section.

(c) In addition to the provisions of [Section 11-904], every person convicted of violating this section shall be punished by imprisonment for not less than 10 days or more than one year, or by fine of not less than \$100 nor more than \$1,000, or by both such fine and imprisonment and on a second or subsequent conviction, such person shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than \$1,000.

ACKNOWLEDGMENTS

This publication was written by Katherine R. Hutt, APR, President of Nautilus Communications, designed by Bobbi Kittner, principal of Kittner Design, and edited by Jane Roemer, Director of Public Policy, and Laura Wilkinson, Public Policy Associate, of the National Safety Council. Special thanks to the National Highway Traffic Safety Administration for their support of this project, especially James C. Fell, Chief of the Research and Evaluation Division, Kay Chopard, Highway Safety Specialist and Sue Ryan, Chief of the Impaired Driving Division.

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.08 BAC Limit Saves Lives – Why Every State Needs a .08 BAC Law (brochure); National Safety Council, Chicago, IL, and National Highway Traffic Safety Administration, Washington, DC; 1994.

.08 BAC Illegal Per Se Level (State Legislative Fact Sheet); National Highway Traffic Safety Administration, Washington, DC; September 1996.

.08 – Save Lives in Your State, 11-minute video produced by USAA, San Antonio, TX, for the National Highway Traffic Safety Administration, Washington, DC; 1985.

The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California, National Highway Traffic Safety Administration (DOT HS 807 777), August 1991.

Mothers Against Drunk Driving, fact sheets (various)

Mothers Against Drunk Driving, press release dated September 20, 1996.

"The Impact of Lowering the Illegal BAC Limit to .08 in Five States in the U.S.," by Delmas Johnson and James Fell, National Highway Traffic Safety Administration, Washington, DC, 39th Annual Proceedings of the Association for the Advancement of Automotive Medicine, Chicago, IL, October 16-18, 1995.

Too Impaired to Drive?, 12-minute video on impairment at .08 BAC by USAA, San Antonio, TX, for the National Highway Traffic Safety Administration, Washington, DC, 1999.

The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes, by Robert B. Voas and A. Scott Tippetts, Pacific Institute for Research and Evaluation, Bethesda, MD, for the National Highway Traffic Safety Administration, April, 1999.

The Effects of .08 BAC Laws, by Robert Apsler, A.R. Choat, and Wayne M. Harding, Rainbow Technology, and Terry M. Klein, National Highway Traffic Safety Administration, March, 1999, DOT HS 808 892.

Evaluation of the Effects of North Carolina's .08 BAC Law, by Robert D. Foss, J. Richard Stewart, and Donald W. Reinfort, Highway Safety Research Center, University of North Carolina, for the National Highway Traffic Safety Administration, March, 1999.

Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 Percent, by Jack W. Stuster and Marcelline Burns, Anacapa Science, Santa Barbara, CA, for the National Highway Traffic Safety Administration, August 1998, DOT HS 808 839.

Effectiveness of State .08 Blood Alcohol Laws, General Accounting Office (GAO) Report to Congressional Committees, June 1999, GAO/RCED-99-179.

A Review of the Scientific Literature Regarding the Effects of Alcohol on Driving-Related Behavior at Blood Alcohol Concentration of 80 mg/dl and Lower, by Herbert Moskowitz and Dary Fiorentino, Southern California Research Institute, for the National Highway Traffic Safety Administration, 1999, in press.

Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Age and Sex: An Update Using 1996 Data, by Paul Zador and Sheila Krawchuk of Westat, Olnc, and Robert B. Voas of Pacific Institute for Research and Evaluation, May 1999, in press.

Driver Characteristics and Impairment at Various BACs, by Herbert Moskowitz, et al, Southern California Research Institute, for the National Highway Traffic Safety Administration, 1999, in press.

For additional copies of this publication please contact NHTSA at (202) 366-2727.



**National
Safety
Council**



U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**



NSC #82353-0000

**DOT HS 808 524
Revised December 1999**

Printed In the U.S.A.

Full report: <http://www.ci.anchorage.ak.us/mayor/>

Final Report of the DUI Prevention Task Force



Municipality of Anchorage

October 30, 2000

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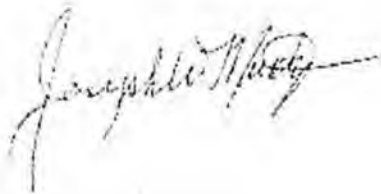
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October 30, 2000

Statement of Intent

The intent of this DUI Task Force has been to fashion realistic recommendations that fulfill its mandate to advise the Mayor and the Assembly on appropriate action necessary to prevent and deter drunken driving in Anchorage. The Task Force addressed many potentially effective suggestions regarding drunken driving prevention and deterrence. Some proved polarizing, complex, and not subject to immediate implementation. Research, testimony, and debate eventually produced consensus as to the recommendations. While the majority of the recommendations were the product of pure consensus, certain elements within the report met with objections by one or two members. As a whole, however, the entire Task Force endorses the report.

It is our intent to provide you simple, not simplistic, guidance in dealing with the problem of drunken driving in Anchorage. You will find no footnotes and few data quotes to complicate the recommendations. As chairmen, we can assure you that the Task Force has done its homework. The Task Force was appointed as a reflection of the community, and the consensus reached in this report should be a good measure of how the recommendations will be embraced by the citizens of Anchorage.



Joe Murdy
Co-Chairman



Bob Bailey
Co-Chairman

Executive Summary

A special citizen's task force on DUI (Driving Under the Influence) was proposed by Mayor George Wuerch and created by a resolution of the Anchorage Assembly on July 18, 2000. The Task Force was created to advise the Mayor and the Assembly on appropriate legislative action necessary to prevent and deter drunken driving in Anchorage. The Task Force consisted of twenty original members, two ex-officio members, two alternates, and one replacement member.

Original Task Force members were co-chairmen Bob Bailey and Joe Murdy, Charlotte Phelps, Marti Greeson, Obed Nelson, Gail Schubert, Judge Elaine Andrews, Jewel Jones, Denise Henderson, Ron Perkins, Jack Amon, John Richard, Janet Seitz, Paul Reid, Curtis Thayer, Rob Heun, Jasmyne Thea Faulk, Bob Young, Bill Chadwick, and Leslie Ridle. Ex-officio members were Chief Duane Udland and Municipal Attorney Bill Greene. Alternate members were Karen Rogina and Denise Trutanic. Judge Andrews eventually withdrew from the task force and was replaced by Wendy Lyford. Assistant Municipal Prosecutor Carmen Clarkweeks provided valuable legal interpretations of state and municipal law.

The Task Force had an organizational meeting in July 2000, and began work sessions in August 2000. Ten full Task Force meetings were held, including one meeting dedicated solely to public testimony in which twenty-two citizens testified. Those testifying were James Gay, Cheryl Mann, Gary T. Spezialy, Dennis Kalpakoff, Joseph Young, Shannon McBride, Rep Norm Rokeberg, Michelle Villard, John Wood, Dan Coffey, Pat Knowles, Jim Messick, Nelson Page, Bill Herman, Don Grasse, Kelly Gillilan-Gibson, Barbara Bennett, Ken Smith, Janet McCabe, Cliff Lamb, Mike Krukar and Philip Petree. One meeting was devoted to an overview of DUI Courts as the Task Force was interested in this concept and its potential. All full Task Force meetings were electronically recorded.

The Task Force's charter outlined the following issues to address:

- State and/or municipal legislation to prevent and deter drunken driving, particularly those previously convicted of driving under the influence of alcohol;
- Enforcement of existing laws and ordinances;
- Other government programs;
- Other organizations, both public and private, that can be of assistance.

The Task Force created three subcommittees to carry out its work in the following areas:

- Current Laws Subcommittee - examined current laws on the books, addressed issues of enforcement and sentencing without additional legislation;
- Courts Subcommittee - examined alternative legal venues for prosecuting offenders, such as DWI and Drug Courts;
- Alternative Solutions Subcommittee - examined what additional can be done to address the problem of drinking and driving, and considered sentencing alternatives.

The subcommittees held several meetings and then presented reports to the full Task Force. The subcommittee reports can be found in the Addendum to this report. These reports generated a composite list of twenty-five subcommittee recommendations that functioned as discussion points for the full task force. The Task Force used a consensus model to develop final recommendations from the discussion points. The final recommendations contained in this Final Report are not presented in any particular order indicating priority.

Summary of Task Force Recommendations

The Task Force addressed the broad spectrum of legislative modifications, enforcement issues, potential government programs, and other types of public and private organizations within the scope of the charter statement and reached consensus on the following recommendations:

State and Municipal Legislative Recommendations

- Change the legal designation from DWI (Driving While Intoxicated) to DUI (Driving Under the Influence)
- Update present statutes to reflect subsequent court decisions
- Make third and subsequent DUIs felonies by eliminating "look back" provisions
- Identify enhancements for charging and sentencing considerations
- Graduate Blood Alcohol Concentration (BAC) levels and penalties from .08, and consider modifying AS 28.35.032, Refusal To Submit To A Chemical Test, to reflect the graduated penalty implications
- Require a valid driver's license and proof of insurance to register a vehicle
- Adopt a mandatory impoundment and forfeiture procedure at the state level
- Explore the feasibility of a centralized clearinghouse for licenses and investigate the expanded options provided by technological advances for tracking licenses whose holders have convictions for certain alcohol related offenses
- Require mandatory alcohol awareness training and a victim's panel as a prerequisite for obtaining a valid resident driver's license
- Provide parameters for monitored, certifiable residential treatment in sentencing when enhancement factors are present
- Offer screening, mandatory alcohol education, and mandatory alcohol assessment during incarceration for DUI
- Provide for monitored alcohol treatment and ensure certifiable minimum standards in all DUI treatment programs
- Adopt Alaska Criminal Justice Assessment Commission recommendation #15 that the state should encourage the expansion of the Department of Health and Social Services Alcohol Safety Action Program (ASAP) through legislation and funding
- Recognize that halfway houses are not appropriate for repeat offenders and analyze halfway house administration
- Adopt Alaska Criminal Justice Assessment Commission recommendation #8 which relates to underage drinkers
- Make AS 04.16.050, Possession, Control, or Consumption by Persons Under 21 a misdemeanor and provide for alcohol treatment or counseling, peer options such as Youth Court, and parental/guardian notification
- Repeal AMC 10.50.015(H), Solicit the Purchase, Attempt to Purchase, or Possess Intoxicating Liquor, and require these offenses be charged under a revised AS 04.16.050

- Establish and fund a DUI Court
- Make AS 28.05.095, Use of Seat Belts and Child Safety Devices Required, a primary law

Enforcement Recommendations

- Encourage focused enforcement of youthful offenders
- Encourage the state to enforce and prosecute AS 28.35.280, Minor Operating a Vehicle After Consuming
- Establish a Report Every Drunk Driver Immediately (REDDI) program in Anchorage
- Expand "Drunk Busters" program, and initiate year round saturation patrols
- Streamline drunken driver arrest processing procedures
- Initiate safety checkpoints when deemed appropriate by law enforcement
- Implement ignition interlock devices as a condition of probation for DUI offenders after their driving privileges have been reinstated

Other Government Programs

- Increase alcohol server mandatory training from every three years to every two years
- Establish media awareness campaigns that target the "uncaught offender"
- Establish mandatory alcohol education and awareness programs in schools
- Study alternative forms of transportation between Girdwood and Anchorage
- Establish an umbrella group to facilitate continued coordination, compilation and exchange of data, and exchange of materials between interested groups and organizations

Public/Private Organizations

- Establish a Responsible Hospitality Institute Chapter in Anchorage

LEGISLATIVE RESEARCH REPORT

NOVEMBER 28, 2000



REPORT NUMBER 01.023

FEDERAL HIGHWAY FUNDING AND STATE DWI LAWS

PREPARED FOR REPRESENTATIVE NORMAN ROKEBERG

BY PATRICIA YOUNG, LEGISLATIVE ANALYST

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<i>Table One: Federal Highway Funding and Alcohol-Related Programs.....</i>	10

You asked for an explanation of the connection between federal highway dollars and a state's drinking and driving laws. Specifically, you asked whether Alaska has foregone federal funding opportunities as a result of not having enacted certain provisions regarding open containers and repeat offenders. If so, you wished to know how long the state has foregone such revenue and the amount of funding that has been "lost." Additionally, you asked for an explanation of the funding consequences of the recent federal requirement concerning a blood alcohol concentration standard of 0.08 percent.

For purposes of this report, we focus on measures relating to driving while intoxicated (DWI) addressed by Congress in the Transportation Equity Act for the 21st Century, the current federal authorization for surface transportation programs. After a brief summary, we address each provision, and its impact on transportation and highway safety funding in Alaska, individually. We consolidate the data in Table One.

SUMMARY

In order to encourage states to adopt and enforce specific anti-drunk driving laws, Congress authorized two incentive grant programs and two transfer provisions as part of the Transportation Equity Act for the 21st Century (TEA-21) in 1998.¹ These provisions are in effect from federal fiscal year 1998 through 2003. More recently, President Clinton signed into law a sanction provision to take effect in federal fiscal year 2004, for states that fail to adopt and enforce a 0.08 percent blood alcohol concentration (BAC) standard by that time.

Under the two incentive programs authorized by TEA-21, grant funds are available to states that have enacted specific drunk driving countermeasures (Section 410) and to states that have enacted a 0.08 percent BAC standard (Section 163). The countermeasures incentive under Section 410—with different eligibility criteria—was available under ISTEA, the predecessor of TEA-21. Alaska qualified for funding under the ISTEA version of the program, and because of a delayed effective date, received approximately \$200,500 during 1998. With the change in requirements, however, the state no longer qualifies, and as a result, "lost" approximately \$127,000 in 1999. Section 410 is a broad program with numerous eligibility requirements and several variables in the funding formula. According to Mary Moran, director of the state's highway safety program, qualification demands more staff resources than are presently available. Thus, even if the state were to qualify, she would not apply with the program's current staffing level.

Potential funding under the Section 163 incentive program is significantly more substantial than that available under Section 410. Because Alaska has not implemented the 0.08 BAC standard needed to qualify for funding under this section, since 1998, the state has foregone approximately \$2.3 million that could have been used for any transportation project eligible for federal assistance. The state will continue to "lose" approximately \$700,000 to \$800,000 during each year through 2003 unless lawmakers choose to lower the BAC from 0.10 percent to 0.08.

The transfer provisions require states to implement specific provisions regarding open containers (Section 154) and minimum penalties for repeat offenders (Section 164) by October of 2000. Because Alaska's laws do not conform precisely to the federal requirements of either provision, 1.5 percent of the state's highway construction funds will be transferred to the highway safety program for each of the provisions during FY 2001—a combined total of approximately \$5.2 million. Another 1.5 percent for each provision will be transferred for fiscal year 2002 if the state has not complied with the federal requirements; the transferred amounts double to three percent for each provision during fiscal year 2003 and each year thereafter that the state has not complied.

Lastly, beginning with federal fiscal year 2004, the U.S. Department of Transportation will begin to withhold a percentage of the highway funds apportioned to states that continue to resist implementing the 0.08 BAC standard for *per se* DWI (Section 163[a]). According to federal estimates, if Alaska has not implemented such a standard by FY 2004, the state will lose 2

¹ The Transportation Equity Act for the 21st Century (TEA-21), enacted June 9, 1998, as Public Law 105-178, authorized federal surface transportation programs for the six-year period of 1998-2003. The Act reauthorized existing National Highway Traffic Safety Administration programs, including the DWI countermeasures incentive grant program under Section 410. Additionally, TEA-21 created the incentive grant program for 0.08 BAC under Section 163. The TEA-21 conferees also agreed upon two provisions for transfer of a portion of a state's highway construction funds to its highway safety program if the state fails to establish and enforce minimum penalties for repeat drunk driving (Section 164) and for open containers in the passenger compartment of a vehicle (Section 154). These two initiatives, omitted from the conference report, were restored to TEA-21 by the TEA-21 Restoration Act, on July 22, 1998, as Public Law 105-206.

percent, or approximately \$3.6 million of its 2004 funding. The annual penalty would rise by an additional 2 percent each year to an estimated \$14.3 million by FY 2007. States that implement the standard before the end of FY 2007, however, will recover the withheld funding.

INCENTIVE GRANT—ALCOHOL-IMPAIRED DRIVING COUNTERMEASURES (SECTION 410)

As part of the Transportation Equity Act for the 21st Century, Congress authorized approximately \$220 million for grants under Section 410, to encourage states to adopt and implement programs to reduce traffic safety problems resulting from individuals driving under the influence of alcohol.² The program includes two basic grant options. States may qualify for both basic grants, and those that qualify for either can also apply for supplemental grants.

The Section 410 program was in place under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Congress reauthorized the program with TEA-21 but amended the eligibility requirements and delayed the effective date until FY 1999. According to Mary Moran, director of the Alaska Highway Safety Office, the amendments, to a large extent, reversed the eligibility requirements for the basic and the supplemental grants. As a result, although Alaska qualified under ISTEA, the state no longer does so.

Prior to the eligibility change, Alaska qualified for basic grant funding because criteria such as videotaping of drunk drivers by police, an on-going DWI-prevention program, and the use of passive alcohol sensors (breath tests) by police were in place. Because the shift did not become effective until 1999, Alaska received approximately \$200,500 during 1998. Since the shift, however, those criteria pertain to the supplemental grants, rather than to the basic ones. Because a state must qualify for a basic grant to apply for a supplemental grant, Alaska is currently ineligible for all Section 410 funding. Had Alaska qualified, the state would have received approximately \$127,000 in 1999 to support anti-drunk driving programs. Because of the high number of variables involved in Section 410 funding, Ms. Moran is unable to estimate the amount that Alaska "lost" in 2000. Specific details of the current Section 410 program follow.³

Section 410 Eligibility. States have two options for qualifying for the basic Section 410 grant funding. States that qualify for a basic grant may apply for supplemental grants:

Basic Grant A—implement at least 5 of the following 7 criteria:

- ◆ Administrative license revocation;
- ◆ A program to prevent drivers under age 21 from obtaining alcoholic beverages;
- ◆ A program for intensive impaired driving law enforcement;

² 23 USC 410, Alcohol-Impaired Driving Countermeasures.

³ Federal Highway Administration, "TEA-21 Fact Sheet: Alcohol-Impaired Driving Countermeasures Incentive Grants," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_410.htm (accessed 10/10/2000).

- ◆ A graduated licensing law with nighttime driving restrictions and zero tolerance;
- ◆ A program to target drivers with high BAC;
- ◆ Young adult drinking programs to reduce impaired driving by individuals age 21 through 34;
- ◆ An effective system for increasing the rate for BAC of drivers in fatal accidents—beginning in FY2001, the testing rate must be above the national average.

Basic Grant B—demonstrate both of the following:

- ◆ A reduction in the percentage of fatally injured drivers with 0.10 BAC or greater, in each of the last 3 years; and
- ◆ A percentage of fatally injured drivers with 0.10 BAC or greater that is lower than the national average for each of the last 3 years.

Supplemental Grants—implement any of the following:

- ◆ Videotaping of drunk drivers by police;
- ◆ A self-sustaining impaired driving prevention program;
- ◆ Laws to reduce driving with suspended license;
- ◆ Use of passive alcohol sensors by police;
- ◆ Effective system for tracking information on drunk drivers;
- ◆ Other innovative programs.

Distribution of Funds: Beginning in FY 1999, qualifying states receive up to 25% of their FY 1997 Section 402 apportionment for each basic grant; supplemental grants may not exceed 10% of funding made available for Section 410.

Program Administration: The federal share for Section 410 shall not exceed 75% in the 1st and 2nd years in which a state receives a grant, 50% in the 3rd and 4th years, and 25% in the 5th and 6th years. States may use Section 410 grant funds only to implement and enforce impaired driving programs.

At present, Alaska meets at least two of the seven program criteria for basic grant A. The state must meet at least five in order to qualify for funding. According to Ms. Moran, Alaska's eligibility in regard to some criteria is debatable: the state might qualify, for example, in regard to programs for reducing alcohol-impaired driving by young adults. Similarly, the state might qualify in regard to the rate of BAC testing of drivers involved in fatal crashes if the rate is above the national

average.⁴ Alaska's DWI countermeasures scheme does not qualify in regard to the following basic grant A criteria:

Administrative license revocation. Alaska qualified in regard to this criterion until state lawmakers reduced the duration of license revocation for minors driving after consuming alcohol from 90 days, one year, and three years for first, second, and third or subsequent revocations to 30 days, 60 days, 90 days, and one year for first, second, third, and fourth or subsequent revocations, respectively.⁵ Although other provisions still qualify, the revocation scheme as a whole now does not.

Graduated licensing law with nighttime restrictions and zero tolerance. Although the state has a graduated licensing system in place and an absolute zero tolerance law (rather than the federally required 0.02 BAC), Alaska's system does not satisfy the federal requirements in the following ways:

- ◆ Program eligibility requires that all occupants must be properly restrained. Alaska law refers only to proper restraint of children under the age of 16.⁶
- ◆ Program eligibility requires that, absent a state-approved exception, a person authorized to drive under a learner's permit or an intermediate driver's license may not drive during some period of the night unless a licensed driver who is 21 years of age or older is in the vehicle. Alaska law has no nighttime restriction.⁷
- ◆ Program eligibility requires that holders of learner's permits and intermediate licenses must remain crash and conviction free. In addition to the revocation provisions noted above, Alaska law addresses license revocation for minors between the ages of 13 and 17 who are convicted of or adjudicated as delinquent for misconduct involving a controlled substance, or for offenses involving the illegal use or possession of a firearm.⁸

Program targeting drivers with high BAC (a system of graduated sanctions for DWI offenders with higher than average BAC).

In regard to basic grant B, according to Ms. Moran, the state is close to qualifying for both criteria. She notes, however, that applying for and monitoring either of the Section 410 grant possibilities require a substantial amount of effort. Even if the state could qualify today, she concludes, she would not apply because she lacks sufficient staff to handle the paperwork.

⁴ Testing the BAC of all drivers involved in crashes that result in fatalities—regardless of whether the drivers survive—would provide highly useful data, according to Ms. Moran.

⁵ AS 28.15.183(d), Administrative Revocation of License to Drive; changed by Chapter 88, SLA 1999.

⁶ AS 28.05.095, Use of Seat Belt and Child Safety Devices Required.

⁷ AS 28.15.051-055, Instruction Permits and Provisional Driver's License.

⁸ AS 28.15.185, Court Revocation of a Minor's License to Drive.

INCENTIVE GRANT—0.08 BAC (SECTION 163)

Along with the reauthorization of Section 410 funding, Congress authorized a new incentive program under Section 163.⁹ Section 163 provides a total of \$500 million in incentive grant funds for states that enact and enforce laws providing that any person with a BAC of 0.08 percent or greater while operating a motor vehicle will be deemed to have committed a *per se* offense of driving while intoxicated. These funds may be used for highway safety or highway construction—any project eligible for assistance under Title 23 U.S.C. No matching state dollars are required. Program particulars follow.¹⁰

Section 163 Eligibility: Any state that has in effect and is enforcing a 0.08 BAC law, before the end of the fiscal year, is eligible to receive incentive funds for that fiscal year. To be eligible, a state's law must meet six basic elements:

- ◆ It must apply to all drivers;
- ◆ It must set a BAC level of no more than 0.08;
- ◆ It must establish driving at 0.08 BAC as an offense that is illegal *per se*;
- ◆ It must provide for primary enforcement of the law (rather than requiring probable cause that another violation has been committed before allowing enforcement of the 0.08 BAC law);
- ◆ It must apply to the criminal code and, in states with administrative license revocation (ALR) laws, to the ALR law as well; and
- ◆ It must be deemed to be equivalent to the state's standard DWI offense.

Distribution of Funds: Available funding each year is apportioned among all eligible states. According to the Section 402 formula—

- ◆ 75 % based on the ratio of the state's population in the latest federal census to the total population in all states.
- ◆ 25 % based on the ratio of the public road miles in the state to the total public road miles in all states.

The apportionment to each state is no less than one-half of one percent.

Program Administration: The federal share of a project funded under Section 163 is 100 percent. States may use Section 163 grant funds for any project eligible for federal funding under Title 23.

⁹ 23 USC 163, Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons.

¹⁰ Federal Highway Administration, "TEA-21 Fact Sheet: Safety Incentives to Prevent Operation of Motor Vehicles by Intoxicated Persons," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_163.htm (accessed 10/10/2000).

Because Alaska's BAC standard is 0.10 percent, Alaska has not qualified for Section 163 incentive funding. Had Alaska lawmakers lowered the BAC limit to 0.08 and had that law been in effect before the end of 1998, Alaska would have received approximately \$762,500 for that year. Had the state qualified in 1999 or 2000, the funding received would have been approximately the same. As Ms. Moran notes, although federal authorization for the program has increased slightly each year, the number of states that qualify has also increased. Nevertheless, at this point, the state has foregone roughly \$2.3 million in funding that could have been used for any project eligible for assistance under Title 23. If the state certifies with the U.S. Department of Transportation before the end of September, 2001, that Alaska has enacted and is enforcing a conforming law, Alaska could receive an estimated \$700,000 to \$800,000 a year in Section 163 funds for federal fiscal years 2001 through 2003.¹¹

TRANSFER PROGRAMS—OPEN CONTAINER (SECTIONS 154) AND REPEAT OFFENDER (SECTION 164)

In addition to the incentive funding programs, Congress authorized two new programs in which a percentage of a state's highway construction funds (National Highway System, Surface Transportation Program, and Interstate Maintenance) will be transferred to its highway safety program if that state has not enacted or does not enforce specific provisions to counter alcohol-impaired driving by October 1, 2000.¹² These programs have identical funding consequences. The penalty for each is transfer of 1.5 percent of a state's construction funds for FY 2001 and 2002, and 3 percent for each year thereafter. The funds transferred to the safety program must be used for alcohol-impaired driving countermeasures, for DWI law enforcement, or for hazard elimination programs. Projects funded with the transferred funds do not require state matching funds.

SECTION 154—OPEN CONTAINER REQUIREMENTS

For the purposes of Section 154, a state must have in effect a law that prohibits the possession of any open alcoholic beverage container, or the consumption of any alcoholic beverage, in the passenger area of any motor vehicle on a public highway or the right-of-way of a public highway in the state.¹³

U.S. Department of Transportation officials deem Alaska's open container law as nonconforming because of ambiguous wording in regard to motor cycles. The problematic portion of AS 28.35.029 reads as follows:

(b) . . . a person may transport an open bottle, can or other receptacle containing an alcoholic beverage

¹¹ Mary Moran, director, Alaska Highway Safety Office. (907) 465-4374.

¹² 23 USC 154. Open Container Requirements; and 23 USC 164. Minimum Penalties for Repeat Offenders for DWI or DUI.

¹³ Federal Highway Administration, "TEA-21 Fact Sheet: Open Container Requirements," September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_154.htm (accessed 10/25/2000).

(1) in the trunk of a motor vehicle;

(2) on a motor driven cycle, or behind the last upright seat in a motor home, station wagon, hatchback, or similar trunkless vehicle, if the open bottle, can, or other receptacle is enclosed within another container

State officials have attempted to persuade federal officials that the provision was intended to mean—and is enforced as meaning—that a person may transport an open bottle on a motor cycle only if it is enclosed within another container. Federal officials maintain, however, that the provision could be interpreted to mean that a person may transport an open bottle on a motor cycle. Under this view, the phrase “if the open bottle . . . is enclosed . . .” could have been intended—and could be interpreted—to refer to “motor home, station wagon, hatchback, or similar trunkless vehicle” without also referring to “motor cycle.” As a result, federal officials conclude that Alaska law does not meet Section 154 requirements.

SECTION 164—MINIMUM PENALTIES FOR REPEAT DWI OFFENDERS

To meet the requirements of Section 164, a state must have in effect a law that provides, as a minimum penalty, that an individual convicted of a second or subsequent DWI offense shall be subject to the following penalties.¹⁴

- ◆ License suspension for not less than one year;
- ◆ Impoundment or immobilization of each of the individual's motor vehicles, or installation of an ignition interlock system on each of the individual's motor vehicles;
- ◆ Assessment of the individual's degree of alcohol abuse and treatment as appropriate; and
- ◆ Receiving, for a 2nd offense, assignment of not less than 30 days community service, or not less than 5 days imprisonment; and for a 3rd or subsequent offense, an assignment of not less than 60 days of community service, or not less than 10 days imprisonment.

Alaska's statutory provisions meet Section 164 requirements except in regard to impoundment and immobilization of a repeat offender's vehicles and the installation of ignition interlock devices. Alaska law provides that the state may order the forfeiture of a vehicle involved in a DWI offense, but forfeiture is not mandatory, and it applies only in third or subsequent offenses. Further, the sanction applies only to the vehicle used in the offense, rather than to all vehicles owned by the offender.¹⁵ As with vehicle forfeiture, the installation of ignition interlock devices is authorized but not mandatory and would not be required in all vehicles owned by an offender. Additionally, installation of such devices applies only in cases wherein the offender receives probation.¹⁶

¹⁴ Federal Highway Administration, “TEA-21 Fact Sheet: Minimum Penalties for Repeat Offenders for DWI or DUI,” September 14, 1998; available at http://www.fhwa.dot.gov/tea21/factsheets/n_164.htm (accessed 10/10/2000).

¹⁵ AS 28.35.036, Forfeiture of Vehicle or Aircraft.

¹⁶ AS 12.55.102, Alcohol Related Offenses.

As noted earlier, in order to avoid transfer of highway construction funds, states must have met the requirements by October 1, 2000, the beginning of federal fiscal year 2001. As a result of not meeting the requirements for Sections 154 and 164, a total of approximately \$5.2 million in funds that would have gone for highway construction in Alaska will be transferred to the state's safety program. The same percentage will be transferred for fiscal year 2002 if the state has not complied with the federal provisions; the transferred amounts double to three percent for fiscal years 2003 and each year thereafter that the state has not complied.

SANCTION--0.08 BAC [SECTION 163(A)]

As you know, on October 23, 2000, President Clinton signed into law a national standard for drunk driving. The act requires states to implement laws providing that any person driving with a blood alcohol concentration of 0.08 percent or greater is deemed to have committed a *per se* offense of driving while intoxicated. Currently, 31 states, including Alaska, define *per se* drunken driving at 0.10 percent BAC.

Under the act, states have until October 1, 2003, to pass a 0.08 BAC *per se* law. Those that do not will face the withholding of 2 percent of their highway construction funds in federal fiscal year 2004, with the penalty increasing by an additional 2 percent each year for a total of 8 percent in FY 2007. States that implement the standard by 2007 will recoup the withheld funding. Based on estimated FY 2003 apportionments, the U.S. Department of Transportation foresees the possibility of up to approximately \$36 million withheld from Alaska by the end of FY 2007 if the state does not pass a conforming BAC law.

We consolidate data and information on each of the TEA-21 alcohol-related programs—incentives, transfers, and sanctions—in Table One, "Federal Highway Funding and Alcohol Related Program."

I hope this information is useful to you. Please do not hesitate to contact us if you have questions or need additional information.

Table One: Federal Highway Funding and Alcohol-Related Programs

(dollars in thousands)

Programs	Fiscal Year						Comments
	1998	1999	2000	2001	2002	2003	
Section 410 DWI Countermeasures Incentive Grants	200 ^(a)	127 ^(b)	no estimate	no estimate	no estimate	no estimate	Congress amended eligibility requirements beginning in FY 1999; as a result, Alaska no longer qualifies. The federal share decreases from 75% in the 1st and 2nd years a state receives a Section 410 grant, to 50% in the 3rd and 4th years, and 25% in the 5th and 6th years. States may use Section 410 grant funds only to implement and enforce impaired driving programs.
Section 163 0.08 BAC Incentive Grants	762 ^(b)	762 ^(b)	762 ^(b)	700-800 ^(c)	700-800 ^(c)	700-800 ^(c)	As a result of not having a 0.08 BAC law in effect, Alaska has forgone approximately \$2.3 million in Section 163 grant funds between FY 1998 and FY 2000. A similar amount could be gained or forgone through FY 2003. States may use Section 163 funds for any project eligible for federal assistance under Title 23.
Section 154 Open Container Transfer	not applicable	not applicable	not applicable	2,581 ^(d)	2,581 ^(e)	5,162 ^(e)	Federal officials deem Alaska's open container law to be nonconforming because of ambiguous wording. On October 1, 2000, therefore, an amount equal to 1.5% of the funds apportioned to Alaska for NHS, STP, and IM is to be transferred to the Highway Safety Program. As similar amount will be transferred if the state's law does not conform at the beginning of federal FY 2002; the transferred amount increases to 3% for FY 2003 and thereafter. Section 154 transferred funds must be used for DWI countermeasures, enforcement of DWI and related laws, or for hazard elimination.
Section 164 Repeat Offender Transfer	not applicable	not applicable	not applicable	2,581 ^(d)	2,581 ^(e)	5,162 ^(e)	Alaska's minimum penalties for repeat DWI offenders does not comply with federal requirements because forfeiture of vehicles or the installation of ignition interlock devices is not mandatory and because such provisions do not apply to all vehicles owned by the offender. Transfer of funds is identical to that under Section 154--1.5% of NHS, STP, and IM funding for states out of compliance in FY 2001 and FY 2002; 3% thereafter. Section 164 transferred funds must be used for alcohol-impaired driving countermeasures or enforcement of DWI and related laws.
	Fiscal Year						Comments
	2004	2005	2006	2007	2008	2009	
Section 163(a) Sanction	3,581 ^(f)	7,162 ^(f)	10,743 ^(f)	14,324 ^(f)	14,324 ^(f)	14,324 ^(f)	States that have not complied with the 0.08 BAC standard by October 1, 2003, will have 2% of their federal apportionment withheld. The withheld amount will increase by 2% each year until reaching 8% for FY 2007 and thereafter. States that implement a conforming law before the end of FY 2007 will recoup the withheld funds.

Notes and Sources:

- (a) Funding Alaska received. National Highway Safety Administration, "FY 1998 Section 410 Grant"; available at [http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/410\\$98.html](http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/410$98.html) (accessed 11/17/2000).
- (b) Funding Alaska did not receive. Estimate provided by Mary Moran, director, Alaska Highway Safety Office, (907) 465-4374.
- (c) Funding Alaska could receive if laws conforming to federal requirements are enacted and enforced. Estimate provided by Mary Moran.
- (d) Funding already transferred from highway construction (National Highway System, Surface Transportation Program, and Interstate Maintenance) to the Alaska Highway Safety Office. Federal Highway Administration, "Transfers Pursuant to 23 USC 154 (Open Container Requirements)"; available at <http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/154.html> and <http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/164.html> (accessed 11/26/2000).
- (e) Funding that will be transferred from highway construction to the Alaska Highway Safety Office unless laws conforming to federal requirements are enacted and enforced. Estimates provided by Mary Moran.
- (f) Funding that will be withheld from Alaska's highway apportionment if the state does not have a 0.08 BAC law in force by October 1, 2003; based on estimated FY 2003 apportionment, after distribution of minimum guarantee funds, and calculating penalties of 2% in FY 2004, and an additional 2% each year up to 8% in FY 2007 and thereafter. Withheld funding can be recouped if the state passes a conforming law by the end of FY 2007. Federal Highway Administration, "Annual Core Apportionments and Potential Penalties Under Sec. 163(a) for FY 2004 and Thereafter"; available at [http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/08\\$SANCTION.html](http://www.nhtsa.dot.gov/nhtsa/whatsup/tea21/tea21programs/08$SANCTION.html) (accessed 11/9/2000).

Post-it* Fax Note	7671	Date	# of pages 5
To	Dennis Bshard	From	Tam Cook
Co./Dept.	DOTPF	Co.	LAA-legal
Phone #		Phone #	465-2450
Fax #	586-8365	Fax #	

106TH CONGRESS
2D SESSION

H. R. 5394

Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 2000

Mr. WOLF introduced the following bill; which was referred to the Committee on Appropriations

A BILL

Making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 2001, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the following sums are appropriated, out of any
- 4 money in the Treasury not otherwise appropriated, for the
- 5 Department of Transportation and related agencies for
- 6 the fiscal year ending September 30, 2001, and for other
- 7 purposes, namely:

2

1 TITLE I
2 DEPARTMENT OF TRANSPORTATION
3 OFFICE OF THE SECRETARY
4 SALARIES AND EXPENSES

5 For necessary expenses of the Office of the Secretary,
6 \$63,245,000: *Provided*, That not more than 52 percent
7 of the funds made available under this heading shall be
8 obligated and not more than 224 full time equivalent staff
9 years funded through the end of the second quarter of fis-
10 cal year 2001: *Provided further*, That funds in excess of
11 52 percent and 224 full time equivalent staff years shall
12 be available only if the Secretary transmits a request to
13 the House and Senate Committees on Appropriations for
14 these additional funds: *Provided further*, That not to ex-
15 ceed \$60,000 for allocation within the Department for of-
16 ficial reception and representation expenses as the Sec-
17 retary may determine: *Provided further*, That not more
18 than \$15,000 of the official reception and representation
19 funds shall be available for obligation prior to January 20,
20 2001.

21 OFFICE OF CIVIL RIGHTS

22 For necessary expenses of the Office of Civil Rights,
23 \$8,140,000.

1 That all information submitted in such reports shall be
2 current as of the last day of the preceding quarter.

3 Sec. 351. Notwithstanding any other provision of
4 law, beginning in fiscal year 2004, the Secretary shall
5 withhold 2 percent of the amount required to be appor-
6 tioned for Federal-aid highways to any State under each
7 of paragraphs (1), (3), and (4) of section 104(b) of title
8 23, United States Code, if a State has not enacted and
9 is not enforcing a provision described in section 163(a)
10 of chapter 1 of title 23, United States Code, in fiscal year
11 2005, the Secretary shall withhold 4 percent of the
12 amount required to be apportioned for Federal-aid high-
13 ways to any State under each of paragraphs (1), (3), and
14 (4) of section 104(b) of title 23, United States Code, if
15 a State has not enacted and is not enforcing a provision
16 described in section 163(a) of title 23, United States Code;
17 in fiscal year 2006, the Secretary shall withhold 6 percent
18 of the amount required to be apportioned for Federal-aid
19 highways to any State under each of paragraphs (1), (3),
20 and (4) of section 104(b) of title 23, United States Code,
21 if a State has not enacted and is not enforcing a provision
22 described in section 163(a) of title 23, United States Code;
23 and beginning in fiscal year 2007, and in each fiscal year
24 thereafter, the Secretary shall withhold 8 percent of the
25 amount required to be apportioned for Federal-aid high-

Oct. 2003

1 ways to any State under each of paragraphs (1), (3), and
2 (4) of section 104(b) of title 23, United States Code, if
3 a State has not enacted and is not enforcing a provision
4 described in section 163(a) of title 23, United States Code.
5 If within four years from the date the apportionment for
6 any State is reduced in accordance with this section the
7 Secretary determines that such State has enacted and is
8 enforcing a provision described in section 163(a) of chap-
9 ter 1 of title 23, United States Code, the apportionment
10 of such State shall be increased by an amount equal to
11 such reduction. If at the end of such four-year period, any
12 State has not enacted and is not enforcing a provision de-
13 scribed in section 163(a) of title 23, United States Code,
14 any amounts so withheld shall lapse.

15 SEC. 352. (a) IN GENERAL.—Notwithstanding any
16 other provision of law, including the Surplus Property Act
17 of 1944 (58 Stat. 765, chapter 479; 50 U.S.C. App. 1622
18 et seq.), the Secretary of Transportation (or the appro-
19 priate Federal officer) may waive, without charge, any of
20 the terms contained in any deed of conveyance described
21 in subsection (b) that restrict the use of any land de-
22 scribed in such a deed that, as of the date of enactment
23 of this Act, is not being used for the operation of an air-
24 port or for air traffic. A waiver made under the preceding

HIGHWAYS FEDERAL-AID HIGHWAYS

23 USCS § 164

obligated at the end of... withheld under subsection... under paragraph (1), the... shall lapse.

June 9, 1998, P. L. 105-

ES

paragraphs (1), (3), 104(b)

a national scenic byways... ural, natural, recreational... Scenic Byways or All-

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any project that would

not protect the scenic, historical, recreational, cultural, natural, and archaeological integrity of a highway and adjacent areas.

(e) Savings clause. The Secretary shall not withhold any grant or impose any requirement on a State as a condition of providing a grant or technical assistance for any scenic byway unless the requirement is consistent with the authority provided in this chapter [23 USCS §§ 101 et seq.]

(f) Federal share. The Federal share of the cost of carrying out a project under this section shall be 80 percent, except that, in the case of any scenic byway project along a public road that provides access to, or within Federal or Indian land, a Federal land management agency may use funds authorized for use by the agency as the non-Federal share.

(Added June 9, 1998, P. L. 105-178, Title I, Subtitle B, § 1219(a), 112 Stat. 219.)

§ 163. Safety incentives to prevent operation of motor vehicles by intoxicated persons

(a) General authority. The Secretary shall make a grant, in accordance with this section, to any State that has enacted and is enforcing a law that provides that any person with a blood alcohol concentration of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a per se offense of driving while intoxicated (or an equivalent per se offense).

(b) Grants. For each fiscal year, funds authorized to carry out this section shall be apportioned to each State that has enacted and is enforcing a law meeting the requirements of subsection (a) in an amount determined by multiplying—

- (1) the amount authorized to carry out this section for the fiscal year; by
(2) the ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(c) Use of grants. A State may obligate funds apportioned under subsection (b) for any project eligible for assistance under this title.

(d) Federal share. The Federal share of the cost of a project funded under this section shall be 100 percent.

(e) Authorization of appropriations. (1) In general. There are authorized to be appropriated out of the Highway Trust Fund (other than the Mass Transit Account) to carry out this section \$55,000,000 for fiscal year 1998, \$65,000,000 for fiscal year 1999, \$80,000,000 for fiscal year 2000, \$90,000,000 for fiscal year 2001, \$100,000,000 for fiscal year 2002, and \$110,000,000 for fiscal year 2003.

(2) Availability of funds. Notwithstanding section 118(b)(2), the funds authorized by this subsection shall remain available until expended.

(Added June 9, 1998, P. L. 105-178, Title I, Subtitle D, § 1404(a), 112 Stat. 240.)

§ 164. Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence

(a) Definitions. In this section, the following definitions apply:

(1) Alcohol concentration. The term "alcohol concentration" means grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(2) Driving while intoxicated; driving under the influence. The terms "driving while intoxicated" and "driving under the influence" mean driving or being in actual physical control of a motor vehicle while having an alcohol concentration above the permitted limit as established by each State.

(3) License suspension. The term "license suspension" means the suspension of all driving privileges.

(4) Motor vehicle. The term "motor vehicle" means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated solely on a rail line or a commercial vehicle.

(5) Repeat intoxicated driver law. The term "repeat intoxicated driver law" means a State law that provides, as a minimum penalty, that an individual convicted of a second or subsequent offense for driving while intoxicated or driving under the influence after a previous conviction for that offense shall—

- (A) receive a driver's license suspension for not less than 1 year;
(B) be subject to the impoundment or immobilization of each of the individual's motor vehicles or the installation of an ignition interlock system on each of the motor vehicles;
(C) receive an assessment of the individual's degree of abuse of alcohol and treatment as appropriate; and
(D) receive—

(i) in the case of the second offense—

(ii) in the case of the third offense—

Responses to Statements Regarding .08 BAC Laws

Statement: Most state legislatures have looked at the research evidence and have concluded that .08 laws are not effective. In New Jersey, for example, a Task Force concluded that there is no evidence that .08 laws result in reductions in alcohol-related fatalities.

Response: The research with regard to the effectiveness of .08 BAC laws is consistent and persuasive. At least eight studies have indicated that these laws are associated with reductions in alcohol-related crashes, fatalities, and injuries, particularly in conjunction with administrative license revocation (ALR) laws.

The New Jersey Task Force reviewed only four early studies of the effects of .08 BAC laws and concluded that the results were "mixed." Since that time, four additional comprehensive studies have been conducted. Together with the four original studies, these studies provide consistent and even more persuasive evidence of the effectiveness of .08 BAC laws, both alone and in conjunction with other laws and activities.

A 1999 GAO review of seven of these eight studies concluded that there are "*strong indications that .08 BAC laws in combination with other drunk driving laws ... can save lives*" (p2). GAO also stated that "*.. we and DOT reach essentially the same conclusion regarding the effectiveness of .08 BAC laws, both by themselves and in combination with other measures*" (p24).

While the studies of effectiveness have been persuasive, effectiveness is not the primary basis for supporting a .08 BAC law. **The primary reasons for supporting such a law are that, at .08 BAC, virtually everyone is impaired in important skills related to driving and their risk of being involved in a fatal crash is greatly increased.** Several states have recognized this. In New Mexico, for example, a State Task Force carefully reviewed only the evidence of impairment and crash risk at .08 BAC. Following this review, New Mexico chose to enact a .08 BAC law.

Statement: The Government Accounting Office (GAO) has recently conducted a critical review of the .08 studies and has concluded that these laws are not effective in reducing alcohol-related fatalities.

Response: This statement is not correct! The GAO report stated that there are "*strong indications that .08 BAC laws in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement can save lives*" (p2).

Statement: The GAO study concluded that "the evidence does not conclusively establish that

.08 laws, by themselves, result in reductions in the number and severity of alcohol-related crashes.

Response: No research is ever conclusive in an "unequivocal" sense. Neither are laws ever implemented "by themselves." The combination of strong laws, highly visible enforcement, and strong public information is the key to reducing alcohol-related fatalities. NHTSA has maintained that the evidence of the effectiveness of .08 BAC laws is consistent and persuasive, particularly in conjunction with the administrative license revocation (ALR) laws, already enacted in 40 states.

The GAO report confirms this relationship and further states that *"although we characterize the strength of the study results differently, we and DOT reach essentially the same conclusion regarding the effectiveness of .08 BAC laws, both by themselves and in combination with other measures"* (p24).

Statement: We keep hearing that enactment of .08 BAC laws in all states would result in 500 lives being saved every year. The GAO report looked at the study that made this estimate and found it to be groundless.

Response: At the time of the GAO study, two studies had independently formulated estimates of lives saved. A Boston University study estimated that 500-600 additional lives would be saved if all states adopted .08 BAC laws. An NHTSA (50-state) study used a more detailed analysis and estimated that 590 lives would be saved -- a very similar estimate. While GAO criticized the Boston University Study for not describing how it arrived at its estimate, GAO did not criticize the elaborate and detailed methodology of the NHTSA 50-state study.

Further, a new Boston University study was recently published. This study evaluated the effectiveness of .08 BAC laws enacted in six states in 1993 and 1994 and concluded that, overall, these states experienced a 5-6 percent greater decline in measures of alcohol-related crashes, compared with six nearby states that did not lower their BAC limits. This study estimated that, if all states adopted a .08 BAC law, 400-500 fewer fatalities would occur annually.

Advocates of .08 BAC laws have used the mid-point of these three estimates and have projected that, if all states were to adopt .08 BAC laws, an additional 500 lives would be saved each year. This estimate of 500 lives saved is well within the confidence boundaries of all of the estimates made to date.

Statement: .08 BAC laws make criminals out of normal social drinkers.

Response: Impairment and crash risk are the issues - not how many drinks it may take to get to .08 BAC. Scores of studies have been conducted which indicate that, at .08 BAC virtually everyone is impaired in important skills related to driving and that, at that level, the risk of being involved in a fatal crash is many times greater than at .00 BAC.

Statement: ".08 BAC legislation will not affect problem drinker drivers who have high BAC levels."

Response: The research shows that .08 laws not only reduce the incidence of impaired driving at lower BACs, they also reduce the incidence of impaired driving at higher BACs (i.e., over .10). A .08 law serves as a general deterrent to drinking and driving. It sends a message that the state is getting tougher on impaired driving, and it makes many people think twice about getting behind the wheel after they've had too much to drink. A .08 BAC law is a key component of an overall program to reduce impaired driving. While problem drinkers do account for a significant part of the problem, most fatally injured drinking drivers (70-80%) have no prior alcohol-related offenses.

A comprehensive anti-DWI program must use all available laws and programs to reduce fatalities.

Statement: ".08 is just the first step toward even lower BACs and eventually another attempt at prohibition."

Response: The notion that safety organizations seek a return to prohibition is unfounded. Although there is strong research evidence that driving-related skills begin to deteriorate below .08 BAC, most safety advocates have adopted .08 BAC as a reasonable and acceptable compromise that will save lives, prevent injuries and reduce costs to society.

**US DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
ANNUAL CORE APPORTIONMENTS AND POTENTIAL PENALTIES UNDER SEC. 163(a)
FOR FY 2004 AND THEREAFTER*
(Assuming Various Rates of Penalty)**

<u>State</u>	<u>IM / STP / NHS Total</u>	<u>.08 BAC adopted as Legal Standard</u>	<u>2% Penalty</u>	<u>4% Penalty</u>	<u>6% Penalty</u>	<u>8% Penalty</u>
Alaska	179,048,339	-	3,580,967	7,161,934	10,742,900	14,323,867
Washington	297,631,829	X	0	0	0	0
Oregon	221,819,579	X	0	0	0	0
Idaho	140,668,319	X	0	0	0	0
Wyoming	156,383,521	-	3,127,670	6,255,341	9,383,011	12,510,682

- Based on estimated FY 2003 apportionments, after distribution of Minimum Guarantee funds

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Web posted Friday, April 21, 2000

Two die in 2-car wreck

By McKIBBEN JACKINSKY
Peninsula Clarion

A two-vehicle accident at Mile 37.5 of the Seward Highway, just north of the Sterling Highway cutoff, claimed the lives of two men and injured two others on Wednesday.

Killed were Martin John Richard, 50, and Ladd E. Macaulay, 57, both of Juneau.

Injured were Steven Gregory McGee, 49, also of Juneau, and Michael J. Glaser, 43, of Crown Point.

Alaska State Troopers reported that shortly after 4 p.m., Glaser was driving an older model Chevrolet crew cab southbound on the Seward Highway. The pickup crossed the center line, striking a northbound Toyota Camry head on.

The pickup then rolled on its side, trapping Glaser, the sole occupant.

The Toyota, a rental vehicle, hit the side of the surrounding mountain, trapping the three occupants, Richard, Macaulay and McGee.

Richard, who had been driving the Toyota, and Macaulay, the backseat passenger, were pronounced dead at the scene.

McGee and Glaser were transported to Central Peninsula General Hospital.

Richard had served as director of Alaska's Division of Investments since 1986 and was a 21-year state employee. He was married to Barbara J. "Jill" Richard, a nurse. The two had no children.

Macaulay was a loan officer with the Division of Investments and previously served as director of the Douglas Island Pink and Chum fish hatchery in the Juneau area.

He is survived by his wife, Linda, a state employee, and two sons and two daughters.

According to a press release from Gov. Tony Knowles, Martin, Macaulay and McGee had been inspecting hatcheries on the Kenai Peninsula. They were returning to Anchorage at the time of the accident.

McGee, a biologist, has been with Alaska's Department of Fish and Game for 17 years. His wife, Bonnie, is a teacher at Floyd Dryden Middle School in Juneau. They have two children.

Bonnie Nichols, a spokesperson for Central Peninsula General Hospital, reported that McGee had suffered broken facial bones, contusions and bruises. Information on Glaser's injuries was unavailable.

Nichols said both McGee and Glaser were in fair condition.

"We reach out with our sympathies and condolences to the family and friends of Martin Richard and Ladd Macaulay, two dedicated state employees who enriched the state through their public service, their commitment to their families, their love of Alaska, and numerous other personal contributions," said Knowles in a press release on Thursday. He ordered state flags be lowered to half-staff.

Rep. Gail Phillips, R-Homer, worked with Richard on financing issues for limited entry fishery programs and boat loans.

"The state of Alaska suffered a tragedy ... with the senseless loss of two longtime, well-respected state employees," said Phillips. "(Their deaths) will have a profound impact on the Department of Commerce.

"My deepest sympathy and condolences go to both families and friends," Phillips said. "Our prayers and hopes are for the speedy recovery for Fish and Game employee Steven McGee, who was also seriously injured in this tragedy."

Sen. Jerry Ward, R-Anchorage, said the Senate remembered Richard and Macaulay with a moment of silence on Thursday.

"Everybody is really quite devastated about this," said Ward. "My prayers and wishes go out to (their families)."

Greg Wilkinson, information officer for the Alaska State Troopers, said alcohol is being investigated as a contributing factor of the accident. The troopers are asking for anyone who may have witnessed either the pickup truck or the Toyota to contact the troopers in Soldotna, at 262-4453, or Seward, at 224-3346.

The Chevrolet crew cab was described by Wilkinson as yellow, but rusty

and dirty. Glaser, the driver of the pickup, may have picked up a hitchhiker at some point on his drive. Troopers would like to contact that person, as well.

Wilkinson described the Toyota Camry as a late model four-door, brown in color.

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7/27

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Web posted Tuesday, May 2, 2000

Troopers arrest man charged in double-fatal accident

ANCHORAGE (AP) -- Alaska State Troopers on Monday arrested a man charged with two counts of second-degree murder resulting from an accident on the Seward Highway.

Michael J. Glaser, 43, is charged with the deaths of Martin John Richard, 50, of Juneau, and Ladd E. Macaulay, 57, of Juneau. He also is charged with one count of assault for causing injuries to Steven Gregory McGee, 49, of Juneau.

An investigation determined that Glaser's blood alcohol following the April 19 crash was .258, more than two-and-half times above the legal driving limit of .10.

Glaser was arrested Monday morning after being released from Alaska Regional Hospital. A Kenai grand jury issued a \$75,000 cash only bail warrant on Friday. Glaser was being held at Cook Inlet Pre-Trial Facility.

Glaser was driving a pick-up truck when it crossed the center line at milepost 37.5 of the Seward Highway. The truck struck a car, killing Richard and Macaulay. McGee was injured. Glaser also was hospitalized.

If convicted, Glaser could be sentenced up to 99 years for each second-degree murder charge and 20 years for first-degree assault.

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ADN
5 July
2000

Pickup hits, kills bicyclist

Police say man drunk had 6 previous DWIs

By LISA DEMER
Daily News reporter

An Anchorage man with six previous drunken driving convictions was driving drunk when he struck and killed a college student riding her bicycle on the sidewalk along Minnesota Drive late Monday, Anchorage police said.

Russell D. Carlson, 39, who had a 2-year-old child in the truck with him, was charged with manslaughter, child abuse, driving while intoxicated and driving while his license was revoked, according to police.

The bicyclist was Jessie Withrow, 20, who grew up in Anchorage and



Jessie Withrow died Tuesday in Anchorage.

See Back Page, BICYCLIST

BICYCLIST: Student enjoyed friends, family, music

Continued from Page A-1

was a dean's list student at Bates College in Lewiston, Maine. She was pronounced dead at Providence Alaska Medical Center on Tuesday afternoon.

Police Lt. Bob Griffiths said Carlson had six DWI convictions in Alaska. Details about those cases were not available Tuesday because of the July Fourth holiday.

The crash happened about 11:30 p.m. Carlson was driving a white full-size pickup, police spokesman Ron McGee said.

Witnesses told police that Carlson was weaving and driving fast while heading south on Minnesota. He ran into a Ford Explorer that had stopped for a red light on Northern Lights Boulevard, then went on the sidewalk and struck Withrow on

her bike, according to police. His truck then went into the parking lot of the Aurora Village Shopping Center and crashed into three parked cars, police said.

The 2-year-old child and another man in the truck were not hurt, police said. The relationship between Carlson and the child wasn't clear.

Family friends of the young woman who died described her as exceptionally bright and creative.

"Jessie was a very unusual child. It was like she was way grown up beyond her years. She was destined to do great things. The world is going to be a cheated place for the fact she was not able to achieve her potential," said Susan Peck, who has a daughter close to Withrow and who is a friend of Withrow's mother, Wendy.

Withrow wrote for Perfect World, the

teen-oriented pages in the Anchorage Daily News. She sang with her mother at the Renaissance Festival and the Anchorage Folk Festival. She served on the Anchorage Youth Court, helping kids who had gotten in trouble. In 1998, she graduated with honors from Steller Secondary School and won a scholarship to Bates College, a liberal arts school. She was home for summer break and would have been a junior, studying English.

"Her friends, her family and her music were the things she enjoyed the most," said another family friend, Ray Booker.

Carlson is being held at Cook Inlet Pre-Trial Facility on \$100,000 bail.

Reporter Lisa Demer can be reached at ldemer@adn.com and 257-4390.

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Anchorage Daily News

3RD WRECK PINNED ON BOOZE WOMAN CRITICALLY HURT; CRASH HIGHLIGHTS DWI ISSUE

By Larry Campbell And Lisa Demer
Daily News Reporters

(Published July 6, 2000)

A young Anchorage woman was hospitalized in critical condition Wednesday following the third collision in the past two weeks involving drunken driving suspects with previous DWI convictions.

Gloria B. Steelman, 19, suffered massive head injuries when the Ford Escort in which she was riding collided with a pickup headed the wrong way on Northern Lights Boulevard early Wednesday morning. Steelman, an East High graduate, was in intensive care Wednesday at Alaska Regional Hospital. The Escort's driver, Jacqueline Fetherolf, 20, a Chugiak High graduate and University of Alaska Anchorage student, was listed in stable condition with less severe injuries at Providence Alaska Medical Center.

Police charged the pickup driver, Albert T. Bowman, 48, with two counts of first-degree assault, driving while intoxicated and driving with a revoked license. He was held at Cook Inlet Pre-Trial Facility in lieu of \$80,000 bail.

Witnesses said Bowman turned east off the Seward Highway into the oncoming traffic lanes of Northern Lights shortly after midnight Tuesday. At the same time, Steelman and Fetherolf were headed west to the Village Inn restaurant, according to a friend following in another car.

The truck and Escort collided nearly head-on. Another vehicle traveling west behind the Escort also hit the compact car.

The crash was the third alcohol-related tragedy in the past two weeks.

Monday night Jessie Withrow, a college student home for the summer, was struck by a pickup while riding her bicycle on a sidewalk along Minnesota Drive and West Northern Lights Boulevard. She died the next afternoon at Providence. Russell D. Carlson, 39, was charged with manslaughter, driving while intoxicated, driving with a revoked license and child endangerment for having two children in the truck with him, including a 2-year-old.

And on June 24, 69-year-old Donna Hobson suffered broken bones and internal injuries when she was knocked down by a pickup that careened onto the bike trail on which she was walking in South Anchorage. Charged with first-degree assault, leaving the scene of an accident and drunken driving was Alfred W. Meyer, 36. Blood tests show his alcohol level at 0.22, more than twice the 0.10 level considered too drunk to drive, police said.

Despite passage in recent years of more stringent drunken driving laws, state justice officials say chronic

drinkers remain on the street. And the law allows it. The same thing is happening across the nation, according to the National Transportation Safety Board, which last month released a report on the problem of chronic drunken drivers.

Current law jacks up jail time with every DWI conviction - three days on the first conviction, 20 days on the second, 60 days on the third and at least 360 days for five or more. Under a provision added in 1995, those who rack up three or more convictions in a five-year period can get even more time.

But court records show that with each of the three men currently charged, their DWI convictions never amassed to the critical point in any five-year span since the 1995 provision was added. And even if they had, the minimum sentence for any number of DWI convictions, within five years or not, is 360 days.

Bowman has been convicted of five previous DWIs, all more than a decade ago. His most recent conviction was in 1990. He received two months in jail, was ordered to spend up to 90 days in a residential alcohol treatment program, and lost his driver's license for 10 years.

Carlson's criminal history includes 19 criminal convictions stretching back to 1979 and includes seven drunken driving convictions as well as convictions for negligent driving and reckless driving.

At the time of Monday's wreck, he was on probation for a 1998 DWI and his driver's license was revoked. At his October 1998 sentencing, prosecutor Ben Walters warned: "This man, unless he changes his ways, is going to kill himself or someone else pretty soon."

At sentencing, District Court Judge Natalie Finn said because most of the prior DWIs occurred years earlier, the sentence was fair: six months in jail, \$3,000 in fines, five years' probation, alcohol treatment, and the loss of his driver's license for another year. It was already revoked until 2006.

Carlson also has two pending child abuse cases against him from May and June. In both cases, police said he was intoxicated and unable to care for young children in his charge, including his 5-month-old son. Police who visited his home on June 1 found him on the couch with a bottle of vanilla extract, the baby screaming in a crib and a 2-year-old and 4-year-old hungry and running about the house, according to a charging document.

In 1990, Meyer was convicted of drunken driving and sentenced to five days in jail after an accident in Anchorage. He lost his license for 90 days. In 1991, he was convicted again after police found his truck stuck in a snowbank. He received 20 days in jail, lost his license for a year and was ordered to complete an alcohol treatment program.

Even when offenders are sentenced, they don't always spend the time in jail, said John Novak, chief assistant district attorney in Anchorage. Increasingly in recent years, defendants have been able to substitute time spent in alcohol treatment programs for time behind bars, Novak said. And the time in a treatment program can count even if it's done before a defendant is sentenced.

"That's what we're commonly seeing now," Novak said. "And it's frustrating. Jail time and treatment time are becoming confused."

People who work with criminals and alcohol problems say the specter of drunken driving has fallen out of general public consciousness in recent years. A spate of concentrated attention by lawmakers, police and citizens groups in the mid- and late-1980s helped reduce some of the problem.

But what remains are the chronics, the ones who keep getting behind the wheel after a judge has told them

not to.

In May a small group pulled together, made up of state social service workers, Mothers Against Drunk Driving, the state Alcohol Safety Action Program, churches and other interested people. The goal was to take the drunken driving problem from obscurity to the forefront again.

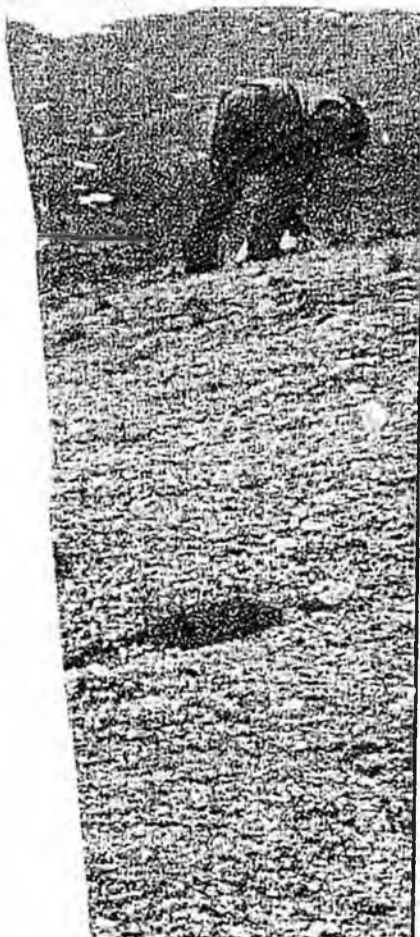
"We've realized this for a long time that there's a part of the problem that's not getting the attention it needs," said Linda Hornstein, MADD president. "People have got to start realizing that anytime they're on the street, this kind of thing could happen to them."

Reporters Larry Campbell and Lisa Demer can be reached at lcampbell@adn.com and ldemer@adn.com. Daily News reporter Mike Hinman contributed to this story.

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MAUREEN CLARK / The Associated Press
are brought into the park
ch summer. **Below:** John
native weeds in the park.



Injured women improving

ADW
July
2000

DWI suspect had truck, not license, police say

By LARRY CAMPBELL
Daily News reporter

Two young Anchorage women showed slight signs of improvement Thursday after being seriously injured in a collision with a suspected repeat drunken driver.

Gloria Steelman, 19, was listed in critical but stable condition at Alaska Regional Hospital with severe head injuries. Steelman had been riding in a car driven by Jacqueline Fetherolf, 20. Fetherolf was listed in serious condition Thursday at Providence Alaska Medical Center.



Bowman

The two were struck early Wednesday morning by a pickup driving the wrong way down East Northern Lights Boulevard. Police charged the truck driver, Albert T. Bowman, 48, with two counts of first-degree assault, driving while intoxicated and

See Page B-2, WOMEN

Firefighters accept 5-year labor contract

By KAREN AHO
Daily News reporter

Anchorage firefighters have voted to accept a five-year labor contract with the city.
"The city deserves five years of labor

140 to 150 pounds, with blond hair and a mustache. He was driving a dark sport utility vehicle, possibly red or maroon. Carr lived in Anchorage but owned about an acre of undeveloped land off Knik Goose Bay Road. Anyone with information is asked to call troopers at 428-7200.

Man sentenced for killing best friend

FAIRBANKS — A 26-year-old Fairbanks man has been sentenced to 99 years in prison for killing his best friend. Adam Hamilton, 26, was convicted of first-degree murder by a jury in March for the Nov. 24 killing of David Dixon of Fairbanks. Dixon was stabbed in the neck, chest and back at his home. Hamilton was covered with blood when he was arrested shortly after the attack, according to police. The victim's

New APRN pre

Paul Stankavich has been appointed as the new pre-licensure officer of the Alaska Board of Nursing. He has 33 years of experience, served as general manager of the Alaska Public Radio Network in Minnesota and worked in commercial television in Ohio. He wants to develop a program committed to the success of the profession. Stankavich succeeds

WOMEN: Crash victims' conditions improve slightly

Continued from Page B-1

driving with a revoked license. Bowman has been convicted of five previous DWIs.

Anchorage police Detective Everett Robbins said Thursday that the truck Bowman was driving was registered to him, even though he didn't have a valid driver's license. There's no law that bars someone without a license from owning a car or truck or any motor vehicle.

Robbins is also investigating two similar recent cases in which, like Bowman, the suspects charged with drunken driving have a history of previous convictions.

Earlier this week Russell D. Carlson, 39, was charged with manslaughter, driving while intoxicated and driving with a revoked license after the truck he was driving struck 20-year-old Jessie Withrow in Spenard. Carlson's criminal history includes seven previous drunken-driving convictions as well as convictions for negligent driving and reckless

driving.

The truck Carlson was driving Monday evening belonged to someone who was out of town. Carlson ended up behind the wheel when a man with whom Carlson had been riding decided he was too drunk to drive and let Carlson take the wheel, Robbins said.

Late last month 69-year-old Donna Hobson suffered broken bones and internal injuries when she was knocked down by a pickup driving on a South Anchorage bike trail.

Alfred W. Meyer, 36, was charged with first-degree assault, leaving the scene of an accident and drunken driving. He had drunken-driving convictions in 1990 and 1991.

Meyer works as general manager of the Muffler City shop downtown, Robbins said. He was driving a company-owned truck.

All three cases remain under investigation.

□ Reporter Larry Campbell can be reached at lcampbell@adn.com.

FIREF

Continued from

living increases and 4 percent 2004.

The city estimates that the contract will cost \$182,000 more than the previous contract would have had for arbitrator and arbitrator's fees. A settlement was reached.

This way, the predictable labor sides get to contract with the help of mediators Smith said.

Smith said that marks the 1984 that they reached an outside help

Other changes in the contract include

- A new firefighter will get a 1 percent pay raise
- They train paramedics

- Firefighter bachelor's degree field, success will get a

DENALI: Crews take whack a

Accused drunken driver charged

JO C. GOODE / *The Frontiersman* / July 25, 2000

[Email this story.](#)

ANCHORAGE An Anchorage man accused of killing a Palmer boy and his cousin, and injuring their grandparents while driving drunk near Portage, was arraigned Friday on manslaughter charges in Anchorage District Court.

Robert Richardson, 35, was arrested after his release Thursday from Alaska Regional Hospital, where he had been treated for a ruptured aorta, severed fingertip and a broken leg injuries he sustained in the July 12 crash that killed Kenneth Kramer, 11, of Palmer, and his cousin, Kevin Blake, 15, of Tatitlek.

Alaska State Troopers say the boys died shortly before 5 p.m. July 12 after an intoxicated Richardson crossed the center line on Portage Valley Road in his Ford F-150 and smashed into the drivers side of a compact Ford Aspire which Blake was driving.

Blake, who was driving with a learners permit, apparently swerved to avoid Richardsons oncoming truck, but had little time, his grandfather, David Glasen, said.

David Glasen, 61, and the boys grandmother, Patsy Glasen, 57, both of Tatitlek, were injured in the crash.

Blood tests in Anchorage soon after the crash revealed Richardson had a blood-alcohol level of 0.175, according to court documents. The legal limit in Alaska is 0.10.

Two days later, Richardson was charged with two counts of manslaughter, driving while intoxicated (DWI), and two counts of first-degree assault.

Richardson is being held at Cook Inlet Pre-Trial Facility in lieu of \$100,000 cash bail.

Last Tuesday, David Glasen underwent 14 hours of surgery to repair damage to his hip and pelvis at Providence Alaska Medical Center. Patsy Glasen, who suffered head injuries, was released from Providence Medical Center.

Also last Tuesday, Kenneth Kramer was laid to rest in Cordova. The 11-year-old was buried with his father, Darryl Kramer, who passed away in January.

Richardsons truck was pulled out of a Portage Lake by a tow truck just 20 minutes before the fatal collision. Richardson managed to travel about 1-1/2 miles toward the Seward Highway before he slammed into the familys compact sedan, according to troopers.

Richardson allegedly told Trooper Barry Wilson at the crash site that he had consumed a six-pack of beer earlier that day and was on his way from Anchorage to Wasilla. According to Wilson, Richardson said he thought he was near Wasilla.

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METRO

SATURDAY, July 29, 2000 ★

ANCHORAGE DAILY NEWS • www.adn.com

SECTION B

Donna Hobson rests in her hospital bed on her last day in the hospital on Friday. She was hit on a bike path by a driver who has been charged with first-degree assault, felony hit and run, and driving while intoxicated.



BOB HALLIHEN / Anchorage Daily News

Hit-run victim on bike path recalls 'outlandish' accident

By KAREN AHO
Daily News reporter

Five weeks after being hit on a bike path by a suspected drunken driver, 69-year-old Donna Hobson rolled out of Providence Alaska Medical Center on Friday in a wheelchair.

Her left leg will never be the same, but she's not feeling sorry for herself. She said the accident was so outlandish and so devastating that she's just grateful to be alive.

"I feel God's given me another chance, given me a message," she said before her release.

"I don't know what it is ...," she added, laughing.

Hobson had been walking with her husband, Bob, on a bike path near O'Malley Road and the Old Seward Highway the evening of June 24. She was still recovering from knee surgery, so she supported herself with a cane in one hand and her husband's hand in the other, both tucked inside his warm pocket. He walked their miniature poodle, Tiny.

As they approached an alder-lined bend, a pickup suddenly rounded the curve. The driver swerved out of control in an apparent effort

to miss the pond, she said, and came fast at them.

Her husband tried to push her out of the way, but somewhat delicately because of her knee. Both they and the dog ended up in the pond, but Hobson was hit. She flew out of her shoes and landed face down in weeds and water some 20 feet away.

She doesn't remember much.

"It seems like I had a vision of crinkled tin in front of my eyes, all that metal. And everything going black. And he told me to lay still and he

See Page B-2, VICTIM

• We can all take lessons from the crisis

VICTIM: Is grateful to be alive JET SKI

Continued from Page B-1

was going for help," she said.

Her husband later told her that she kept saying she hurt. Paramedics said she kept asking, "What happened?" which is common for trauma victims.

The pickup got stuck in the pond, and the driver and his passenger fled, refusing to help Hobson pull his wife from the water or call for help, police said. A K-9 tracked a scent and found two men hiding behind a Dumpster outside Sports Authority, Hobson said.

"They thought it was all fun and games. Police said they were laughing about it when they found them," she said.

Alfred W. Meyer, who police identify as the driver, is charged with first-degree assault, felony hit and run, and driving while intoxicated. Police said Meyer, 36, has two prior convictions for DWI.

Hobson underwent 15 surgeries on her lower left leg. She thinks it got tangled in the pickup's metal. The tissue was so crushed, doctors thought they would have to amputate. But enough muscle and nerve remained.

Over a two-week period, doctors stripped and cleaned what was left, then wrapped the thin portion that remained with a long patch of skin cut from her thigh.

She'll wear a brace from her heel to her thigh for the rest of her life. But she will be able to walk. Slowed circulation through the calf will leave her left foot permanently swollen.

Her pelvis, fractured on both sides along with bones in her lower back, is slowly healing on its own. A tube inserted in her chest helped her punctured lung recover.

"I thought that I would just be devastated — oh, another day at the hospital — but I felt so fortunate that I came through it that I felt a sense of peace about it," she said.

"I'm angry at them at getting their kicks for taking a joy ride down the bike trail," she said. "I guess if he stops drinking and learns something from it then it's not in vain. ... Some people, they just can't seem to get away from their drinking."

□ Reporter Karen Aho can be reached at kaho@adn.com or 257-4450.

Continued from Pa

Alaska. "A personal watercraft is a boat. It has no difference from the environment or any other boat. In some cases, the watercraft club response to the ongoing debate swirling around urged jet skiers as well as boaters and motorcyclists get in touch with law Gov. Tony Knowles.

They believe the teaching boaters and jet proper etiquette and wildlife instead of causing. "This is the tip of the iceberg and we need to act now."

Kevin Hite, president of the Alaska State Snowmobile Association, called the ban a limiting recreational activity in Alaska. In a prepared statement, Hite said the Knowles administration was on a "crusade to do away with public land and water."

The jet ski group is part of the motorboat industry's ABATE — Alaska Boating Training and Education

CRITTERS: Man spreads smiles, mess

Continued from Page B-1

... we can't afford to start with the ... died ...

Driver drunk in 6-fatality July wreck

Chena road collision worst ever in Interior

By KAREN AHO
Daily News reporter

A July auto accident that killed six people east of Fairbanks, making it the deadliest crash in Interior memory, can now join another list: that of crashes blamed on drinking and driving.

Alaska State Troopers said Saturday that the driver of the pickup that slammed head-on into another pickup on Chena Hot Springs Road had a blood-alcohol level nearly three times the legal limit for driving. His three passengers, all of whom were thrown from the truck and pronounced dead at the scene, also were highly intoxicated, troopers said.

Two Army soldiers who were killed when the pickup crossed into their lane

See Back Page, CHENA

CHENA: Driver, 3 others were drunk

Continued from Page A-1

had not been drinking, troopers said. They also died on the road. Their wives were critically injured.

The alcohol test results from the July 2 crash, forwarded to troopers Friday by the state medical examiner's office, put a spike in a recent run of crashes blamed on drunken driving, especially in Southcentral.

In the Anchorage area alone, four people have been killed and six seriously injured by suspected drunken drivers since June.

Troopers say they would like to step up patrols but have limited manpower. Federal grants aimed at seat belt enforcement are paying overtime of extra officers on

the street. Some posts are juggling shifts to hit peak drunken driving hours.

"It is frustrating because I know they're there. If I could get out there more, if my guys could get out there more, we could arrest more," trooper Sgt. Lee Oly said. "There's only so much blood you can get out of a turnip."

In a state House committee meeting Thursday, officials spent three hours addressing the problem. Among draft bills being discussed for the next legislative session: lowering the blood-alcohol level for driving to 0.08, lengthening minimum prison sentences and requiring alcohol-purchase ID cards that mark past convictions.

In the crash outside Fairbanks, the driver had come

from a Fairbanks bar, trooper Capt. Mike Stickler said Saturday.

Jacky L. Moore, 39, had a blood-alcohol level of 0.27 percent, nearly three times the 0.10 legal limit for driving, troopers said. Passengers Christy Simon, 29; Harvey Grau, 27p; and Kristine Fuit, 47, were "highly intoxicated," a troopers press release said.

Christopher McFadin, 21, and Bruno Guglielmi, 24, soldiers at Fort Wainwright, were killed. Their wives, Teri Jo McFadin, 18, and Krystal Guglielmi, 22, were seriously injured.

□ Reporter Karen Aho can be reached at kaho@adn.com or 254450.

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Justin Freeman / KTVU

Robert Mersing is loaded into a police car, following the crash.



Dan Fagan

Man faces 3rd DUI

Anchorage, Aug. 9- One year ago, 22-year-old Robert Allan Mersing was arrested for drunken driving. A month ago, he was arrested again for drunken driving. Then on Tuesday night, for the third time in a year, Mersing found himself once again handcuffed and headed to jail for allegedly driving drunk.

POLICE SAY MERSING'S THIRD drunken driving incident could have easily been the most dangerous. Eric Quint's young daughter was playing in their yard by a fence just minutes before police say Mersing came speeding and crashing into the fence.

"After hearing so much in the press recently about drinking and driving, it really scares me actually," Quint said. "It really does."

Police say Mersing failed his sobriety test and refused to take a blood alcohol test. He also was uncooperative with police and at one point refused to spread his legs and be searched. After a while, police spread Mersing's legs for him.

One witness says Mersing told police he had been through this before and that it was no big deal. But it was a big deal for neighbors who saw it all. After Mersing crashed into the fence, he then ran over a nearby stop sign. Two neighbors approached his car when it became disabled because of an air bag.

"He hit the stop sign, then we got a hold of him and we pulled him out of the car and grabbed the keys, threw them up on the roof of the car," neighbor Clint Belcher said.

"He would have ran," Vic Shincke said. "He would have ran."

Mersing was charged with DWI and driving with a suspended license. His license was suspended because of his two DWI arrests.

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SAM HARRAL / Fairbanks Daily News-Miner

Alaska State Troopers investigate a three-vehicle accident on Chena Hot Springs Road on July 2. Six people were pronounced dead at the scene, and two more suffered critical injuries.

DWI

The road to tragedy

Now we know the truth about the crash on Chena Hot Springs Road near Fairbanks last month: The driver of the pickup that caused the head-on collision was drunk as a skunk.

Because Jacky L. Moore, 39, chose to leave a bar and drive with a blood-alcohol level nearly three times the legal limit, six people, including Mr. Moore, are dead.

The young soldiers in the pickup Mr. Moore crashed into had not been drinking. They were two more innocent victims of an intoxicated driver in a summer of intoxicated drivers and innocent victims.

The soldiers' wives were seriously injured. They have to try to recover physically while somehow accepting that, at 18 and 22, they are widows.

What must keep them awake nights is the knowledge that this tragedy could have been avoided if Mr. Moore had called a cab. Or if the bartender had insisted Mr. Moore leave his keys and arranged a ride for him.

There are at least three parties involved in creating a drunken driver: the driver, the person providing the booze, and a community that tolerates the behavior.

Anchorage, like many Alaska towns and cities, in effect tolerates drunken driving.

Bad bars aren't the only contributors to the problem, but they play a part.

"We're not trying to get bars to stop selling people their 10th or 11th drink," Anchorage Police Department officer Derek Hsieh says. "We're trying to get them to stop at the 14th or 15th drink."

Think about being on the road with somebody who has had 14 drinks.

Of three high-profile Anchorage drunken driving cases this summer, one driver came from an "entertainment establishment," one had been drinking at home, and one picked up booze at a liquor store and drank in his vehicle.

Inspector John Bilyeu of the Alcoholic Beverage Control Board says 90 percent to 95 percent of liquor sellers are law-abiding businesses doing their best to follow rules. "It's that 5 to 10 percent that are doing anything to make a buck" who cause problems, Bilyeu says.

Officer Hsieh and Inspector Bilyeu agree that long-term, consistent enforcement is the key to producing responsible liquor sellers and drinkers.

"Our community has known about this problem for a long time," officer Hsieh says. "We've missed an opportunity to be proactive and now we're being reactive."

Let's be reactive in a way that's most likely to produce the results we want. Drunks by definition have no judgment. Society must step in when they stagger and fall — before others die needlessly.

As officer Hsieh says, this community needs to "make a commitment to stand by the standards we're going to set in the short term and live by them for the long term."

We don't need vigilantes gathering under the tree to hang each convicted killer. We need to stop relatively harmless drunks — whether first-time social drinkers or hard-core alcoholics — before they become killers.

At a minimum we need strict, consistent enforcement of liquor laws and adequate police and trooper highway and street patrols. We need to consider a lower blood-alcohol limit, alcohol-purchase ID cards, and any other reasonable idea.

Selling, buying and drinking alcohol is a right that society should only tolerate if done responsibly. And responsibly means at the very least not drinking and driving.

If we don't prepare to deal with drivers who drink, we're really preparing for more, more and more drunken

Anchorage
Daily
News

9 Aug 2000

Driver involved in fatal crash had high blood alcohol

October 17, 2000

By BETH IPSEN
Staff Writer

The driver involved in a fatal accident that killed a 17-year-old Lathrop High School student Sept. 30 had a blood-alcohol level nearly three times the legal limit, according to Alaska State Troopers.

Trooper Sgt. Tim Schoenberg said Kirk Johnson, 32, of Fairbanks had a blood-alcohol level of 0.29, according to information obtained from his medical records at Fairbanks Memorial Hospital. A search warrant was authorized to examine the records.

Blood alcohol levels of 0.10 percent and higher are considered drunken driving.

Johnson was driving a full-sized 1987 GMC truck that slid into the opposing lane around 3 p.m. that day and collided head-on with a 1991 Toyota sedan driven by 17-year-old Heather Dowdy at 3.5 Mile Old Steese Highway. Both individuals were the only occupants in the vehicles.

Dowdy suffered several injuries and died at FMH that day. Johnson received facial injuries and was admitted to the hospital.

Trooper Aileen Witorsky, who is investigating the accident, said the ice on both sides of the road also contributed to the collision.

Schoenberg said charges are pending completion of the investigation on the accident itself, which takes longer.

"We'll research all of the statutes that are appropriate with that particular incident," he said. "There will be more charges pending than a DWI; that's a forgone conclusion."

After the investigation is complete, Witorsky said it will be reviewed at the district attorney's office before the report and charges are made public.

Johnson was convicted of driving while intoxicated in 1988 after troopers stopped him for weaving across the center line of the Richardson Highway, according to court records. In that incident, he had a blood-alcohol level of 0.18.



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Anchorage Daily News

Family, friends express outrage

**Something should have put a stop to repeat DWI offender long ago DWI:
Repeat offender charged in Muldoon collision**

By Karen Aho
Daily News Reporter

(Published October 12, 2000)

In 1998, after his fifth drunken driving conviction, Franklin Schug asked to be excused from his court-ordered alcohol counseling.

"I will be 67 next birthday," he wrote a judge in a one-page note contained in court files. "I don't intend to drive, nor could I afford a car and insurance. I would like to have this order dismissed."

The court denied his request. Two years later, Schug did drive, despite the fact that, according to prosecutors, he did not have a license and couldn't have had insurance.

He also drove while intoxicated, according to charging documents. Police said he had a blood-alcohol level of .229, more than twice the legal limit, when he collided with two motorcycles Saturday evening on Muldoon Road, injuring four people, one of them critically.

Schug has been charged with four counts of assault, as well as leaving the scene of an accident, DWI, and driving without a valid license. He is being held at Cook Inlet Pre-Trial Facility in lieu of \$290,000 cash bail.

Family and friends of the victims attended Schug's hearing earlier this week and expressed outrage at his repeated drunken driving. His convictions, none of them felonies, date back to 1976.

"I have a DWI conviction from 1987 and I have a perfectly clear driving record now," said Brad Mork, a friend of the victims. "Some people learn and some don't."

Mork, 36, said he was riding his motorcycle behind his friends down Muldoon Road on Saturday when Schug's pickup pulled out of a side street in front of them. The bikes struck metal. His friend Mark Thorn looked up at Mork from the pavement and said, "Go get that SOB."

The pickup had taken off, Mork said. "It was the worst thing I ever seen."

Mork caught up, and hollered through the driver's closed window as the pair moved down Muldoon, he said. With the aid of another driver, Mork blocked the pickup 29 blocks later. Mork jumped on the running board, punched out the window, and pulled the gearshift into park.

He said he told Schug, "Pull over, now! You just caused a major accident. Pull over!"

"You could see the whole side of his truck was smashed in," Mork recalled. "He's like, 'Huh, uh, I didn't do anything.'"

According to the criminal complaint, Schug wobbled from the pickup and told police "that he felt a bump, didn't see anything in his mirrors, so he continued."

Tammy Thorn, who was riding on her husband's motorcycle, suffered a torn artery in her chest. In the first days after the accident she was given a 10 percent chance of survival, according to the court document. Friends said she has since pulled through open-heart surgery and has resumed breathing on her own.

"She's able to whisper," friend Jody Doyle said. "Her mother-in-law said she wanted to hold her baby."

Tammy, 27, and Mark, 34, have three children, ages 10, 7 and 3 weeks. Tammy is expected to be hospitalized for a couple months with internal injuries and multiple broken bones. Mark could be in a wheelchair the same length of time. The driver of the second motorcycle, Terry Longoria, 35, suffered internal injuries and multiple fractures, and his passenger, Jerri Romazewski, 30, minor injuries.

To help the Thorns pay their bills and insurance deductible, friends opened two bank accounts in the family's name. Both are at the National Bank of Alaska, under account numbers 1102307084 and 1102284378.

Mork, meanwhile, had swollen knuckles from punching out the pickup's window. He said something long ago should have stopped Schug from driving.

Reporter Karen Aho can be reached at kaho@adn.com or 257-4450.

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Photo courtesy of Matthew Thorn

Tammy and Mark Thorn and their children Kristina, 10, and Christopher, 7, pose for a family picture after the birth of daughter Sherry Lee three weeks ago. Tammy and Mark Thorn's motorcycle collided with a pickup Saturday that police say was driven by a man with five DWI convictions.



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Web posted Thursday, October 19, 2000

Woman arrested in connection with September death of Unalaska man

UNALASKA (AP) -- A 29-year-old woman is behind bars in connection with the hit-and-run death of an Unalaska man in September.

Alya S. Landt is charged with manslaughter, criminally negligent homicide, tampering with evidence and **drunk driving**. She was arrested Monday in Unalaska following a six-week investigation.

Police said Landt accidentally ran over Robert Shapsnikoff on Sept. 3 after a night of heavy drinking. Landt then allegedly concocted a story to cover up the incident.

According to charging documents, Landt, Shapsnikoff and Innocent "Ty" Dushkin were drinking together at an Unalaska bar. Afterward, Shapsnikoff reportedly walked away from the bar, and Landt and Dushkin left soon afterward in her rental truck.

Police said Landt and Dushkin initially told officers they found Shapsnikoff injured in the road. But Dushkin reportedly changed his story after an autopsy revealed the victim died of injuries consistent with a vehicle accident. Dushkin has not been charged.

Landt was being held Thursday on \$100,000 bond.

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Web posted Thursday, November 16, 2000

Attorney calls drunken driving sentence one of most severe ever

Two fatalities worth 22 years

By DOUG LOSHBAUGH

Peninsula Clarion

A Crown Point man drew 22 years in prison Tuesday for the drunken driving deaths of two prominent Juneau residents and the injury of a third.

Michael Glaser, 44, entered guilty pleas Tuesday in Kenai Superior Court on two counts of second-degree murder and one count of first-degree assault stemming from the April 19 accident that killed Martin John Richard, 50, and Ladd E. Macaulay, 57, and injured Steven Gregory McGee, 49, all of Juneau.

Judge Jonathan Link sentenced Glaser to 30 years in prison with 15 years suspended for each murder count and eight years in prison with three years suspended for the assault count. He ordered Glaser to serve 10 years for each murder count and three years for the assault count concurrently, and to serve five years for each murder count and two years for the assault count consecutively. That complicated formula amounts to a sentence of 22 years in prison.

However, it appears Glaser could be eligible for parole after 14 years, said his attorney, John M. Murtagh. Link also sentenced Glaser to 10 years probation.

Glaser originally pleaded not guilty to all three charges. On Tuesday, though, he felt changing his pleas was "the right thing to do," Murtagh said.

"He wanted to accept responsibility for his actions," Murtagh said.

According to court documents, Glaser told the victims' families he is "very sorry for what has happened," and he "will never drink again and put (him)self in this position."

Glaser reportedly had a .258 blood-alcohol level, two-and-one-half times the legal limit, at the time of the accident.

Richard, Macaulay and McGee, three state of Alaska employees, were returning to Anchorage in a rented Toyota Camry after visiting peninsula hatcheries. Glaser was southbound on the Seward Highway in an older model Chevrolet crew cab. The pickup crossed the center line at Mile 37.5 Seward Highway, struck the Camry head on, and rolled on its side, trapping Glaser.

The Camry was shoved against a mountainside, trapping the three occupants. Richard and Macaulay were pronounced dead at the scene.

Richard was director of the Division of Investments for the state Department of Community and Economic Development. Macaulay was a loan officer with the division.

McGee and Glaser were injured. Glaser underwent ankle reconstruction and was arrested May 1, following his release from Alaska Regional Hospital in Anchorage.

Murtagh said he argued during Tuesday's sentencing hearing that the mandatory 10-year sentence would be sufficient. Glaser already has been through residential treatment and offered to help Mothers Against Drunk Driving, the Seward Police and other groups teaching about the possible consequences of drunken driving.

"He doesn't need to be in prison because he is a danger to the public or for rehabilitation," Murtagh said. "The only reason to put him in prison is for punishment or to deter the public."

According to court documents, though, John Wolfe, assistant district attorney, said Glaser had a blood alcohol of .247 two hours after the accident, and suggested Glaser's efforts at rehabilitation should be low on the list of criteria considered for sentencing.

"The most important was community condemnation and reaffirmation of societal norms," Wolfe said Wednesday. "The public strongly condemns people who drink and drive, then injure or kill people."

Deterring others from drinking and driving is the next most important consideration, Wolfe said, and a longer sentence might better catch the public's attention. The Legislature recently changed the minimum sentence for second-degree murder from five years to 10. Wolfe argued that Glaser should be sentenced to seven years for the assault, since that involved a deadly weapon.

"My argument was that the sentences should all be consecutive," he said.

The two 10-year minimum sentences plus the seven years for assault would total 27 years.

Murtagh said the sentence **Glaser** did receive is the most severe he is aware of in Alaska for a drunken driving fatality.

"I don't believe Mr. **Glaser** is the most serious offender," he said. "The theory is that people who drink and drive will get the message. I think that is a very tough use of anyone's life."

He said he has not yet seen Link's written judgment, and **Glaser** has not yet decided whether to appeal the sentence.

"If the sentence leads people not to drink and drive, it might be appropriate, but that's always speculative," Murtagh said.

Wolfe said **Glaser** is among the first to be sentenced under the recent changes to the law. **Glaser** made a bad decision and was well aware of the potential consequences. **Glaser** took two lives and hurt several others, he said.

Peninsula Clarion staff and The Associated Press contributed to this story.

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Legislature on right road with drunken-driving laws

Without sounding preachy, it is important to acknowledge and endorse attempts in the Alaska Legislature to toughen the state's drunken driving laws.

Barely a generation ago, drinking and driving bore the imprimatur of social acceptance – as long as no one got hurt. The problem was, people kept getting hurt. With more people drinking and more people driving as the U.S. population surged after World War II, more were killed or injured because of those who followed socially acceptable practices with little consideration of the consequences.

How do we know that drunken driving was socially acceptable?

By the mild penalties imposed on offenders in general and repeat offenders in particular.

Far too often and for far too long, drunken driving was excused as a boys-will-be-boys exercise. Asking a man to give up his car keys even when he was falling-down drunk was considered an affront to his masculinity. If fewer women were drinking and driving in the years immediately after World War II, the feminist movement and increasing numbers of women in the workforce helped eliminate gender distinctions about alcohol consumption.

Everybody played; everybody lost.

Still, judges, jurors, prosecutors and defendants played a wink-wink game of pretending to impose penalties on people who pretended to have learned a lesson.

Inevitably, survivor-victims and the relatives and friends of those who did not survive demanded an end to wink-wink justice.

Like smoking or smoking in public places, getting drunk and driving drunk have had society's full attention for a while.

Tolerance has declined, but a segment of the Legislature believes there is more to be done in the name of involuntary social responsibility.

We favor the move to make it more difficult for offenders to become repeat offenders. Removing some of the spontaneous opportunities whereby offenders can purchase alcohol is a start. It is right that they should be required to produce distinctive identification that tips off a retail clerk to a drunken driving history.

Those who purchase alcohol for someone prohibited from buying it rightfully should be doing so at some legal risk to themselves.

And, just as citizens may lose driving, hunting, fishing and voting privileges based on criminal behavior, it is not unreasonable to prohibit convicted drunk drivers from consuming alcohol for a specified period of time. Tough to enforce, but not unreasonable.

Lowering the legal threshold for intoxication from 0.10 blood-alcohol content to 0.08 is a must. To refuse is stubborn folly that will cost Alaska a bushel of federal highway dollars.

Raising the cost of drinking has been proposed and also must be considered.

Consideration and dollars also should be given for alcohol-related education.

Alcohol remains a favorite mood modifier. It still slows reflexes. As with so much else in life, people don't always know when to quit.

Teens need to have access to information about alcohol's physical effects. The information needs to be presented in an unbiased manner – without sounding preachy, as we said from the top.

There is a need as well for educating those who may have

22 JAN 2001

DWI legislation

Jan. 18, 2001

To the editor:

Legislators wishing to toughen the stance against drunk drivers should tweak the existing laws before enacting new ones that will have little or no deterrent effect.

If I understand correctly three DWI's in five years qualifies you for a felony DWI. A dedicated drunk driver can space out his/her convictions every two years and rack up as many as 20 or so DWI's over a lifetime, with none of them being a felony.

Second DWI convictions average 15 days in jail and \$500-1,500 in fines. This plus a chunk of the lawyer's fee can be covered by a single year's dividend so how much of a deterrent can it be? The third conviction and every conviction after that should be a felony with the fine and mandatory minimum sentence doubled each time until a lesson has been learned or we never see the offender again.

Giving people who have demonstrated a total disregard for the consequences and penalties for drunk driving a break of any kind for avoiding detection for a set period of time is ridiculous. Toughen this portion of the law and give our local lawyers fewer repeat offenders to defend and fewer ambulances to chase.

Matt Kennebec
Fairbanks

Anchorage Daily News 23 Jan 2001

**Pick up your phones and pens a join
the battle against drunken driving**

Alaskans, our state Legislature is in Juneau for the 2001 session. If you are interested in getting drunken drivers off Alaska's roads and highways, please call your representatives and senators and demand a change in state laws concerning drunken driving. The present laws are not working. If we are going to stop drunken drivers, the punishment has to be severe enough to get their attention, severe enough that a person will think about it and not do it.

I am going to call my senator and representative and ask for zero tolerance, 18 months in jail, loss of license for five years, a \$3,000 fine and loss of vehicle. If a drunken driving accident results in death, the charge against the drunken driver should be second-degree murder. If you think this punishment is too severe, then you have not suffered the loss of a loved one because of drunken driving.

On July 12, a little after 5 p.m., I lost two grandsons, 11 and 15 years old, to a drunken driver on the new toll road between Whittier and Portage. As I lay in the hospital after the accident, going over and over it in my mind, the one thing that stood out so clearly was that every drunken driving accident is 100 percent preventable.

It is up to each person who drinks to decide whether to drive or not to drive. If he or she chooses to drive, he or she also chooses the consequences of the decision. Being drunk is no excuse!

— Dave Glasen
Tatitlek

Anchorage Police responded to a van rollover at Mile 9 of Eagle River Road on Monday afternoon. Nobody was injured. Police had to close the road for about an hour until the wreck was removed. The accident was one of at least 20 caused by icy roads this past week. More than 50 "vehicles in distress" were also reported. (See page 5.)

Local legislators get an earful

Citizens want attention given to schools, roads

By JODI STEPHENS
Alaska Star

The state exit exam, a new high school, drunk driving and local service districts were on the minds of 15 residents attending Saturday's town hall meeting with Chugiak-Eagle River legislators.

Sen. Randy Phillips and Reps. Peter Kott and Fred Dyson came in person, while Rep. Vic Kohring took part via speaker phone from Juneau. Sen. Rick Halford was in Washington, D.C., for the presidential inauguration.

On the topic of high school exit exams, Kott said he favors a delay in implementing the tests, now set to face all seniors in spring 2002. "I'm just not sure how long we should delay it. Four years? Or is two years enough?"

Dyson took an opposing view. "A lot of people who are lobbying for a delay have a dog in the fight. I'm not sure I'm going to learn a lot more hearing from the professional teachers lobby." He quoted

Commissioner of Education Shirley Holloway as stating, "There's 60 or 70 schools out there who know they haven't been doing the job, and they're embarrassed about the figures coming out in the light."

Audience member Gail Dial urged adults to take the sample exam on the Internet. Referring to the language sections, she said, "The writing section is not that complicated. If kids can't handle that, we're doing them a real disservice. I think you really shouldn't have a diploma if you can't pass that test." However, she added, "maybe the math part is too hard; not everyone is going to be able to do advanced geometry or advanced algebra."

Judith Fetherolf took a harder line. "Algebra should be a minimum for math standards," she said. "Without a certain level of skills, you're going to have a hard time finding a job to support yourself. There aren't alternatives to college anymore."

Fetherolf's daughter Jackie, a 1998 Chugiak High School graduate, spoke of her own experience. "It's really easy to graduate. You're encouraged not to take hard classes ... You shouldn't lower the standards so everyone can graduate."

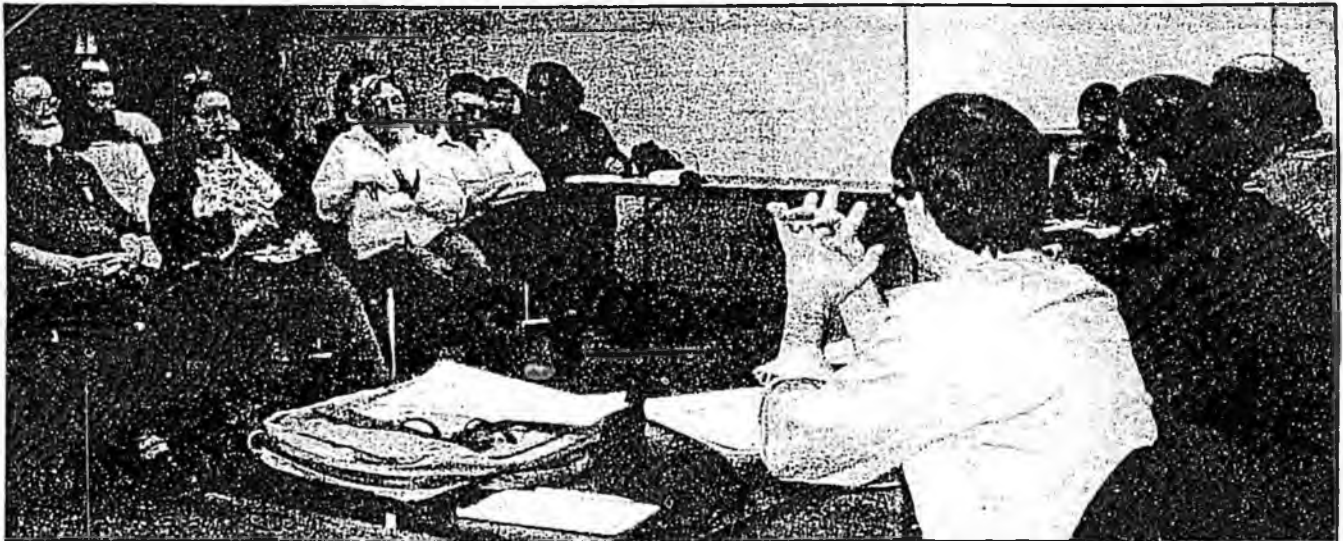
"Whether or not we continue the testing, we have to identify the weaknesses in our schools," Dyson said, adding that he'd like more comments from parents, especially on how to make the tests fair to disabled students.

The subject of drunk driving also brought lengthy discussion. "The number of people uninsured in this state is enormous," said Fetherolf, whose daughter's car was hit by a drunk driver last July and who now faces a \$60,000 lien to pay medical expenses for a badly injured passenger. "You're looking at the state cost but you're not looking at the overall costs to the people of this state," she told the legislators.

Kott said he's introduced legislation to reduce Alaska's legal blood alcohol limit from the present .1 to .08, explaining that the lower standard is a federal mandate without which Alaska stands to lose \$7.5 million in 2004. Kott said his House Bill 17 may be rolled into an omnibus bill by Rep. Norm Rokeberg (R-Anchorage), which is working its way through the House.

On the subject of road projects, Sen. Randy
See EARFUL, Page 17

Alaska Star 25 Jan 2001



STAR PHOTO BY JODI STEPHENS

Sen. Randy Phillips, Rep. Pete Kott and Rep. Fred Dyson listen as local road board member Gail Dial makes a point about service areas at the Saturday town hall meeting.

EARFUL:

Continued from Page 1

Phillips expressed frustration that Eagle River priorities are constantly losing funding to Anchorage projects that run over budget or that are deemed more important. "I'm coming up with some legislation to deal with that. If it says No. 1 or 2 (on the city's funding list), it's going to get done," Phillips said.

The need to protect local service districts, which provide road maintenance, parks programs and fire protection, also brought heated comments — all in favor of HB 13, a bill sponsored by Rep. Con Bunde (R-Anchorage). Similar to a measure passed last year but vetoed by the governor, the bill aims to prevent boroughs and municipalities from taking over limited service areas formed, and paid for, by local voters.

Bunde's substitute bill adds volunteer fire departments to the list of service districts that may not be abolished, amended or merged without a majority vote of the people affected.

Chugiak Volunteer Fire Department assistant chief Bruce Bartley said the bill would ensure that cities "can't do an end run around it, dissolve a service area and recreate it." Such moves typically mean higher rates and less service within the former district, he said. During his 18 years with CVFD, he said, the push to professionalize the Chugiak force "has come and gone," with the latest attempt being to take over emergency medical services.

Phillips asked interested audience members to keep

tabs on the legislation and "make very sure which draft of the bill you want. We went through this drill last year. If you have any objections, let us know what the pitfalls are."

The budgets for local parks and roads also came in for debate, with Gail Dial saying she and fellow road board members "are never allowed to see the whole (road) budget, just what our contractor's costs are. We have no idea how much money we've got or where it's going."

Anchorage Assembly member Anna Fairclough said she has asked municipal finance officer Kate Giard to research Chugiak-Eagle River property tax assessments and how much goes to parks and roads, and report to local board members in March.

As the discussion turned to the need for a new high school, Fairclough urged legislators to obtain a 70/30 match for the project, having the state pay 70 percent so voters would only have to approve a \$12 million bond this spring. "If we'd had 2,400 more votes, we could have passed it last year," Fairclough said, referring to a \$42 million bond that narrowly failed last April. "People realize that Chugiak-Eagle River has been shortchanged."

Phillips stopped short of promising state money for the project, but said, "The high school is going to be my No. 1 priority this session."

Future public meetings with local legislators are set for Feb. 17, March 3 and April 7.

8, 2001, at

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Taking away the keys

February 02, 2001

In May 1998 the city of Fairbanks began seizing vehicles from drunk drivers.

In addition to the fines and other drunk driving penalties mandated by state law, the city's ordinance provides for impounding vehicles used by offenders for a minimum of 30 days.

The most recent statistics available show 870 vehicles have been impounded as a result of individuals caught driving while intoxicated. If first-time offenders are involved, or 10 years has passed since the driver's last DWI conviction, those cars and trucks sit parked for a month, if not in an official impoundment yard than in private storage facilities approved by the city. If nothing else, these seizures idled the hundreds of vehicles used by drunk drivers for weeks at a time, hopefully giving drivers inconvenienced in this manner a sobering lesson.

The city ordinance takes a bigger bite from repeat offenders.

If the owner was operating the vehicle at the time of the repeat offense, if he or she was present in the vehicle when the violation occurred, or can be otherwise proven to have been aware that a drunk with a DWI conviction, anywhere in the country, in the last decade was at the wheel, Fairbanks tough policy directs the city to pursue forfeiture of the vehicle.

The local forfeiture ordinance has resulted in the forced auction of 72 vehicles to date, with another 12 "ready for sale," according to Connie Martin, the legal assistant employed on a part-time basis to run the city's program.

In cases where the vehicle involved in a DWI arrest is owned by someone other than the driver, Martin notes, the city gives the innocent party the option of reclaiming their vehicle following impoundment. The cost of such redemptions generally runs between \$200-\$260, depending upon the progress of the legal paperwork.

The state also has a similar law on the books providing for seizure and forfeiture of vehicles from repeat drunk drivers. There is one whopping difference: vehicle forfeiture is an option for state prosecutors, rather than a mandate.

House Bill 39, introduced at the opening of the session by Rep. Pete Kott, R-Eagle River, would have, among other things, changed that policy, replacing the word "may" in the state's vehicle forfeiture law with "shall."

In committee this week HB 39's forfeiture provision was dropped as too expensive.

Every lawmaker should prudently address the costs associated with proposed legislation. In this instance, however, Fairbanks' experience suggests the modest cost of pursuing vehicle forfeitures amounts to a solid investment against drunk driving.

That's the view you'll hear from Martin, the paralegal who handles, on a less-than-full-time basis, the vehicle seizure program in Alaska's second largest city.

"In some cases it might cost a little more than the vehicle is worth, but this program isn't about making money," she said. "It's about getting those drivers off the street."

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**Money is no object; Alaskans
are fed up with drunk drivers**

Wonderful! Rep. Pete Kott introduces a reasonable measure to address the absurd DWI problem in our state, then he finds out that it would actually cost money to implement, so he

*What price
can you put
on a dead
wife?*

waters it down ("Kott trims costly parts from drunken driving bill," Feb. 3). Amazing. I always thought this was one area that Republicans were good at ... you know, law and order stuff.

The state Legislature needs to address the carnage wrought by drunken drivers, no matter what the cost. What price can you put on a dead wife, husband or child? We need representatives who actually "represent" the will of the people, and I think the vast majority of citizens in Alaska are fed up with drunken drivers.

— Doug Brown
Anchorage

Anchorage Daily News
10 Feb 2001

State traffic accidents up 8.8 percent in 1999

■ *January, February are most dangerous months in Juneau*

By ANN CHANDONNET
THE JUNEAU EMPIRE

A report recently issued by the Alaska Department of Transportation and Public Facilities shows traffic accidents in the state increased significantly in 1999.

According to "1999 Alaska Traffic Accidents," there were 14,691 traffic accidents that calendar year, an increase of 8.8 percent over 1998. Twenty-eight percent of the accidents resulted in injuries; 0.5 percent resulted in fatal injuries (77 victims).

Thirty-four of those 77 died in accidents that were classified as alcohol- or drug-related. Twenty-nine of them might have survived had they been wearing seatbelts or using other safety equipment.

The percentage of accidents involving either injuries or fatalities increased in four of the eight largest boroughs in 1999: Juneau, Mat-Su, Kodiak and the Kenai Peninsula. The fatalities in Alaska are slightly below the fatalities per million licensed drivers in the entire United States.

The most prevalent type of collision in Alaska was the angle colli-

sion, a crash type associated with turning, passing and failure to yield situations. The second most prevalent was the rear end collision, typical of situations involving unsafe speed and driver inattention.

New Year's weekend was the most dangerous time to drive, followed closely by Thanksgiving. December, January and February were the most accident-prone months. Most fatalities occurred between 2 and 3:59 a.m. and between 8 and 9:59 p.m.

In the greater Juneau area in 1999, according to the report, 961 people were injured in vehicle accidents, 17 of them seriously. Two died.

Juneau had most of its accidents in the months of January and February; the least in April and August. Statewide, accidents happened less under rainy conditions than under cloudy and clear conditions.

Property-damage-only accidents were unchanged in Juneau, but total accidents increased for 1999 due to higher numbers of injury and fatal accidents.

Ann Chandonnet can be reached at achandonnet@juneauempire.com.

Juneau Empire 11 February 2001

12 Jan 2001
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FAIRBANKS

Daily News - Miner

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KELLY BOSTIAN
Managing Editor

BRIAN O'DONOGHUE
Editorial Page Editor

The whole toolbox

Lowering the state's drunken driving standard from .1 blood-alcohol content to .08 won't do much to stop the most dangerous, habitual offenders whose intoxication at the scene of horrific accidents sadly registers two or three times the legal limit.

Suspensions, likewise, are insufficient to protect the law-abiding public from individuals with a history of ignoring such paper penalties.

Incarceration, confiscation of vehicles, and mandatory participation in alcohol treatment programs offer better means for protecting the law-abiding public from the careening path of repeat offenders.

On the other hand, individuals inclined to mix drinking with driving are likely to sip more cautiously if lawmakers lower the state's intoxication standard. The specter of a mandatory stay in jail, stiff financial penalties and the irritations of a significant period of license suspension might be the deciding factor in passing up that 'one for the road' that slows a generally responsible individual's reactions to a dangerous, potentially tragic degree.

All of the above-suggested approaches to curbing drunken driving and more are before lawmakers this session. At last count, there were nine House or Senate bills with provisions addressing the subject from various angles.

The point here is that no mandatory jail sentence or fine, no single adjustment of the state's intoxication standard, and no one approach to treatment can be expected to achieve the goal of protecting law-abiding Alaskans from the threats posed by drunken drivers.

The only long-term solution is in educating all Alaskans about the public dangers and personal risks that go with taking the wheel in a drunken or impaired state. That's the mission this society thrusts upon its law officers. It's up to lawmakers to give troopers, police and public safety officers all the necessary legal leverage, backed by sufficient funding, to rid our roads of drunken drivers.

Alcohol abuse is so pervasive in Alaska—the mission requires a full assortment of prosecutorial tools and treatment programs.



Anchorage Daily News

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OUR VIEW

When drivers are outlaws

Suspending a license isn't a strong enough deterrent

When cocaine user Scott Sunderland ran off a city road last year, rolling his truck and killing his wife, he was driving even though his license had been suspended.

When drunken driver William Rust crushed a 29-year-old mother of two with his Ford Bronco back in 1995, he was driving even though his license had been suspended.

When Daniel James Bushey, hopped up on cocaine and booze, sped through a downtown intersection in 1994 and killed a mother and her 10-year-old daughter, he was driving even though his license had been suspended.

When 18-year-old Morris King spent a night in 1992 guzzling beer and wine coolers and speeding through red lights for fun, killing two 22-year-old women, he was driving even though his license had been suspended.

There seems to be a pattern here.

Sometimes a suspended license is no stiffer a punishment than the paper it is written on.

Sometimes a suspended license is no stiffer a punishment than the paper it is written on. Last year, Anchorage police issued 4,266 citations for driving without a license. The vast majority of those were given to people driving with suspended licenses and the vast majority of those had lost their licenses for DWIs. As Messrs. Sunderland, Rust, Bushey and King

demonstrate, these outlaw drivers can inflict disaster on innocents.

Suspending driver's licenses does not do enough to protect innocent motorists from mayhem. People tempted to drive with suspended licenses need to face sterner consequences. Assemblyman Dick Traini has an excellent proposal to do just that. He wants people who drive with suspended licenses to forfeit their cars to the city, just as drunken drivers do. First offense, a 30-day impound. Second offense, bye-bye car.

In DWI cases last year, the city seized 1,600 cars. Impounding cars for driving with a suspended license will make it even more difficult for dangerous drivers to get back on the streets.

Seizing cars in such cases does raise legitimate questions about due process and the rights of innocent owners. Where a relative or bank owns an interest in the car, the city is willing to negotiate an appropriate settlement or the case can go to court. To get the car back in the meantime, owners can post a bond. The city's goal is to terminate the ownership of the violator while protecting the innocent owner's rights.

Processing all the new seizure cases may seem like an expensive proposition. But the current program basically pays for itself through fees the violator is charged for police time and work by the city attorney. And cracking down on drivers with suspended licenses is a good investment in public safety.

Mandatory sentences should go to drunk drivers who injure, kill

Are you really tired of drunk drivers? The answer is simple. Write or telephone your state legislators and ask them to enact minimum mandatory drunk driving laws. Many other states have in place laws that carry five-year minimum mandatory jail sentences for each person killed in drunk driving accidents. Alaska could go a step further to include a two-year minimum mandatory jail sentence for each person injured in a drunk driving accident. While we're at it, let's make this law include all the people using illegal drugs that impair driving as much or more than alcohol.

Minimum mandatory sentences mean the legislative command must be unequivocal since courts hesitate to find their judicial discretion curtailed. The Legislature normally provides explicitly for the mandatory sentence by stating a certain minimum sentence be imposed and that it may not be suspended nor may the defendant be released on probation or parole until that minimum term has been served. Write your legislator today.

— Gladys Wilson
Anchorage



ALASKA PUBLIC DEFENDER AGENCY

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MAR 8 REGO

February 28, 2001

Representative Vic Kohring, Chair
House Transportation Committee
State Capitol, Room 24
Juneau, Alaska 99801-1182

Dear Representative Kohring:

Pursuant to your request, here is a summary of my testimony at the House Transportation meeting on HB 4 on February 27, 2001. I realize that this bill has passed out of your committee into the House Judiciary Committee. However, as the entire state is grappling with this issue, I hope you will find these comments helpful.

The Public Defender Agency would like to express its appreciation for the willingness of Representative Rokeberg and his staff (especially Janet Seitz, chief of staff) in giving us an opportunity to comment and work on drafts of this bill from the beginning. This has allowed us time to gather the fiscal information and have input in less formal ways that was extremely helpful.

Certainly the Public Defender Agency agrees that driving while under the influence of alcohol is a serious problem in this state. However we do have some suggestions about other ways to go about solving this problem. Alaska was one of the first states to enact a felony DUI statute. We traditionally have one of the highest rates of incarceration in the country. And yet, as Section 1 of this bill recognizes, we continue to have among the highest rates of alcohol-related fatalities.

We feel that an important part of the answer may lie in effective court-ordered and supervised treatment for these driving while intoxicated offenders. We agree with other agencies that because the recidivism rate for first-time offenders is relatively low (75 – 80%), we should concentrate our more expensive and highly structured treatment efforts on offenders with priors. We are gratified to learn of the legislature's interest in therapeutic courts as a way of delivering this treatment and have been cooperating with other members of the legislature and other criminal justice agencies to set up pilot projects.

I realize that the pressure is great on the legislature to do something. However, the Public Defender Agency believes that enacting draconian laws with even stiffer sentences and even higher fines and even more financial consequences has not proven to be successful in the past.

We hope the legislature will continue to look at creative alternatives that have proven successful in other states. In addition to these general comments I would like to say some very specific things about this bill.

1. Section 33, page 22, section (q). This section adds a mandatory six-month prison sentence to the mandatory minimum sentence already in place and also requires completion of a mandatory 30-day residential treatment if available in the community any time the offender's blood alcohol result is .16 or higher. We believe this punishment is too severe. We also believe that residential treatment isn't always the answer. There are cheaper, better alternatives. For example, there is intensive outpatient treatment provided by Providence Breakthrough Program that does an 8:00 a.m. to 5:00 p.m. session, has a break for dinner and then evening sessions. Their success rates have proven to be as successful as inpatient treatment. **[This section was eliminated by the (H) Transportation Committee.]**
2. Section 31, page 21, line 7 and Section 46, page 28, line 5 – Vehicle Forfeiture. These sections require court to order a vehicle be forfeited in a felony DUI and require the state to seek forfeiture in every case at sentencing. Property forfeitures are difficult cases. You also have to take into account the property rights of family members, lienholders and other co-owners. Mandatory forfeiture can have huge unintended consequences such as taking a family's only means of transportation away, impacting their ability to get the basic necessities of life. Current law allows for forfeiture. We feel it should remain discretionary with the power of the judge. Particularly in rural areas, the consequence of forfeiture could be a matter of basic survival.
3. Section 12, page 7; Section 17, page 10; Section 27, page 16 and 17; Section 29, page 18 and 19; Section 31, page 20-21. These sections increase fines, license revocation periods, jail time, reinstatement fees and imposed costs of incarceration. Section 17 doubles the license reinstatement fee for repeat DUI offenders. One unintended consequence will be that with these extremely high costs added onto what they already owe (victim restitution, Rule 39 costs for their attorney, felony and misdemeanor surcharges, costs of incarceration, costs of treatment), people will just give up on the idea of ever becoming validly licensed. Frankly, many of these people will have to resort to driving anyway. This bill will actually discourage people from getting the SR-22 insurance that is required for licensing as they become overwhelmed with their financial obligations. There were 4,500 driving without valid license cases filed in the courts last year. This is a huge area of criminal justice resources. The Palmer/Matanuska-Susitna Valley area is especially hit hard. Fortunately, in the Municipality of Anchorage, the prosecutor has a creative diversion program that actually provides assistance to people to get through the red tape and helps them get their licenses back instead of just putting them in jail and extracting large fees. The goal of getting people licensed and insured before they get on the road has been very successful, much more successful than the deterrent effect of imposing greater and greater suspensions, fines and fees. For the same reason a permanent or 10-year revocation for a felony DUI (Section 31, page 20-21) is not a good idea. There needs to be some sort of light at the end of the tunnel. The court should have the discretion in this area for people who are able to turn their lives around and successfully complete rehabilitation.

Section 31, page 20, line 17 raises the mandatory minimum fine to \$10,000 for a felony DUI. Judges already have the discretion to go higher than the \$5,000 minimum if the

circumstances are appropriate. However, once these people complete their jail time, complete their treatment, they could really benefit from the opportunity to get back on their feet financially and pay the restitution, child support, treatment costs, lawyer costs, surcharges, rent and other fees they already owe. And I know of no study that supports the idea that increasing jail time is an effective deterrent to chronic DWI offenders. It is a very costly proposition.

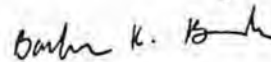
4. Section 18, pages 10-11. This section creates the new crime of knowingly allowing an unlicensed DUI offender to drive. I certainly understand the policy behind this. However, you may have a spouse or family member, one who is co-dependent or abused, who is persuaded to lend their vehicle in situations approaching duress or necessity. It might be a situation where we can't actually prove duress, which is a difficult legal standard to meet. The minimum fine here is \$1,000 which could create quite a hardship. While the fine and license revocation may be appropriate in some cases, we believe the court should have the discretion not to do so if these circumstances are present. Additionally the bill, line 6-8, requires that person to complete an alcohol program. That may not make sense for the person who is not driving while intoxicated.
5. Section 37, page 24. This is not just a technical amendment but is designed to overrule a recent case by the Alaska Supreme Court. We think the current state of the law, which discourages dangerous encounters with drunken individuals, is the better idea. Mr. Sosa was arrested in Bethel for DUI. The breath-testing machine in Bethel was not working that day and so the police officers asked Mr. Sosa if they could stick a needle in his arm and take some blood to test it. Mr. Sosa for whatever reason felt uncomfortable with that and declined to allow it. The police then got a warrant. However, Mr. Sosa, who admitted being intoxicated, still refused to let the police stick a needle in his arm and take blood. The state of Alaska decided to charge him with felony tampering with evidence for this conduct. Mr. Sosa was convicted of this at trial in addition to being convicted of DUI. The Supreme Court however reversed the tampering with evidence conviction, but upheld the DUI. The Court recognized the wisdom of the legislature in enacting the refusal laws. This current law is a balance between the need to prosecute crime, and the need to avoid potentially dangerous situations. Police are not to strap down a highly intoxicated person and try to get a needle in his arm to draw blood. Under the law, the person arrested has to either do a breath test voluntarily or get charged with a refusal. Only in the most serious cases can the state forcibly take blood from someone. It is unnecessary and inappropriate to allow such an extreme intrusion in the routine DWI. The solution to the problem raised in the Sosa case is to make sure the equipment is operable. The solution is not to change the law to allow forcible taking of bodily fluids, which is an extreme invasion of a person's privacy, not to mention a potentially dangerous practice. The police can get a search warrant if there is serious injury or death or if a person is unconscious and can't consent or not consent. This is adequate to cover those situations where a breath sample is not available. And it should be noted that Mr. Sosa was convicted of DUI, even without the blood sample.
6. Section 31, page 20 – A 10-year look back provision. This section increases the time we look back at prior convictions to count them towards a felony from five years to ten years. This is a very expensive provision. Felony cases are much more time intensive and resource-needy than misdemeanors. This section also increases the fine and doubles the amount of jail time

that currently exist as a mandatory minimums. Repeat offenders in Alaska are already getting harsh sentences. With presumptive sentencing, probation revocation time and aggravating factors under current law, multi-year sentences are not uncommon. Again, imposing more and more jail time upon this group of offenders has not seemed to result in breaking the cycle.

7. Section 30, page 20, line 8-9. This section specifically provides that any term of imprisonment cannot be served at a residential treatment facility or a hospital. This section will clearly discourage people from getting treatment outside of a jail setting. It seems to be headed in exactly 180 degree opposite direction from the current thought of the Criminal Justice Assessment Commission. This group was made up of representatives from every criminal justice agency as well as legislators, studying Alaskan criminal justice issues for three years with the assistance of a federal grant. The Commission specifically recommended increasing the number of substance abuse treatment beds, and maximizing the appropriate use of alternatives to incarceration due to their cost effectiveness and success. To receive what is called Nyeren credit, a facility must be supervised 24 hours a day. It appears counterproductive to allow people who are receiving treatment for addictions other than alcohol to receive credit at such residential treatment centers or hospitals and yet refuse that to those people who are addicted to alcohol. It also appears to be more costly to have the DOC be the **only** treatment provider, particularly for those who have insurance or can pay for their own residential treatment.

Thank you for this opportunity to comment on this bill which we all understand is a work in progress.

Sincerely,



Barbara K. Brink
Public Defender

BKB:sh

moved by Kapsner

Passed

AMENDMENT #2

OFFERED IN THE HOUSE

TO: CSHB 4 (), P version

Page 2, line 9: After "facilities" *fatalities* _____

INSERT: ;

(7) habitual offenders do most of the harm

*moved by
Rep Kapsner*

passed

A M E N D M E N T ¹

OFFERED IN THE HOUSE

TO: CSHB 4 (), P Version, 2/16/01, Lauterbach

Add new section to bill as follows:

***Sec. ____ AS 28.40.100(a) is amended by adding a new subsection to read:**

- (26) "controlled substance" includes a "hazardous volatile material or substances", as defined in AS 47.37.270(1), that has been knowingly smelled or inhaled.**

FISCAL NOTE

4

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. CSHB 4 (TRA)

Revision Date/Time (Note if correction) _____ Dept. Affected _____
 Title Omnibus DWI Bill BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Norman Rokeberg
 Requester House Judiciary Committee Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	352.1	362.0	362.0	362.0	362.0	362.0
Travel						
Contractual	20.7	33.1	47.6	60.0	72.4	72.4
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	372.8	395.1	409.6	422.0	434.4	434.4

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

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	372.8	395.1	409.6	422.0	434.4	434.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	372.8	395.1	409.6	422.0	434.4	434.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	4	4	4	4	4	4
Part-time	4	4	4	4	4	4
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 CSHB 4 (TRA) makes several changes to the statutes relating to the offense of driving while intoxicated. Some of those changes will have a fiscal impact on the court system.
 The bill lowers the BAC necessary for a DWI violation under AS 28.35.030(a)(2) from .1 to .08. National studies show that this change typically results in a 10% increase in DWI filings. Based on that assumption, the court system would see an additional 500 misdemeanors and 28 felony filings a year.
 The bill also imposes a five-year phase-in of a new 10-year look-back for felony DWI offenses. The Department of Law estimates that the phase-in will result in 64 new felony filings in year one, 128 in year two, 192 in year three, 256 in year four, and 320 in year five. This fiscal note is based on those estimates and on a 10% felony trial rate.
 Finally, the bill calls for mandatory vehicle forfeiture for all second and subsequent DWI offenders. A court hearing is required for each forfeiture. The Department of Law estimates that this change will result in 800 forfeiture hearings. This note is based on that estimate and assumes that each hearing will last 15 minutes.

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 2/28/01 @ 10.00 A.M.
 Approved by: Stephanie Cole Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Alaska Court System
Fiscal Note Calculations for CSHB 4 (TRA)
2/28/01

Increase in 64 - 320 New Felonies FY02 thru FY06:

	FY02	FY03	FY04	FY05	FY06
Superior Court:					
Jury Costs	14,476	26,884	41,360	53,768	66,176
Superior Court Judge	138,467	142,300	142,300	142,300	142,300
Law Clerk for Superior Court Judge	48,130	49,400	49,400	49,400	49,400
Secretary	41,997	43,050	43,050	43,050	43,050
In-Court Clerk	41,997	43,050	43,050	43,050	43,050
	270,591	277,800	277,800	277,800	277,800
Fiscal Note Total for 64 - 320 New Felonies	285,067	304,684	319,160	331,568	343,976

Vehicle Forfeitures:

800 new hearings, 287 of which would be handled in conjunction with a superior court case (felony)

513 hearings @ 15 minutes/hearing = 128.25 hours of hearing time (one month)

	FY02	FY03	FY04	FY05	FY06
District Court:					
District Court Judge Pro Tem (1 Month)	10,084	10,449	10,449	10,449	10,449
In-Court Clerk PPT (1 Month)	3,500	3,588	3,588	3,588	3,588
Fiscal Note for Vehicle Forfeitures	13,584	14,037	14,037	14,037	14,037

500 New Misdemeanors and 3 Felony Trials at .08:

	FY02	FY03	FY04	FY05	FY06
Superior Court:					
Jury Costs	6,204	6,204	6,204	6,204	6,204
District Court Judge Pro Tem (5 Months)	50,419	52,245	52,245	52,245	52,245
In-Court Clerk PPT (5 Months)	17,499	17,940	17,940	17,940	17,940
	67,918	70,185	70,185	70,185	70,185
Fiscal Note for 500 Misdemeanors & 3 Felony Trials	74,122	76,389	76,389	76,389	76,389

Cumulative Fiscal Note:

Personal Services	352,092	362,022	362,022	362,022	362,022
Contractual	20,680	33,088	47,564	59,972	72,380
Cumulative Total	372,772	395,110	409,586	421,994	434,402
Funding Source:					
1004 GF	372,772	395,110	409,586	421,994	434,402
Positions:					
Full-time	4	4	4	4	4
Part-time	4	4	4	4	4

By Scott?

AMENDMENT

#2

OFFERED IN THE HOUSE

TO: CSHB 4 (), P version

Page 2, line 9: After "facilities"

INSERT: ;

(7) habitual offenders do most of the harm

INTERAGENCY COST SUMMARY

2/22/01
DRAFT

Reduce Blood Alcohol Threshold for DWI to .08

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Assumes the only change to current DWI statutes is to reduce the threshold for DWI from 1.0 % blood alcohol to .08 %, and a similar change for breath alcohol.
- * ACS projects 10% increase in DWI filings, both state and municipal.
- * DMV projects 10-15% increase in drivers' license revocation cases and attendant administrative hearings.
- * PDA projects 10% increase, and they will represent 75% of the defendants.
- * DOC projects 10% increase in DWI misdemeanor and felony convictions, both state and municipal.
- * Law, Criminal Division projects 10% increase in state DWI prosecutions.
- * Law, Civil Division projects 780 new DWI judgments will be subject to collection. (Cost of incarceration; court -appointed counsel; fines)
- * Both Law and PDA assume municipalities that prosecute misdemeanors in their jurisdictions will mirror the change in state law. If this does not occur, the estimated number of new misdemeanor cases is understated. The other agencies must respond to both state and local prosecutions.

AGENCY	GF COST	PFT	PPT	COMMENTS
Alaska Court System	\$74.1		2	0.4 district court judge and clerk; juror and personnel costs for felony trials
Department of Administration				
Division of Motor Vehicles	\$120.0		2	Hearing officer and administrative clerk
Public Defender Agency	\$140.6		1	1 FTE attorney, Palmer PDO
Department of Corrections	\$1,054.8			\$1,049.6 in FY03; \$1,083.5 in FY04; \$1,117.5 in FY05 and subsequent years.
Department of Health & Social Services				
ASAP	\$112.4			Assessments
Treatment	\$582.2			
Department of Law				
Criminal Division	\$148.3		1	1 FTE attorney, Anch DAO
Collections and Support	\$31.9		1	1/2 time Admin Clerk for collection of new judgments
TOTAL ESTIMATED COSTS	\$2,264.2		4 3	

INTERAGENCY COST SUMMARY

Reduce Blood Alcohol Threshold for DWI to .08 with HB 4 Diversion

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * ACS projects 10% increase in DWI filings, both state and municipal.
- * DMV projects 10-15% increase in drivers' license revocation cases and attendant administrative hearings.
- * PDA projects 20% increase, and they will represent 75% of the defendants.
- * DOC projects 10% increase in DWI misdemeanor and felony convictions, both state and municipal. Approx 33% will do diversion.
- * Law, Criminal Division projects 10% increase in state DWI prosecutions.
- * Law, Civil Division projects 690 new DWI judgments will be subject to collection.
- * Both Law and PDA assume municipalities that prosecute misdemeanors in their jurisdictions will mirror the change in state law. If this does not occur, the estimated number of new misdemeanor cases is understated. The other agencies must respond to both state and local prosecutions.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$120.0	2		Hearing officer and administrative clerk
Public Defender Agency	\$140.6	1		1 FTE attorney, Palmer PDO
Department of Corrections	\$1,027.9			\$1,022.7 in FY03; \$1,056.7 in FY04; \$1,090.6 in FY05 and subsequent years.
Department of Health & Social Services				
ASAP	\$112.4			Assessments
Treatment	\$582.2			
Department of Law				
Criminal Division	\$148.3	1		1 FTE attorney, Anch DAO
Collections and Support	\$31.9		1	1/2 time Admin Clerk for collection of new judgments
TOTAL ESTIMATED COSTS	\$2,163.3	4	1	

INTERAGENCY COST SUMMARY

Vehicle Forfeiture

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Law assumes 800 hearings per year, statewide: 100-150/year Kenai, Palmer, Fairbanks; 100/yr Anchorage; remainder around state.
- * DPS assumes 800 convictions per year resulting in 250 vehicle forfeitures.
- * PDA assumes will represent 75% of defendants, but will not need to do as much post-hearing work as Law.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration Division of Motor Vehicles Public Defender Agency	\$0.0 \$255.6	4		3 paralegals (Anch, Fairbanks, Palmer); 1 secretary (Anch)
Department of Corrections	\$0.0			
Department of Health & Social Services ASAP Treatment	\$0.0			
Department of Law	\$556.1	7		4 paraprofessionals (Anch, Kenai, Palmer); 1 atty (Fairbanks); 2 secy
Department of Public Safety	\$253.2	1		
TOTAL ESTIMATED COSTS	\$1,064.9	12	0	

INTERAGENCY COST SUMMARY

0.16 BAC Enhancement

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Law assumes 1,500 state cases will be subject to mandatory minimum. 2,655 of 3,837 defendants had .15 or greater BAC in FY00.
- * DOC assumes 2,590 state and municipal convictions will be subject to mandatory minimum.
- * PDA assumes 1,500 state cases will be subject to mandatory minimum, and will represent 75% of defendants.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$0.0			
Public Defender Agency	\$617.2	7		3 atty (Anch, Palmer, Fairbanks); 2 paraprofessionals (Palmer, Fbx); 2 secretaries
Department of Corrections	\$23,349.2			Same cost each year.
Department of Health & Social Services				
ASAP	\$0.0			
Treatment	\$0.0			
Juvenile Justice	\$20.0			Increased overtime costs at smaller youth facilities for longer stays.
Department of Law	\$803.6	8		4 atty (Anch, Kenai, Palmer, Fbx); 2 paraprofessional (Palmer, Fbx); 2 secy
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$24,790.0	15	0	

INTERAGENCY COST SUMMARY

30 Days for 2nd DWI Offense

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * DOC assumes 412 second time offenders will serve 7 additional days. Remaining 50% will take community work service option.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration				
Division of Motor Vehicles	\$0.0			
Public Defender Agency	\$0.0			
Department of Corrections	\$184.6			Same cost each year.
Department of Health & Social Services				
ASAP	\$0.0			
Treatment	\$0.0			
Department of Law	\$0.0			
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$184.6	0	0	

INTERAGENCY COST SUMMARY

HB 4 Increased Fines and Sentences

ASSUMPTIONS

- * Cost estimates are for FY02 only.
- * Does not include look back provisions of HB 4, or 0.16 BAC Enhancement!
- * Expect an increase in driving with suspended license misdemeanors, but unable to quantify.
- * DOC assumes 50% of 240 felons will require intensive out-patient treatment, and 50% residential treatment.
- * DOC assumes of 240 felons receiving increased sentences, 80% will be 3rd time offenders, 15% 4th time, and 5% 5th time
- * DOC assumes 3% of 824 2nd time misdemeanants will have had their 1st conviction more than 10 yrs before.
- * Law, Civil Division cannot estimate cost of collection of treatment judgments without additional information.

AGENCY	GF COST	PFT	PPT	COMMENTS
Department of Administration Division of Motor Vehicles Public Defender Agency	\$0.0			
Department of Corrections Treatment	\$945.6			Increases to \$1,024.4 in second and subsequent years.
Increased felony sentences	\$2,116.2			Increases to \$2,292.6 in second and subsequent years.
Remove 2nd time misdo look back	\$27.5			Same cost each year.
Department of Health & Social Services ASAP Treatment	\$0.0 \$0.0			
Department of Law	*****			Collections & Support costs to collect treatment judgments - GF/Program Rcpts
Department of Public Safety	\$0.0			
TOTAL ESTIMATED COSTS	\$3,089.3	0	0	

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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Representative Norman Rokeberg

MEMORANDUM e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

TO: Rep. Vic Kohring, Chairman
House Transportation Committee

FROM: Rep. Norman Rokeberg *Norman/tp*

DATE: February 27, 2001

RE: HB 4
(Vehicle Forfeiture question)

During the hearing on HB 4 today, there were questions concerning vehicle forfeiture.

Attached are:

1. Appendix O - State Vehicle Forfeiture Requirements for Drunk Driving Offenses from the NCSL Transportation Series: Legislative Summary 2000.
2. Paragraph concerning vehicle forfeitures from NCSL Transportation Series: Legislative Summary: 1999.
3. Municipality of Anchorage Code regarding vehicle forfeiture
4. City of Fairbanks Code regarding vehicle forfeiture
5. City and Borough of Juneau information

*1 Coolish
again
prostate*

*per Bart Brink
- Increase fines & penalties
- might be changes
program for the
30-day residential
program (p. 22)*

*- Summary
(3/20/01)
for us.
covered.
Ms. Brink:
Provide Summary
of concerns
(E-mail on
for us)?*

*Ernie:
"Diversion
Program"*

APPENDIX O. STATE VEHICLE FORFEITURE REQUIREMENTS FOR DRUNK DRIVING OFFENSES

State	Statute	Details
Alabama	None	
Alaska	§28.35.036	Vehicle forfeited for second or subsequent DUI offense (not mandatory)
Arizona	§28-697.01(A)	Vehicle forfeited for either third or subsequent DUI offense or for a DUI while license revoked/suspended for prior DUI or if committed while transporting child under 15 years old
Arkansas	§5-65-117	(a) vehicle forfeited for fourth offense within three years, at court's discretion
California	Veh. Code §23195	Vehicle impounded 1-30 days for first offense, and 1-90 days for second or subsequent offense within 7 years
	Veh. Code §23198	Vehicle subject to forfeiture for a DUI homicide, for two or more DUI offenses within seven years, or for a serious injury-related DUI with one or more DUI offenses within seven years
	Veh. Code §22651	Vehicle may be impounded temporarily if driver is taken into custody or for minor driving with a BAC of more than .01
Colorado	None	
Connecticut	§14-227h	Vehicle impounded for 48 hours if person's driving privilege was either suspended or revoked at the time of offense
Delaware	21 §2756(e)(1)	Impoundment of vehicle, plates or registration authorized for DUI while under license suspension/revocation for DUI or implied consent refusal, 1-90 days for first offense, one year for subsequent offenses
Florida	§316.193 (6)(d)	Vehicle used in DUI offense impounded or immobilized for 10 days for first offense, 30 days for second within three years, 90 days for third within 5 years
Georgia	§40-6-391.2	Vehicle forfeited for fourth DUI if offense committed in habitual offender status based on three or more prior DUI convictions
	§40-6-391.2(i)	Court may order transfer of title to family member for demonstrated hardship for employment or family needs
Hawaii	None	
Idaho	None	
Illinois	625 ILCS 5/4-203(c)	Vehicle impounded for 12 hours if law enforcement officers "reasonably believe" release will result in another DUI offense; 2 nd offense 24 hours; 3 rd offense 48 hours; however, vehicle may be released sooner if owner gives consent to competent driver
Indiana	IC9-30-4-6(b)(3), & (d)(1)	Registration revoked for six months for second felony; involving a motor vehicle (second DUI)
Iowa	321J.4B (2), (5)(d), (7)(a), (7)(b)	For subsequent offenses, vehicle, registration and plates for all vehicles owned by driver may be impounded for 180 days or the period of license revocation, whichever is longer
Kansas	8-1567(p)	Plate revoked for one year for fourth or subsequent offense
Kentucky	None	
Louisiana	§14:98 (D)	Vehicle forfeited for 3 rd offense or subsequent offenses, if vehicle used by offender is owned by him/her

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
Maine	29-A §2411 et seq	For subsequent offense within in 10 years, registration and plates are suspended for the same time period as their driver's license suspension
	29-A §2421	Vehicle must be forfeited for a subsequent DUI offense while already under license suspension for DUI; temporary impoundment for 8 hours upon arrest for drunk driving offense (29-A MRSA §2422)
Maryland	Trans. §16-303 §27-101 §27-111(d)	Registration suspended up to up to 120 days for driving on a suspended or revoked license for a previous DUI offense and/or vehicle can be impounded for up to 180 days
Massachusetts	None	
Michigan	1998 H.B. 4960	Provides for vehicle immobilization and forfeiture for 2 nd or subsequent offenses (discretionary)
Minnesota	168041(3)	Plates may be impounded for first or subsequent offense
	168.042(1)(20)	Plates and/or vehicle impounded for first or second offense within five years or for DUI child endangerment
	169.1217	Vehicle forfeited for third offense within five years, fourth offense within five years or for child endangerment and a second conviction or second revocation within five years or a third
Mississippi	63-11-30(2)(c)	Vehicle forfeited for third offense within five years
	63-11-49	Spouse may retain possession in case of hardship
Missouri	§82.1000	Permits some cities to enact vehicle impoundment or forfeiture laws
Montana	61-8-714 & 722	Vehicle must be forfeited for third or subsequent DUI offense within five years
Nebraska	None	
Nevada	§60-6, 197.01(1)(a) & (1)(b)(i)	If defendant convicted of 2 nd or subsequent offense, their vehicle must be immobilized 5 days to as much as 8 months; vehicle can be released to co-owner of vehicle due to hardship
New Hampshire	261:180 III	Registration suspended for same time period as license, on second or subsequent offense
New Jersey	§39:5-30(a)	Gives licensing agency discretionary authority to suspend/ revoke registration of person in violation of traffic laws or "other reasonable grounds"
New Mexico	None	Previous provisions repealed
New York	Civ Prac 1301 & 1311	Vehicle forfeited for a DUI felony (i.e. second DUI offense within ten years at the discretion of the court)
	V&T Law §1193 (2)(a) & (b)	Defendant's vehicle and registration may be suspended or revoked for same length of time as license revocation/suspension
North Carolina	20-28.2	Vehicle forfeited for DUI while on a revoked/suspended license
	§20-54.1	Registration for all vehicles owned by defendant can be revoked for time that license has been suspended/revoked

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
North Dakota	39-08-01(3)	Plate may be impounded for same period as license
	39-08-01.3	Vehicle may be forfeited for 2 nd or subsequent DUI within five years
Ohio	4507.164, 4511.195, 4511.99	Plates impounded for 90 days for second offense within six years and 180 days for third offense within six years; vehicle forfeited for subsequent offense within six years
Oklahoma	47 §11-902b	Subsequent DWI offender's vehicle subject to forfeiture
Oregon	§809.700 §809.2 of chapter 1100 Laws of 1999	Vehicle impounded for second or subsequent offense or for a DUI while on a suspended or revoked license; vehicle can be forfeited if offender had prior offense within 3 years of been convicted of murder, manslaughter, negligent homicide or assault related to operation of a vehicle
Pennsylvania	Case law	Vehicle may be forfeited for DUI offense: Commonwealth v. Crosby 568 A.2d 233 (PA Super. 1990)
Rhode Island	31-27- 2(d)(3)(ii);	Vehicle forfeited for third offense within five years
	§31-32-4(b)	If license suspended then defendant may have registration of any vehicle they own suspended; however, such registrations are not suspended if financial responsibility is provided
South Carolina	§56-5-6240	Vehicle forfeited for third or subsequent offense within 10 years; vehicle can either be owned and operated by offender or operated by offender who is resident of household of registered owner
South Dakota	§32-35-44	Registration suspended for all vehicles owned by driver for same time period license is revoked/suspended for DUI
Tennessee	55-10-403(k)(1)	Vehicle forfeited for second or subsequent offense
Texas	Tran Code §704.001	Vehicle may be forfeited after three or more DUI offenses
Utah	§41-6-44.30	Vehicle is impounded if driver arrested for DUI is the owner of the vehicle
Vermont	23 § 1213a, b	If second or subsequent offense vehicle can be immobilized for 18 months; if third offense the vehicle may be forfeited; if defendant is under 18 years old, vehicle is impounded for up to 60 days
Virginia	46.2-391.1	Registration suspended when license revoked/suspended for DUI conviction, or for driving on suspended/revoked license or for vehicular homicide
Washington	46.61.5058	Vehicle forfeited for second conviction within seven years, subject to possession by spouse in case of hardship
West Virginia	None	
Wisconsin	343.305(10m); 346.65(6)	Vehicle may be forfeited for third offense within ten years; vehicle shall be forfeited for fourth or subsequent offense within ten years
Wyoming	31-7-128(c)	Registration suspended for same period as license revocation/suspension, for subsequent DUI conviction within two years
American Samoa	None	

**APPENDIX O. STATE VEHICLE FORFEITURE
REQUIREMENTS FOR DRUNK DRIVING OFFENSES
(CONTINUED)**

State	Statute	Details
District of Columbia	§40-716(c-1)	Vehicle may be impounded for 24 hours for any DUI offense; if licensed registered owner of vehicle who is with offender at the time of offense, may take immediate possession of vehicle
Guam	Title 16 §9104(e)	Vehicle used in offense subject to forfeiture for third or subsequent offense, or driver's license suspended one to five years in lieu of vehicle forfeiture
Puerto Rico	None	
Virgin Islands	20 §544 (c)	Vehicle may be impounded at court's discretion if defendant fails to appear on a DUI charge

Source: *Digest of State Alcohol-Highway Safety Related Legislation*, 18th edition. 2000.

In the Virgin Islands, the department of education provides programs at all grade levels on the dangers of drinking and driving. New Mexico funds school-based alcohol abuse and drunk driving awareness programs, and additionally, provides enhanced server training requirements and stiffer penalties for selling alcohol to minors.

California has adopted the Youthful Drunk Driver Visitation Program, which requires underage drunk drivers to participate in supervised visits to hospital emergency rooms, trauma centers, or county morgue facilities. The program has an excellent history of discouraging repeat offenders and has been copied in Florida, Illinois and Iowa.

Both Connecticut and Vermont make it a crime for minors to misrepresent their age to buy alcohol and require violators to participate in alcohol treatment programs, in addition to significant fines and possible jail sentences. New Jersey not only sanctions minors attempting to purchase alcohol but also adults who buy liquor on their behalf. Both are subject to a fine of \$500 and a six-month license suspension. Minors convicted of drunk driving face additional penalties and must participate in alcohol treatment programs.

New Hampshire requires that first-time applicants for a driver's license be fully informed about the state's drunk driving laws, including standards, penalties and fines, administrative license revocation, implied consent requirements, and penalties for unlawful possession or transportation of alcoholic beverages by a minor.

Georgia provides for a lengthy license suspension and requires underage drunk drivers to complete a state-approved alcohol use reduction program. Tennessee has established a separate offense of Underage Driving While Drunk, punishable by a one-year license suspension and \$250 fine, while Texas punishes underage drunk drivers with fines up to \$2,000, 180 days in jail, or both.

Vehicle Forfeitures

Although asset forfeiture laws have long been used by states and cities to target drug dealing and a variety of other crimes, they are a relatively new mechanism for traffic safety. Thirty-five states, plus the District of Columbia, Guam and the Virgin Islands, have already enacted some sort of vehicle impoundment or forfeiture law for drunk drivers. Most of the laws provide for temporary impoundment of a convicted drunk driver's vehicle, license plates or vehicle registration; some states permit hardship exceptions where a spouse or family would be unduly harmed by the loss of their means of transportation. Permanent forfeiture of a vehicle is generally reserved for those convicted of multiple offenses. (See Appendix K for current state laws regarding vehicle impoundment and forfeiture.)

Concerns about the constitutionality of asset forfeiture laws in general have been set aside by state and federal courts, which have ruled that seizure of an "instrumentality of crime" is constitutional. In the case of drunk drivers, the instrumentality of the crime is the vehicle itself. As long as drunk driving cases receive the constitutional protections of due process, forfeiture of the vehicle is an acceptable sanction.

Permanent forfeiture of a vehicle generally is reserved for those convicted of multiple offenses.

ANCHORAGE

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TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

9.28.020 Driving while intoxicated--Prohibited; sentencing.



A. It is unlawful for any person to commit the crime of *driving while intoxicated*.



B. A person commits the crime of *driving while intoxicated* if he operates, drives or is in actual physical control of a motor vehicle or operates an aircraft or a watercraft:

1. While under the influence of intoxicating liquor or depressant, hallucinogenic, stimulant or narcotic drugs as defined in AS 11.71.140--11.71.190;
2. When, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.10 gram or more of alcohol per 210 liters of the person's breath;
3. While the person is under the combined influence of intoxicating liquor and a drug, or intoxicating liquor and another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely;
4. While the person is under the influence of a drug, or another substance that when introduced into the body acts as a central nervous system depressant or stimulant, to a degree which renders the person incapable of driving safely; or
5. In the case of an individual operating a commercial motor vehicle, when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.04 percent or more by weight of alcohol in the person's blood, or 40 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's breath.



C. Upon conviction for *driving while intoxicated* 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 \$250.00 if the person has not been previously convicted.
 - b. Not less than 20 days and a fine of not less than \$500.00 if the person has been previously convicted once.
 - c. Not less than 60 days and a fine of not less than \$1,000.00 if the person has been previously convicted twice.
 - d. Not less than 120 days and a fine of not less than \$2,000.00 if the person has been previously convicted three times.
 - e. Not less than 240 days and a fine of not less than \$3,000.00 if the person has been previously convicted four times.

TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

- f. Not less than 360 days and a fine of not less than \$4,000.00 if the person has been previously convicted more than four times.
2. Except in mitigated circumstances, the court shall impose more than the mandatory minimum sentence. Mitigated circumstances do not exist if any of the following circumstances are present:
 - a. The defendant's driving conduct caused personal injury or property damage to another.
 - b. The defendant failed to stop for a red light or stop sign.
 - c. A container of alcoholic beverage was open in the passenger compartment of the defendant's vehicle.
 - d. The defendant was on release under AS 12.30.020 or AS 12.30.040 or on probation for another DWI or refusal charge or conviction.
 - e. The defendant has been previously convicted of reckless driving or leaving the scene of an accident.
 - f. The defendant had a breath test result of 0.15 gram or more of alcohol per 210 liters of the defendant's breath as determined by a chemical test within four hours after the alleged offense was committed.
 3. The court may not:
 - a. Suspend execution of sentence or grant probation except on condition that the person serve the minimum imprisonment under subsection 1 of this subsection.
 - b. Suspend imposition of sentence.
 4. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under subsection D of this section, finds appropriate.
 5. If the person has any interest in the vehicle used in the commission of the offense, the court shall order that:
 - a. The vehicle be impounded for 30 days if the person has not been previously convicted; and
 - b. The person's interest in the vehicle be forfeited to the municipality if the person has been previously convicted.

TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited: sentencing.

At sentencing, the court shall order that any vehicle return bond which has been posted to secure the release of the vehicle be forfeited to the municipality if the vehicle subject to the vehicle return bond is not returned to the custody of the municipality within five days after the sentencing. At sentencing, the court shall order that any vehicle return bond posted to secure the release of the vehicle be exonerated when the vehicle has been returned to the custody of the municipality. At sentencing, the court may also order that any proceeds of any sale, transfer, or encumbrance of the vehicle be forfeited to the municipality if the vehicle has been sold, transferred, or encumbered while the vehicle has been subject to a vehicle return bond. A vehicle ordered impounded pursuant to this subsection shall not be released until after the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the impound fees and the storage fees. Impound fees shall include the actual cost of impound plus an administrative fee of \$220.00 to offset the municipality's processing costs. Any order of impoundment or forfeiture entered under this subsection is subject to the rights of lienholders, owners, lessors, lessees, and co-owners who are not the person convicted of *driving while intoxicated* as those rights are adjudicated in civil proceedings under section 9.28.026. If the municipality has brought a civil action under section 9.28.026 seeking impoundment or forfeiture as against all those with an interest in the vehicle except the person charged with a violation of section 9.28.020, that civil action shall provide the sole forum in which lienholders, owners, lessors, lessees, and co-owners who claim an interest in the vehicle but are not the person charged with a violation of section 9.28.020 can seek relief.



D. Except as provided by federal law or regulation, every provider of treatment programs to which persons are ordered under subsection C of this section shall supply the state court system with the information regarding the condition and treatment of those persons as the supreme court may require by rule. Information compiled under this subsection is confidential and may only be used by a court in sentencing a person convicted under subsection C of this section, or by an officer of the court in preparing a pre-sentence report for the use of the court in sentencing a person convicted under subsection C of this section.



E. For purposes of this chapter, the following terms shall have the meaning given in this subsection:

1. *Interest in the vehicle* means a right, claim, or title to the vehicle or a legal share in the vehicle that the oral statement of a police officer, complaint, indictment, or information alleges was used in the commission of an offense.
2. *Operate a watercraft* means to navigate or use a vessel used or capable of being used as a means of transportation on water for recreational or commercial purposes on all waters, fresh or salt, inside the territorial limits of the municipality.
3. *Physical control* means to be behind the steering apparatus of a motor vehicle, whether asleep or awake, while the engine is running or any electrical or mechanical devices are turned on, or to be in a position to exercise exclusive control over the operation of the vehicle while possessing the apparent means to start the vehicle and the apparent ability to do so.
4. *Previously convicted* means having been convicted in this or another jurisdiction, within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under this section or another law or ordinance with substantially similar elements, or of refusal to submit to a chemical test under AS 28.35.032 or section 9.28.022 or another law or ordinance with substantially similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AMC 9.28.020.B.2.



F. For purposes of this section, convictions for both *driving while intoxicated* and for refusal to submit to a chemical test of breath under section 9.28.021, if arising out of a single transaction and a single arrest, are considered one previous conviction.



G. The court 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.



H. A program of inpatient treatment may be required by the authorized agency under subsection G of this section only if authorized in the judgment, and may not exceed the maximum term of inpatient treatment specified in the judgment. A person who has been referred for inpatient treatment under this subsection may make a written request to the sentencing court asking the court to review the referral. The request for review shall be made within seven days of the agency's referral, and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.



I. If a person fails to satisfy the requirements of an authorized agency under subsection H of this section, the court:

1. May impose any portion of a suspended sentence.
2. May punish the failure as contempt of court under AS 9.50.010 or as a violation of a condition of probation.
3. Shall order the revocation or suspension of the person's driver's license, privilege to drive, and privilege to obtain a license until the requirements are satisfied.



J. The magistrate or judge who sets the conditions of release for a person arrested for *driving while intoxicated* shall at the same time set a vehicle return bond for the vehicle alleged in an oral statement of a police officer to have been used in the commission of the offense if the records of the Alaska department of public safety, division of motor vehicles or the records of an agency with similar responsibilities in another state show that the person arrested for the offense has any interest in the vehicle. The purpose of setting a vehicle return bond is to secure the presence of the vehicle pending trial and to provide security to be forfeited along with the proceeds of a sale, transfer, or encumbrance if the defendant's interest in the vehicle is sold, transferred, or encumbered after the vehicle has been released pending trial. A person who secures the release of a vehicle pursuant to a vehicle return bond must return the vehicle to the custody of the municipality upon order of the court. If the vehicle's release has been obtained through the posting of a vehicle return bond and the vehicle is not returned pursuant to the court's order after a judgment of conviction, the municipality may, in addition to obtaining the forfeited bond funds, seize the vehicle to implement the impoundment or forfeiture ordered by the court. If the person has not been previously convicted, the magistrate or judge setting the vehicle return bond shall order that the requirement of the vehicle return bond shall automatically expire 30 days after the vehicle has been seized if the vehicle has not been released pursuant to a vehicle return bond. The vehicle return bond set under the authority of this subsection may only be posted by a person alleged to have used the vehicle in the commission of the offense of *driving while intoxicated* or by a person who agrees to return the vehicle upon order of the court upon penalty of forfeiture of the bond. The vehicle return bond set under the authority of this subsection may be posted at the municipality. A vehicle return bond may be posted in cash only. A vehicle return bond shall be set at a minimum of:




TITLE 9 VEHICLES AND TRAFFIC*


Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited: sentencing.

1. Two hundred fifty dollars if the person has not been previously convicted.
2. Five hundred dollars if the person has been previously convicted and the vehicle is 20 years old or older.
3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

 K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

 L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.


TITLE 9 VEHICLES AND TRAFFIC*


Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while intoxicated--Prohibited; sentencing.

1. Two hundred fifty dollars if the person has not been previously convicted.
2. Five hundred dollars if the person has been previously convicted and the vehicle is 20 years old or older.
3. One thousand dollars if the person has been previously convicted and the vehicle is 15 years old or older but less than 20 years old.
4. One thousand five hundred dollars if the person has been previously convicted and the vehicle is ten years old or older but less than 15 years old.
5. Two thousand dollars if the person has been previously convicted and the vehicle is five years old or older but less than ten years old.
6. Two thousand five hundred dollars if the person has been previously convicted and the vehicle is less than five years old.

A vehicle return bond may be set above the minimum if the vehicle appears to have unusually high value for its age. A vehicle that is or has been the subject of an order under this subsection shall not be released pending trial until the person seeking release of the vehicle has provided proof of ownership of the vehicle and paid or provided proof of payment of the vehicle return bond and towing and storage fees, including the administrative fee of \$220.00 to offset the municipality's processing costs. If a vehicle has not been impounded for a longer period than the vehicle would be impounded if the person were convicted, the court shall not delete the requirement of the vehicle return bond or exonerate a posted vehicle return bond until the vehicle for which bond has been posted is returned pursuant to court order. Unless the following sentence applies, a vehicle that is or has been the subject of a vehicle return bond may only be released if the person seeking the release of the vehicle pays or provides proof of payment of the towing and storage costs, including the administrative fee of \$220.00 to offset the municipality's processing costs. A vehicle may be recovered without payment of the towing and storage costs, including the administrative fee, only if a court makes a specific finding that the seizure of the vehicle was legally unjustified and such specific finding follows a contested hearing or is pursuant to a stipulation between the parties. A seizure is "legally unjustified" only if there was: (1) no reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle; or (2) no probable cause for the arrest of an individual for *driving while intoxicated* based on the individual allegedly operating, driving, or being in actual physical control of the vehicle.

 K. The conditions of release established for a person charged with *driving while intoxicated* (DWI) shall include at a minimum an order that the person's interest, if any, in the vehicle alleged in an oral statement by a police officer, criminal complaint, information, or indictment to have been used in the commission of the offense be forfeited if the person does not appear as ordered. This subsection applies to any release before judgment of conviction on a charge of *driving while intoxicated*, including any release on the person's own recognizance.

 L. A vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section and has not been released pursuant to that order is subject to the provisions of AS 28.10.502 if no criminal complaint, information, or indictment is filed by the date and time of the scheduled arraignment alleging a violation of this section or if the count of the criminal complaint, information, or indictment alleging a violation of this section is amended upon motion of the prosecution, is dismissed by the prosecution, or is resolved by the acquittal of the person alleged to have violated this section. The provisions of chapter 9.50 do not apply to a vehicle that is or has been the subject of an order setting a vehicle return bond under subsection J of this section. Any vehicle return bond set expires on the date and time of the scheduled arraignment if no criminal complaint, information, or indictment alleging a violation of this section is filed by the date and time of the scheduled arraignment.



M. Vehicles ordered impounded under section 9.28.020.C.5 which are not claimed at the end of the court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond can be recovered only by the owner of the vehicle and only upon payment of a fee charged for monitoring the recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the municipality if it is not established by ordinance. Such fee shall be recoverable by the owner of the vehicle if a court makes a specific finding that the seizure of the vehicle was legally unjustified following a contested hearing or pursuant to a stipulation between the parties.



N. A motor vehicle that is the subject of a vehicle return bond under section 9.28.020.J and has not been released pursuant to that vehicle return bond shall be held in the custody of the police department or a private corporation authorized by the chief of police to retain custody of the motor vehicle, subject only to the orders and decrees of any court having jurisdiction over any forfeiture or impoundment proceedings. If a motor vehicle is seized under this section, the chief of police or his or her authorized designee may:

1. Remove the motor vehicle and any contents of the motor vehicle to a place designated by the court; or
2. Take custody of the motor vehicle and any contents of the motor vehicle and remove it to an appropriate location for disposition in accordance with law.



O. Before disposing of any vehicle forfeited under this section, the chief of police or his or her designee shall make an inventory of the contents of any motor vehicle seized. Property forfeited under this section shall be disposed of by the chief of police or his or her designee in accordance with this subsection. Property forfeited under this section includes both the vehicle that is the subject of the forfeiture action and the contents of the vehicle if those contents have not been recovered before the date of the disposal. The chief of police or his or her designee may:

1. Sell the property at an auction conducted by an auctioneer not employed by the impound contractor and use the proceeds for payment of all proper expenses of seizure, custody, the costs of the auction, court costs, and municipal attorney fees, provided if such sale is arranged for by the impound contractor the municipality shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction of those vehicles regardless of whether the costs of impound and storage exceed the value of the vehicles sold;



TITLE 9 VEHICLES AND TRAFFIC*

Chapter 9.28 SERIOUS TRAFFIC OFFENSES

9.28.020 Driving while Intoxicated--Prohibited; sentencing.

2. Take custody of the property and use it in the enforcement of the municipal and state criminal codes; or
3. Destroy the property.

(AO No. 267-76; AO No. 78-72; AO No. 78-230(S); AO No. 80-122; AO No. 81-75; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52; AO No. 91-56(S); AO No. 91-190; AO No. 94-68(S), § 11, 8-11-94; AO No. 95-84(S-1), §§ 1--9, 4-27-95; AO No. 95-163(S), §§ 1--5, 8-8-95; AO No. 97-72, § 1, 6-10-97; AO No. 97-87, § 1, 6-3-97)

Editor's note--AO No. 97-87 occasioned by 1996 Proposition 3 Initiative enacting Chapter XXI.

Cross reference(s)--Penal code, tit. 8; drinking alcoholic beverages while driving, § 9.36.200; alcoholic beverages, ch. 10.50.

9.28.021 *Driving while intoxicated*--Implied consent to chemical test.

A person who operates, drives or is in actual physical control of a motor vehicle within the municipality or who operates an aircraft as defined by section 9.28.020.E.1 or who operates a watercraft as defined by section 9.28.020.E.2 shall be considered to have given consent to a chemical test of his breath for the purpose of determining the alcoholic content of his blood or breath if lawfully arrested for an offense arising out of acts alleged to have been committed while the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft while intoxicated. The test shall be administered at the direction of a law enforcement officer who has reasonable grounds to believe that the person was operating, driving or in actual physical control of a motor vehicle or operating an aircraft or a watercraft in the municipality while intoxicated.

(AO No. 78-72; AO No. 79-194; AO No. 80-122; AO No. 82-126; AO No. 83-168, 10-17-83; AO No. 89-52)

State law reference(s)--Implied consent, AS 28.35.031.

9.28.022 *Driving while intoxicated*--Refusal to submit to chemical tests.

- A. If a person under arrest refused the request of a law enforcement officer to submit to a chemical test under section 9.28.021, after being advised by the officer that the refusal will, if that person was arrested while operating or driving a motor vehicle for which a driver's license is required, result in the denial or revocation of the license or nonresident privilege to drive, that the refusal may be used against the person in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating or driving a motor vehicle or operating an aircraft or a watercraft while intoxicated, and that the refusal is a misdemeanor, a chemical test shall not be given, except as provided by section 9.28.025.
- B. The refusal of a person to submit to a chemical test of his or her breath under subsection A of this section is admissible evidence in a civil or criminal action or proceeding arising out of an act alleged to have been committed by the person while operating, driving or in actual physical control of a motor vehicle or operating an aircraft or watercraft while intoxicated.
- C. Refusal to submit to the chemical test of breath authorized by section 9.28.021 is a misdemeanor.
- D. Upon conviction for refusal to submit to chemical tests under subsection C of this section:
 1. The court shall impose a minimum sentence of imprisonment of:

FAIRBANKS

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

***Cross reference(s)**--Disposal by the department of public safety of abandoned, stolen, forfeited, seized, and found property, § 62-31 et seq.

State law reference(s)--Forfeiture of vehicle, AS 28.35.036.

Sec. 78-961. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assessed or appraised value of a motor vehicle shall be based upon the Automobile Dealers Association Book (Blue Book) for the same or similar make and model and accessorized motor vehicle. Should there be no Blue Book value, the value shall be \$500.00.

Driver means a person who drives or is in actual physical control of a vehicle.

Motor vehicle means a vehicle which is self propelled except a vehicle moved by human or animal power.

Previously convicted means having been convicted in this or another jurisdiction within ten years preceding the date of the present offense, of operating a motor vehicle, aircraft or watercraft while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements, or a refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

Registered owner refers to the owner of the vehicle at the time of the offense as shown in the vehicle ownership records of the state division of motor vehicles or another agency with similar responsibilities in another state, but may include subsequent good-faith purchases.

Regulated lienholder means an entity whose lien on the vehicle is a result of lending activities that are subject to regulation by any federal or state agency, commission or department.

Vehicle means a device in, upon or by which a person or property may be transported or driven upon immediately over a highway, road or other public right-of-way.

(Code 1960, § 7.22.117)

PART II CODE OF ORDINANCES

Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-962. Purpose; public nuisance.

A motor vehicle that is operated, driven or in actual physical control of an individual arrested for or charged with violation of AS 28.35.030, pertaining to *driving while intoxicated*, or a violation of AS 28.35.032, pertaining to refusal to submit to chemical tests, may be impounded and may be forfeited to the city in accordance with this article. The purpose of this article is to protect the public by removing public nuisances and deterring *driving while intoxicated*. A vehicle operated in violation of the aforesaid statutes is declared to be a public nuisance for which the registered owners shall be legally responsible subject only to defenses set forth by law.

(Code 1960, § 7.22.101)

Sec. 78-963. Presumptions; vehicle seizure.

- (a) It shall be presumed that a vehicle operated by or driven by or in the actual physical control of an individual arrested for or charged with a violation of either AS 28.35.030 or AS 28.35.032 has been so operated by the registered owner or has been operated by another person with the knowledge and consent of the registered owner.
- (b) A vehicle used in the alleged violation of AS 28.35.030 or AS 28.35.032 shall be impounded for 30 days if the person driving, operating or in the actual physical control of the vehicle has not been previously convicted, and shall be forfeited to the city if the person has been previously convicted.
- (c) Impoundment may occur through a seizure of the vehicle incident to an arrest at the discretion of the arresting officer or a court order.

(Code 1960, § 7.22.102)

Sec. 78-964. Jurisdiction; hearings; costs.

- (a) Civil impoundment or forfeiture cases may be heard and decided by either the district court, an administrative hearing officer, or the parking authority, which throughout this article may be referred to as "the court" or "a court." Hearings before an administrative hearing officer shall take place no less than seven days and no more than 30 days after the registered owner or lienholder requests a hearing. At the request of the city or a claimant, a civil proceeding under this section shall be postponed until the conclusion of any pending criminal charges arising out of the incident giving rise to the proceeding under AS 28.35.030 and AS 28.35.032.
- (b) The court shall award the prevailing party in an impoundment or forfeiture case its reasonable attorney's fees and costs. Costs shall include but are not limited to filing costs, advertising costs, police officer time required for testimony, prosecution costs, and other costs incurred in processing the case.

(Code 1960, § 7.22.103)

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appear.

- (a) A lienholder and any party having an interest in the vehicle as shown by the vehicle ownership records by the division of motor vehicles or any agency in any state where the vehicle is registered shall be served with notice of the civil action by certified mail sent to the address of record as shown in the ownership records. In a forfeiture action, the city may serve a party of record personally or by publication if mail service is unsuccessful.
- (b) Service by publication in a forfeiture proceeding shall describe the vehicle, the date and place of impoundment and a contact person, and shall be published once per week for two consecutive weeks in a newspaper of general circulation.



(c) Any party who fails to appear within 30 days of service of notice of an impoundment or forfeiture waives the right to object to impoundment or forfeiture. Any party who requests a hearing in a civil action shall be deemed served. For actions filed in district court, district court civil rules shall apply. Requests for release of a vehicle made by a person or entity not charged with a violation of AS 28.35.030 and AS 28.35.032 must be brought in the forum of the civil action.



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Chapter 78 TRAFFIC AND VEHICLES*

ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-965. Notice to lienholders and parties of record; service by publication; failure to appe.

(Code 1960, § 7.22.104)

Sec. 78-966. Avoidance of impoundment or forfeiture by owners and lienholders; defenses.



(a) An owner or lienholder of record may avoid impoundment or forfeiture of that person's interest if the claimant can establish by a preponderance of the evidence that:

- (1) The claimant had an interest in the motor vehicle at the time of the alleged violation or which was acquired in good faith after the violation and not to avoid impoundment or forfeiture;
- (2) A person other than the claimant was in possession of the vehicle and was responsible for the act which resulted in impoundment or forfeiture; and
- (3) Before permitting the operator to gain custody or control of the vehicle, the claimant did not know or have reasonable cause to believe that vehicle would be operated in violation of AS 28.35.030 or AS 28.35.032.



(b) A regulated lienholder may meet the requirements of this section by filing with the court a copy of the vehicle's certificate of title or other security instrument reflecting the lien, with an affidavit stating the amount of the lien and that the lienholder is a regulated lienholder and that the lienholder was not in possession of the vehicle at the time of the act which resulted in the seizure of the vehicle.



(c) A regulated lienholder shall have no duty to inquire into the driving record of any loan applicant or any member of the loan applicant's family or household, and failure to do so shall not be usable as evidence against the regulated lienholder in any forfeiture proceeding or other civil action.



(d) A regulated lienholder's interest in a vehicle shall not be subject to forfeiture in any case where:

- (1) The individual who allegedly used the vehicle in violation of AS 29.35.030 or AS 29.35.032 is not the person whose dealings with the lienholder gave rise to the lien; or
- (2) The vehicle which the individual was driving, operating or was in actual physical control of at the time of the violation was not the vehicle involved in a prior conviction.



(e) An acquittal in a criminal proceeding under AS 28.35.030 or AS 28.35.032 shall constitute a defense against impoundment or forfeiture of a vehicle if the civil proceeding is based on the same conduct that forms the basis for the criminal charge.

(Code 1960, § 7.22.105)

Sec. 78-967. Presumptions; knowledge of violation.




(a) When a person other than the claimant was in possession of the vehicle and was driving with a suspended, revoked or canceled license, or without a valid driver's license, or in violation of a limited license, it shall be presumed that the claimant had reasonable cause to believe that the vehicle would be used in violation of AS 28.35.030 or AS 28.35.032. This subsection shall not apply to regulated lienholders.

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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-967. Presumptions: knowledge of violation.

-  (b) When the claimant and driver are not the same person and have a familial relationship, such as husband/wife, father/daughter, mother/stepson, etc., it shall be presumed that the claimant is responsible and that the vehicle was operated by the driver with the knowledge and consent of the claimant.

(Code 1960, § 7.22.106)


Sec. 78-968. Hearing notification.

Upon notification from the court of the time and place for a hearing in a civil action, the city shall provide to every person, unless notified by the court, who has an ascertainable ownership or security interest, written notice that includes:


- (1) A description of the motor vehicle;
- (2) The time and place of the forfeiture or impound hearing;
- (3) The legal authority under which the vehicle may be impounded or forfeited; and
- (4) Notice of the right to intervene to protect the interest in the motor vehicle.

(Code 1960, § 7.22.107)

Sec. 78-969. Seizure; evidence; burden of proof.

-  (a) A seizure is legally unjustified only if there was:

- (1) No reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the operation, driving or actual physical control of the vehicle; or
- (2) No probable cause for the arrest of an individual for *driving while intoxicated* based on the individual's operation, driving or actual physical control of the vehicle.

 (b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative; accompanying documents; computer printouts from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status, and the record of criminal convictions of the driver; and/or tape recordings is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the city in a statement made under oath.

-  (c) The burden of proof for an action under this article is preponderance of the evidence.

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Sec. 78-969. Seizure; evidence; burden of proof.

(1) No reasonable suspicion for the stop of the vehicle leading to an arrest for *driving while intoxicated* based on the operation, driving or actual physical control of the vehicle; or

(2) No probable cause for the arrest of an individual for *driving while intoxicated* based on the individual's operation, driving or actual physical control of the vehicle.

(b) For purposes of proceedings in an administrative forum, the police report, which may include the narrative; accompanying documents; computer printouts from data bases operated by police agencies and/or government agencies regulating motor vehicles showing the ownership of the vehicle, the driver's license status, and the record of criminal convictions of the driver; and/or tape recordings is admissible evidence so long as it is signed with either the name, initials, badge number, or other identifying mark of an employee of the city in a statement made under oath.

(c) The burden of proof for an action under this article is preponderance of the evidence.

(Code 1960, § 7.22.108)

Sec. 78-970. Resolution agreement between city and owner/lienholder.

(a) The city may enter into an agreement with the registered owner or lienholder of the vehicle to resolve a civil impound or forfeiture action and permit release of the vehicle. Any such agreement shall include:

- (1) Acceptance by the owner or lienholder of responsibility for meeting the requirements of this section;
- (2) Agreement that the owner or lienholder will take reasonable steps to prevent the person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 from operating the vehicle until properly licensed; and
- (3) Agreement by the owner or lienholder that failure to fulfill the obligations under the agreement may result in forfeiture of the vehicle at the option of the city unless the lienholder is regulated and is required by law or the terms of the security agreement to relinquish possession of the vehicle upon payment of the lien or cure of any default.

(Code 1960, § 7.22.109)

Sec. 78-971. Release of motor vehicle.

A person seeking to redeem a vehicle must obtain an order authorizing release of the vehicle unless the release is made under an agreement with the city. A release shall not be granted unless the person can:

- (1) Provide proof of ownership or, if a lienholder, a legal right to repossess the vehicle; and
- (2) Pay or provide proof of payment of any costs imposed, including the impound fees, storage fees and any court costs imposed. The impound fee shall be the actual cost of impound plus an administrative charge to offset the city's processing costs. If the city agrees or the court finds that seizure of a vehicle was legally unjustified, the vehicle shall be released at no cost if the person seeking to reclaim the vehicle does so within five days after the court's finding. A vehicle not claimed within five days after the court's decision is subject to the provisions of AS 28.10.502, relating to towing and storage liens.

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Sec. 78-971. Release of motor vehicle.

(Code 1960, § 7.22.110)

Sec. 78-972. Bail release of motor vehicle; vehicle bond; amount of bond; costs.

(a) A person not charged with a violation of AS 28.35.030 or AS 28.35.032 may petition the court for a bail release of a motor vehicle before a civil action is filed.

(b) A vehicle return bond shall be set for each vehicle alleged in the complaint to have been used in an alleged violation of AS 28.35.030 or AS 28.35.032. The bond may be posted in cash only. The purpose of this bond is to secure the presence of the vehicle and to provide security to be forfeited if the vehicle is sold, transferred or encumbered after the vehicle has been released pending hearing. If a vehicle is not returned on a return bond, the city may forfeit the bond funds and seize the vehicle to implement the impoundment or forfeiture ordered by the court. The court may not modify the bond requirement or release a posted bond for a vehicle which has been impounded for a period less than the vehicle would have been impounded for if the person was convicted.

(c) If a person charged with a violation of AS 28.35.030 or AS 28.35.032 has no previous convictions for those statutes, the minimum vehicle return bond shall be \$400.00. Where the person charged has been previously convicted of either offense, the minimum vehicle bond shall be:

20 years or older . . . \$ 400.00

15--19 years . . . 1,000.00

10--14 years . . . 1,500.00

5--10 years . . . 2,000.00

0--4 years . . . 2,500.00

A vehicle return bond may be set above the minimum if the vehicle appears to have been unusually high value for its age but not to exceed twice the minimum amount.

(d) A vehicle under this section may be released pending hearing upon proof of ownership of the vehicle, payment of the vehicle return bond, and payment of towing and storage fees, including the administrative fee of \$200.00 to offset the city's processing costs.

(e) The court may order all or any part of the vehicle return bond to be forfeited to the city and may also order that the proceeds of any sale, transfer or encumbrance be forfeited if the vehicle has been sold, transferred or encumbered while subject to a vehicle return bond, if the vehicle is not returned in accordance with an order entered in the case requiring impoundment or forfeiture.

(Code 1960, § 7.22.111)

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle disposal; personal property in vehicles.

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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-973. Impoundment; seizure incident to arrest; impoundment period; abandoned vehicle

- (a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested for or charged with a violation of AS 28.35.030 or AS 28.35.032 may be ordered impounded either upon conviction of the person for the offense or upon the decision of the court in a separate civil proceeding. To obtain an order for the impoundment in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the actual physical control of a person who was acting in violation of AS 28.35.030 or AS 28.35.032.
- (b) If the motor vehicle is seized incident to an arrest or otherwise prior to a conviction or court-ordered impoundment, the vehicle may not be held more than two days without a court order obtained to continue its detention. For purpose of computing the two-day period, Saturdays, Sundays and legal holidays are not to be included.
- (c) A vehicle which is ordered impounded under this section shall be held for a period of 30 days. An impoundment order may be made either upon conviction of the person of a violation of AS 28.35.030 or AS 28.35.032, or upon decision of a court in a separate civil proceeding.
- (d) Vehicles ordered impounded under this section, which are not claimed at the end of the 30-day court-ordered period of impoundment may be disposed of pursuant to the provisions of AS 28.10.502. If the contents of the vehicle have not been recovered before such disposal, the contents may be disposed of with the vehicle. Personal property in a vehicle that is subject to a vehicle return bond and has not been released can be removed from a vehicle only by the owner of the vehicle and only upon payment of a fee charged for monitoring such recovery of such personal property. Such fee shall be set by contract between the towing and storage contractor and the city unless established by the parking authority. The owner may recover the fee if a court makes a specific finding that the seizure of the vehicle was legally unjustified.

(Code 1960, § 7.22.112)

Sec. 78-974. Forfeiture process.

- (a) A motor vehicle that is operated, driven or in the actual physical control of a person arrested or charged with a violation of AS 28.35.030 or AS 28.35.032 may be forfeited to the city either upon conviction of either offense or upon decision of a court in a separate civil proceeding. To obtain an order of forfeiture in a contested proceeding, the city must establish by a preponderance of the evidence that the vehicle was operated, driven or in the physical control of the person acting in violation of either offense and the individual has been previously convicted.
- (b) A motor vehicle may be seized and towed to a secure location by a police officer or a police officer's designee upon an order issued by a court having jurisdiction over the motor vehicle upon a showing of probable cause that the motor vehicle may be forfeited or impounded under this section. Seizure without a court order may be made if:
- (1) The impoundment is incident to an arrest;
 - (2) The motor vehicle has been ordered impounded or forfeited and that order has not yet been executed; or
 - (3) There is probable cause to believe that the motor vehicle was operated, driven or in the actual physical control of a person in violation of AS 28.35.030 or AS 28.35.032.
- (c) A court may order impoundment of a motor vehicle subject to forfeiture in a civil action for a minimum of 30 consecutive days.

(Code 1960, § 7.22.113)

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.



(a) A motor vehicle seized for the purpose of forfeiture or impoundment should be held in the custody of the department of public safety or a private corporation authorized by the department to retain custody of the vehicle, subject only to the orders and decrees of the court having jurisdiction over any forfeiture or impoundment proceedings. When a motor vehicle is seized, the director of public safety or an authorized designee may:


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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-975. Custody of vehicle; department of public safety; private corporations; inventory.

- (1) Remove the motor vehicle and any contents in the vehicle to a place designated by the court; or
- (2) Take custody of the motor vehicle and any contents of the vehicle and remove it to an appropriate location for disposition.


 (b) Following a forfeiture the department of public safety shall make an inventory of the contents of any motor vehicle seized. Personal property can be recovered from the vehicle in the same manner as set forth in section 78-973.

 (c) A person in a forfeiture action claiming an interest in the property shall file, within 30 days after service or completion of publication, a notice of claim setting out the nature of the interest, the date it was acquired, the consideration paid, and an answer to the city's allegations. If a claim and answer is not filed within the required time, the motor vehicle must be forfeited to the city without further proceedings. For a regulated lienholder, the notice of claim and answer is met by the filing of information required in section 78-966 and by adding to the affidavit a statement of the original amount of the loan giving rise to the lien and the current balance due on that loan.

 (d) A claimant may petition the court for sale of a motor vehicle before final disposition of court proceedings. The court shall grant a petition for sale upon a finding that the sale is in the best interest of the city. Proceeds from the sale plus interest to the date of final disposition of the court proceedings become the subject of the forfeiture action.

(Code 1960, § 7.22.114)


Sec. 78-976. Disposition of forfeited property; return to claimant.

 (a) Property forfeited under this article shall be disposed of by the department of public safety in accordance with this section. Property forfeited includes both the vehicle and its contents if those contents have not been recovered before the date of disposal. The department of public safety may:

- (1) Sell the property at an auction and use the proceeds for payment of all expenses of seizure, custody, costs of auction, court costs and attorney's fees; and if such sale is arranged for by the impound contractor, the city shall receive at least 30 percent of the proceeds of any sale of forfeited vehicles following deduction for the costs charged by the auctioneer for the auction regardless of whether the costs of impound and storage exceed the value of the forfeited vehicles sold;

(2) Take custody of the property and use it in the enforcement of city and state criminal codes; or

(3) Destroy the property.

 (b) When a claimant to a motor vehicle is entitled to its possession, the court shall order that:

(1) The vehicle be delivered to the claimant immediately subject to costs as described in section 78-971; or

(2) If the claimant is entitled to some value less than the total value of the motor vehicle, the claimant is entitled to receive either the value of the claimant's interest after the sale of the vehicle at an auction following deduction of the costs of the auction or, upon request and payment of the difference in value by the claimant, the motor vehicle itself.

 (c) When a vehicle is sold and lienholder interest exceeds the sale price, the owner may be held responsible for the difference and the city's cost.

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ARTICLE XXII. MOTOR VEHICLE IMPOUNDMENT AND FORFEITURE*

Sec. 78-976. Disposition of forfeited property; return to claimant.

(Code 1960, § 7.22.115)

Sec. 78-977. Multiple ownership on certificate of title.

In a contested forfeiture proceeding concerning a vehicle titled in the names of more than one owner on the certificate of title, the court shall proceed as follows:

(1) If one owner does not avoid forfeiture, the court may order the forfeiture of the entire interest of all the owners in a vehicle which is titled in the names of more than one owner in the disjunctive which is signified by the word "or."

(2) If such owner does not avoid forfeiture, the court shall order the forfeiture of the interest of any owner in a vehicle which is titled in the names of more than one owner in the conjunctive which is signified by the word "and." Owners of a vehicle titled in the names of more than one owner in the conjunctive are presumed to own the vehicle in equal shares. Under this subsection, the court shall order that the vehicle be sold at public auction and further order that the proceeds from the sale of the vehicle be held by the city's department of finance. After deduction of the reasonable costs of the auction, the amount of the proceeds of the auction for the sale of that vehicle which is equal to the interests of the owners whose interests have not been forfeited shall be returned to those owners if those owners apply to the department of finance within 60 days of the auction. If the owners whose interests have not been forfeited do not apply within that period, those funds become the property of the city subject to the rights of any other claimant to those funds.

(Code 1960, § 7.22.116)

Chapters 79--81 RESERVED

Chapter 82 UTILITIES*

*Cross reference(s)--Administration, ch. 2; buildings and building regulations, ch. 10; uniform mechanical code, § 10-101 et seq.; uniform plumbing code, § 10-136 et seq.; uniform housing code, § 10-171 et seq.; National Electrical Code, § 10-276 et seq.; businesses, ch. 14; health, ch. 34; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70.

ARTICLE I. IN GENERAL

Sec. 82 City water fluoridated.

A source of fluoride ion, approved by the state department of health, shall be added to the water supply of the city under the rules and regulations of the state department of health, such addition to be administered by Golden Heart Utilities, Inc. in a manner approved by the environmental coordinator of the city.

(Code 1960, § 10.301(a))

WELCOME TO THE CBJ CODE

This copy, including the CBJ Charter, is current as of January 18, 2001.

Navigating through the code is easier using the bookmarks accessible via Acrobat's "window" menu.

For update information call the CBJ Law Department. 907-586-5242

You can e-mail the City & Borough Attorney at

corso@cbjlaw.com

To suggest formal corrections to the code, or to request copies in an alternate form, please send a message to

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<http://www.cbjlaw.com>

- (2) Order participation in such program; or
- (3) Any combination of subsections (1) and (2) above. (Serial No. 85-56 § 68, 1985; Serial No. 84-80 § 3, 1984; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.010).

72.22.045 TRAFFIC CITATION ON ILLEGALLY PARKED VEHICLE. Whenever a motor vehicle without driver is found parked, stopped or standing in violation of any of the restrictions imposed by this title the officer finding such vehicle shall take its registration number and may take any other information displayed upon or within the vehicle which may identify its user, and shall conspicuously affix to such vehicle a traffic citation on a form provided by the city and borough for the driver to answer to the charge against him in the municipal court at an appointed time within twenty days from such alleged violation specified in the citation. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.045).

72.22.055 VIOLATIONS RESPONSIBILITIES AND DEFENSES. (a) Every person in whose name a vehicle is registered shall be responsible for violations of any parking, standing, stopping or other nonmoving traffic violations of this title. It shall be no defense for the owner of a vehicle to such a charge that the vehicle was in the possession or control of another, unless it can be shown to the satisfaction of the court that at such time such vehicle was being used without the consent of the registered owner thereof.

(b) It shall be a defense for a vehicle owner to a charge of a failure to appear if it is shown to the court's satisfaction that the owner of such vehicle was not aware of the citation and that such vehicle was being used without the consent of the registered owner. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.055).

72.22.060 AUTHORITY TO IMPOUND VEHICLES – REDEMPTION OR SALE – PRESUMPTION OF ABANDONMENT. (a) Whenever any vehicle is located or is standing upon any street or alley or right-of-way in violation of the provisions of this title or any rule or regulation adopted thereto, or whenever any vehicle is found to be mechanically unsafe to operate upon any street or alley or right-of-way, or whenever the driver is arrested for an offense involving either driving under the influence of intoxicating liquor or hypnotic or narcotic drugs, reckless driving, negligent driving, or any felony, such vehicle may be removed from the city and borough streets or alleys and may be impounded at a place to be designated by the manager. The police shall, in the proper case and whenever any other provision of this title is violated, cause a complaint to be filed against the person committing such offense. When the owner or authorized representative of the owner of the vehicle claims the same, he shall be informed of the nature of the circumstances causing the impoundment of such vehicle and to obtain release thereof shall pay all towing, impoundment and storage charges. Such fees may be established, changed or abolished by the assembly by resolution. If the operator or owner of the vehicle, upon hearing before the municipal judge, is found not guilty of the violation of which he is charged, the impounded vehicle shall be released immediately to the owner without collection of fees or other charges, or if such person found not guilty has already paid impoundment towing or storage charges, the court may order the city and borough to refund part or all of such fees or charges. If the owner or operator of such vehicle is found guilty, any fine imposed under the provisions of the appropriate section of this title shall be in addition to the towing, impounding and storage charges herein prescribed.

(b) No person shall allow, permit or suffer any vehicle registered in his name to stand or park upon

or be operated upon any street in this city and borough in violation of this title or any rule or regulation adopted or issued pursuant thereto.

(c) Whenever an officer removes or has removed a vehicle from a street as authorized in this section and the officer knows or is able to ascertain from the registration records in the vehicle the name and address of the owner thereof, such officer shall immediately give or cause to be given notice in writing to such owner of the fact of such removal and the reasons therefor and of the place to which such vehicle has been removed. In the event any such vehicle is stored in a public garage, a copy of such notice shall be given to the proprietor of such garage.

(d) After a vehicle has been impounded for more than ten days, the chief of police shall cause to be sent by registered mail a notice to the owner and any lienholder thereof, if after the exercise of due diligence said owner's or lienholder's name can be ascertained. The notice shall accurately describe the vehicle, give the date the vehicle was impounded, and inform the owner that unless he reclaims the vehicle within ten days from the dispatch thereof, the vehicle shall be sold. Not less than fifteen days after the dispatch of the letter, if the letter can be sent, and in any event if such letter cannot be sent, the chief of police shall cause to be posted in three public places in the city and borough a description of the vehicle, the owner's name if known, and state the facts that the vehicle and other similar vehicles similarly described will be sold at public auction to the highest responsible bidder at a public sale under the direction of the chief of police at a specified time and place, not less than ten days after the publication of the notice of sale. The chief of police shall keep a permanent accurate record of all vehicles impounded containing date of impoundment, description of vehicle, cause for which impounded, date of redemption if redeemed, an amount paid upon redemption, date of letter to owner if owner known, notice of sale, record of sale and price paid at sale and name of purchaser.

(e) If the highest bid at public auction shall not be equal to or greater than the towing and storage charges, the city and borough may reject the bid and attempt to sell the vehicle at subsequent public auction or negotiate for private sale; provided, however, the price obtained at private sale must be equal to or greater than the highest bid at public auction.

(f) The proceeds of a sale of any impounded vehicle shall be applied first against any and all costs of the city and borough involved in towing, impounding and storing the vehicle, and in conducting any sale thereof, with any remaining proceeds paid first to the lienholder if known, to the extent of his interest if any, then to the owner if known, or if unknown into the operating fund of the police department.

(g) Notwithstanding any other provisions of this section, whenever any vehicle located or standing upon any street or alley or right-of-way is or has been involved in an accident resulting in personal injury, or property damage in an amount of five hundred dollars or more as judged by a police officer, such vehicle may be removed from the streets and impounded by the police department for a period not to exceed five days for the purpose of having the vehicle inspected by a competent mechanic to determine whether the vehicle is mechanically safe. The expense of this type of inspection impoundment shall be borne by the city and borough. (Serial No. 2000-20 § 5, 2000; Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.060).

72.22.063 VEHICLE IMMOBILIZATION. (a) The manager or his designee may, subject to the limitations contained in this section, authorize the immobilization of any motor vehicle by the use of a vehicle immobilization device which, when attached to the wheel or other part of a motor vehicle, prevents that vehicle from being driven.

(b) No vehicle may be immobilized pursuant to this section unless there has been affixed to that or

any other vehicle owned by the same person, or that person has otherwise been issued, at least two municipal parking citations and has, with respect to each such citation, failed, within the time permitted by law, to:

- (1) Post or forfeit the bail specified for that offense; or
 - (2) Appear and answer to the charge.
- (c) The owner or operator of a vehicle immobilized pursuant to this section may obtain its release by:
- (1) Posting bail for each of the parking citations outstanding against the owner; and
 - (2) Paying the release service fee established by the manager or his designee.
- (d) A vehicle immobilized pursuant to this section may not be the subject of further parking citations during the period of immobilization.
- (e) If a vehicle immobilized pursuant to this section is not released within twenty-four hours, it may be impounded and shall thereafter be released only upon the posting of bail and payment of the service fee required under subsection (c) of this section and compliance by the owner or operator with Section 72.22.060.

It is unlawful for a person to purposely or recklessly and without authority, tamper with, remove, attempt to remove, damage or deface any vehicle immobilization device attached to any vehicle. (Serial No. 81-13 § 2, 1981; Serial No. 80-13 § 2, 1980).

72.22.065 AUTHORITY TO EFFECT REGULATIONS. The chief of police is hereby empowered, with approval of the assembly to make all necessary regulations to effect all provisions of this title. (Serial No. 71-59 § 4 (part), 1971; CBJ § 72.22.065).

Chapter 72.24

SNOW EMERGENCY AND REMOVAL

Sections:

- | | |
|-----------|---|
| 72.24.010 | Parking prohibition – Snow emergency routes. |
| 72.24.015 | Snow emergency routes designated. |
| 72.24.020 | Parking prohibition – Other streets. |
| 72.24.025 | Parking prohibition – Notice. |
| 72.24.030 | Parking prohibition – Violation – Impounding and removing vehicles. |
| 72.24.035 | Parking prohibition – Termination. |
| 72.24.040 | Snow emergency route – Stalled vehicle prohibited when. |
| 72.24.045 | Snow emergency route – Stalled vehicle – Procedure. |
| 72.24.050 | Illegally parked vehicle – Citation. |
| 72.24.055 | Illegally parked vehicle – Evidence. |
| 72.24.060 | Chapter provisions – Precedence. |
| 72.24.065 | Advancement of quitting-time traffic regulations. |
| 72.24.070 | Requirement for chains or studded tires. |
| 72.24.075 | Placing snow in public ways prohibited. |

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
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SECTIONAL ANALYSIS

CSHB 4 (), P Version Work Draft, 2/16/01

An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to court records of a conviction involving a violation of the Alaska Uniform Vehicle Code or another law, regulation, or ordinance regulating the driving of vehicles; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumption arising from the amount of alcohol in a person's breath or blood; and providing for an effective date.

Prepared by Representative Norman Rokeberg

- Section 1: Finding and intent section.
- Section 2: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 3: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 4: Adds new subsection setting forth that the presumptive sentence for manslaughter as a result of driving while under the influence of an alcoholic beverage or controlled substance is seven years.
- Section 5: Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 6: Requires the department of administration to refuse to register a vehicle if the applicant does not have a valid driver's license due to suspension or revocation or fails to register the vehicle using the applicant's first, middle, and last name or a business name.

- Section 7:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 8:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 9:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 10:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 11:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 12:** Provides for minimum periods of driver's license revocation after a person has been convicted of D.U.I. or convicted of refusing to take a breath test after being arrested for D.U.I.
- Section 13:** Requires that the court shall furnish the Division of Motor Vehicles with information on a driving conviction by the end of the following business day.
- Section 14:** Technical amendment relating to the authority of the court to grant limited driver's license privileges following a conviction for D.U.I.
- Section 15:** Creates a provision that allows a person with a revoked driver's license to obtain limited driver's license privileges following a conviction for D.U.I. or refusal to take a breath test. Mandates that any such license shall require that the vehicle be equipped with an ignition interlock device during the period of such limited license.
- Section 16:** Requires a person who loses their driver's license for D.U.I. or refusal to take a breath test to meet the alcoholism screening, evaluation, referral, and program requirements under AS 28.35.030(h) imposed under AS 28.15.1819(a)(5) or (8) in order to have license reissued.

- Section 17:** Doubles driver's license reinstatement fees for those convicted of D.U.I.
- Section 18:** Creates a new crime relating to knowingly allowing a person who has been convicted of felony D.U.I. to drive a vehicle you own or control. Defines the crime as a class A misdemeanor and provides minimum penalties.
- Section 19:** Technical amendments relating to driving with a canceled, suspended, or revoked driver's license, or in violation of a license limitation.
- Section 20:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 21:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law. Also changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance."
- Section 22:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the commercial motor vehicle implied consent law.
- Section 23:** Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Also changes references to "intoxicating liquor" to "alcoholic beverage".
- Section 24:** Changes a reference to "intoxicating liquor" to "alcoholic beverage".
- Section 25:** Changes references from driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 26:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Adds "an alcoholic beverage" to list of items that constitutes crime of driving while "under the influence of an alcoholic beverage or controlled substance". Reduces the legal limit for being intoxicated from 0.10 to 0.08 percent of alcohol in a person's blood.

- Section 27:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Changes the penalties for D.U.I.
- Section 28:** Changes law to establish that treatment providers must provide the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress. Such information may only be used in connection with court proceedings involving the defendant or the defendant's treatment and is otherwise confidential.
- Section 29:** Amends law to provide that Department of Health and Social Services shall establish standard for clinically appropriate treatment programs required under AS 28.35.030(h). Increases the limit imposed on cost of imprisonment required to be paid by a person convicted of D.U.I. Specifies that, as much as possible, treatment shall occur while incarcerated. Establishes that "cost of treatment" does not include costs incurred as a result of treatment not required under this subsection.
- Section 30:** Increases the limit imposed on the cost of imprisonment required to be paid by a person convicted of D.U.I. Specifies that imprisonment for a person convicted of D.U.I. cannot be served at a residential treatment facility or a hospital.
- Section 31:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Phases in a 10-year look back period and establishes that a person is guilty of a class C felony if convicted a third time since January 1, 1996, and within 10 years preceding the date of the offense. Increases the penalties for a conviction under this section, including jail time, fine, loss of driver's license, and forfeiture of the vehicle, watercraft or aircraft used in the offense. Revokes vehicle registration for all vehicles owned by the person convicted. Permits a co-owner to register the vehicle in that person's name.
- Section 32:** Changes references to driving " while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."

- Section 33:** Adds provisions relating to restoration of a driver's license following a D.U.I conviction, relating to the penalty for D.U.I. when the offender has a blood alcohol level of 0.16 or more, and relating to failure to satisfy alcoholism treatment requirements. Establish procedure for surrender of registration plate for any vehicle registered or co-registered in convicted person's name.
- Section 34:** Makes technical amendments relating to implied consent law. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of the implied consent law.
- Section 35:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for the purposes of administering a breath test under the implied consent law.
- Section 36:** Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administering a breath or blood test under the implied consent law when there is a motor vehicle accident that causes death or serious physical injury.
- Section 37:** Adds new section providing that the implied consent statute was not intended to prevent the police search warrants.
- Section 38:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 39:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 40:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 41:** Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance." Also changes certain presumptions applicable to civil or criminal action involving a person alleged to have driven while under the influence of an alcoholic beverage or controlled substance.

- Section 42:** Requires the police to inform a person undergoing a chemical test for intoxication of their right to have an independent chemical test and requires the department to make reasonable and good-faith efforts to assist the person to obtain an independent test.
- Section 43:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 44:** Conforming amendment to Section 45.
- Section 45:** Adds new section authorizing the police to obtain a blood sample where exigent circumstances prevent the police from administering a breath test.
- Section 46:** Requires the state to seek forfeiture of motor vehicle used in committing a D.U.I. or breath test offense. Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 47:** Adds new provision requiring registration of felony repeat D.U.I. offenders.
- Section 48:** Changes reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance."
- Section 49:** Applicability section.
- Section 50:** Section 47 effective date is July 1, 2002.
- Section 51:** With exception of Section 47, all other sections take effect July 1, 2001.

22-LS0046P
Ford
2/16/01

CS FOR HOUSE BILL NO. 4()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE ROKEBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft
2 while under the influence of an alcoholic beverage or controlled substance; relating to
3 court records of a conviction involving a violation of the Alaska Uniform Vehicle Code
4 or another law, regulation, or ordinance regulating the driving of vehicles; relating to
5 implied consent to take a chemical test; relating to registration of motor vehicles;
6 relating to presumptions arising from the amount of alcohol in a person's breath or
7 blood; and providing for an effective date."

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

9 * Section 1. The uncodified law of the State of Alaska is amended by adding a new section
10 to read:

11 FINDINGS AND INTENT. (a) The legislature finds that

- 12 (1) driving on state highways is a privilege granted to citizens;
- 13 (2) in order to keep the privilege of driving on state highways, a citizen must

1 follow state laws regarding safe driving;

2 (3) in 1998, there were 71 vehicle-related deaths in the state, and 31 were
3 alcohol-related;

4 (4) in 1999, there were 76 vehicle-related deaths in the state, and 40 were
5 alcohol-related;

6 (5) from 1998 to 1999, the number of traffic fatalities in Alaska rose by nine
7 percent;

8 (6) Alaska ranks in the top 15 states in terms of alcohol-related traffic
9 fatalities.

10 (b) It is the intent of this Act to reduce the number of alcohol-related traffic accidents
11 and fatalities.

12 * Sec. 2. AS 09.60.070(c)(14) is amended to read:

13 (14) driving while under the influence of an alcoholic beverage or
14 controlled substance [INTOXICATED] or another crime resulting from the operation
15 of a motor vehicle, boat, or airplane when the offender is under the influence of an
16 alcoholic beverage or controlled substance [INTOXICATED];

17 * Sec. 3. AS 12.25.033 is amended to read:

18 Sec. 12.25.033. Arrest without warrant for operating vehicle while under
19 the influence of an alcoholic beverage or controlled substance [INTOXICATED].

20 A peace officer may arrest a person without a warrant, whether or not the offense is
21 committed in the presence of the officer, when the officer has probable cause to
22 believe that the person to be arrested has committed the crime of operating a motor
23 vehicle, an aircraft, or a watercraft in violation of AS 28.35.030 or a similar city or
24 borough ordinance, if the violation is alleged to have occurred less than eight hours
25 before the time of arrest.

26 * Sec. 4. AS 12.55.125(c) is amended to read:

27 (c) A defendant convicted of a class A felony may be sentenced to a definite
28 term of imprisonment of not more than 20 years, and shall be sentenced to the
29 following presumptive terms, subject to adjustment as provided in AS 12.55.155 -
30 12.55.175:

31 (1) if the offense is a first felony conviction and does not involve

1 circumstances described in (2) of this subsection, five years;

2 (2) if the offense is a first felony conviction

3 (A) other than for manslaughter and the defendant possessed a
4 firearm, used a dangerous instrument, or caused serious physical injury during
5 the commission of the offense, or knowingly directed the conduct constituting
6 the offense at a uniformed or otherwise clearly identified peace officer, fire
7 fighter, correctional employee, emergency medical technician, paramedic,
8 ambulance attendant, or other emergency responder who was engaged in the
9 performance of official duties at the time of the offense, seven years;

10 (B) for manslaughter and the conduct resulting in the
11 conviction was knowingly directed towards a child under the age of 16, seven
12 years;

13 (C) for manslaughter and the conduct resulting in the
14 conviction involved driving while under the influence of an alcoholic
15 beverage or controlled substance. seven years;

16 (3) if the offense is a second felony conviction, 10 years;

17 (4) if the offense is a third felony conviction and the defendant is not
18 subject to sentencing under (1) of this section, 15 years.

19 * Sec. 5. AS 18.67.101 is amended to read:

20 Sec. 18.67.101. Incidents and offenses to which this chapter applies. The
21 board may order the payment of compensation in accordance with the provisions of
22 this chapter for personal injury or death that resulted from

23 (1) an attempt on the part of the applicant to prevent the commission of
24 crime, or to apprehend a suspected criminal, or aiding or attempting to aid a police
25 officer to do so, or aiding a victim of crime; or

26 (2) the commission or attempt on the part of one other than the
27 applicant to commit any of the following offenses:

28 (A) murder in any degree;

29 (B) manslaughter;

30 (C) criminally negligent homicide;

31 (D) assault in any degree;

- 1 (E) kidnapping;
- 2 (F) sexual assault in any degree;
- 3 (G) sexual abuse of a minor;
- 4 (H) robbery in any degree;
- 5 (I) threats to do bodily harm; or
- 6 (J) driving while under the influence of an alcoholic
7 beverage or controlled substance [INTOXICATED] or another crime
8 resulting from the operation of a motor vehicle, boat, or airplane when the
9 offender is under the influence of an alcoholic beverage or controlled
10 substance [INTOXICATED].

11 * Sec. 6. AS 28.10.041 is amended by adding a new subsection to read:

12 (d) The department shall refuse to register a vehicle if the applicant

13 (1) does not have a valid driver's license and the applicant's license or
14 privilege to obtain a license has been suspended or revoked; or

15 (2) fails to register the vehicle using the applicant's first, middle, and
16 last name or a business name.

17 * Sec. 7. AS 28.15.046(d) is amended to read:

18 (d) The department may not issue a license to an applicant who has been
19 convicted of driving while under the influence of an alcoholic beverage or
20 controlled substance [INTOXICATED] under AS 28.35.030 within two years of the
21 time of application or to an applicant who has two or more convictions for driving
22 while under the influence of an alcoholic beverage or controlled substance
23 [INTOXICATED] within 10 years of the time of application.

24 * Sec. 8. AS 28.15.081(a) is amended to read:

25 (a) The department shall examine every applicant for a driver's license. The
26 examination must include a test of the applicant's (1) eyesight, (2) ability to read and
27 understand official traffic control devices, (3) knowledge of safe driving practices, (4)
28 knowledge of the effects of alcohol and drugs on drivers and the dangers of driving
29 under the influence of alcohol or drugs, (5) knowledge of the laws on driving while
30 under the influence of an alcoholic beverage or controlled substance
31 [INTOXICATED], (6) knowledge of the laws on financial responsibility and

1 mandatory motor vehicle liability insurance, and (7) knowledge of the traffic laws and
2 regulations of the state. The examination may include a demonstration of ability to
3 exercise ordinary and reasonable control in the driving of a motor vehicle of the type
4 and general class of vehicles for which the applicant seeks a license. However, an
5 applicant who has not been previously issued a driver's license by this or another
6 jurisdiction shall demonstrate ability and shall present medical information that the
7 department reasonably requires to determine fitness to safely drive a motor vehicle of
8 the type and general class of vehicles for which the applicant seeks a license.

9 * Sec. 9. AS 28.15.165(c) is amended to read:

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

22 (1) that a chemical test administered under AS 28.33.031(a) or
23 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2), that a
24 chemical test administered under AS 28.33.031(a) produced a result described in
25 AS 28.33.030(a)(2), or that a person refused to submit to a chemical test authorized
26 under AS 28.33.031(a) or AS 28.35.031(a) or (g);

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

28 (3) describing the

29 (A) circumstances surrounding the arrest and the grounds for
30 the officer's belief that the person operated a motor vehicle, commercial motor
31 vehicle, or aircraft while under the influence of an alcoholic beverage or

1 controlled substance [INTOXICATED] in violation of AS 28.33.030 or
2 AS 28.35.030; or

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

6 * Sec. 10. AS 28.15.166(g) is amended to read:

7 (g) The hearing for review of action by the department under AS 28.15.165
8 shall be limited to the issues of whether the law enforcement officer had probable
9 cause [REASONABLE GROUNDS] to believe that the person was operating a motor
10 vehicle or commercial motor vehicle that was involved in an accident causing death or
11 serious physical injury to another, or that the person was operating a motor vehicle,
12 commercial motor vehicle, or aircraft while under the influence of an alcoholic
13 beverage or controlled substance [INTOXICATED] in violation of AS 28.33.030 or
14 AS 28.35.030 and whether

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

20 (2) the chemical test administered under AS 28.33.031(a) or
21 AS 28.35.031(a) or (g) produced a result described in AS 28.35.030(a)(2); or

22 (3) the chemical test administered under AS 28.33.031(a) produced a
23 result described in AS 28.33.030(a)(2).

24 * Sec. 11. AS 28.15.181(a) is amended to read:

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

27 (1) manslaughter or negligent homicide resulting from driving a motor
28 vehicle;

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

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

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

3 (5) operating a motor vehicle or aircraft while under the influence of
4 an alcoholic beverage or controlled substance [INTOXICATED];

5 (6) reckless driving;

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

8 (8) refusal to submit to a chemical test authorized under
9 AS 28.33.031(a) or AS 28.35.031(a) while under arrest for operating a motor vehicle,
10 commercial motor vehicle, or aircraft while under the influence of an alcoholic
11 beverage or controlled substance [INTOXICATED], or authorized under
12 AS 28.35.031(g);

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

15 (10) vehicle theft in the first degree in violation of AS 11.46.360 or
16 vehicle theft in the second degree in violation of AS 11.46.365.

17 * Sec. 12. AS 28.15.181(c) is amended to read:

18 (c) A court convicting a person of an offense described in (a)(5) or (8) of this
19 section arising out of the operation of a motor vehicle, commercial motor vehicle, or
20 aircraft shall revoke that person's driver's license, privilege to drive, or privilege to
21 obtain a license. The revocation may be concurrent with or consecutive to an
22 administrative revocation under AS 28.15.165. The court may not, except as provided
23 in AS 28.15.201, grant limited license privileges during the minimum period of
24 revocation. The minimum periods of revocation are [:]

25 (1) not less than 45 days if the person has not been previously
26 convicted and if the court has suspended the execution of the sentence of
27 imprisonment under AS 28.35.030(b)(1)(A)(i);

28 (2) not less than 90 days if the person has not been previously
29 convicted and if the court has not suspended the execution of the sentence of
30 imprisonment under AS 28.35.030(b)(1)(A)(i);

31 (3) [(2)] not less than one year if the person has been previously

1 convicted once;

2 (4) [(3)] not less than 3 years if the person has been previously
3 convicted twice;

4 (5) [(4)] not less than 5 years if the person has been previously
5 convicted more than twice.

6 * Sec. 13. AS 28.15.191(a) is amended to read:

7 (a) A court that convicts a person of an offense under this title or a regulation
8 adopted under this title, or another law or regulation of this state, or a municipal
9 ordinance that regulates the driving of vehicles, shall forward a record of the
10 conviction to the department by the end of the following business day. A conviction
11 of a standing or parking offense need not be reported.

12 * Sec. 14. AS 28.15.201(d) is amended to read:

13 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
14 a license under AS 28.15.181(c)(2), (3), (4), or (5) [AS 28.15.181(c)], or the
15 department when revoking a driver's license, privilege to drive, or privilege to obtain a
16 license under AS 28.15.165(c), may grant limited license privileges for the final 60
17 days during which the license is revoked if

18 (1) the revocation was for a violation of AS 28.15.181(a)(5) and not
19 for a violation of AS 28.15.181(a)(8);

20 (2) the person has not been previously convicted; in this paragraph,
21 "previously convicted" has the meaning given in AS 28.35.030 and also includes
22 convictions based on laws presuming that the person was under the influence of
23 intoxicating liquor if there was 0.08 percent or more by weight of alcohol in the
24 person's blood;

25 (3) the court or the department determines that the person's ability to
26 earn a livelihood would be severely impaired without a limited license;

27 (4) the court or the department determines that a limitation under (a) of
28 this section can be placed on the license that will enable the person to earn a livelihood
29 without excessive danger to the public; and

30 (5) the court or the department determines that the person has met [IS
31 ENROLLED IN AND IS IN COMPLIANCE WITH, OR HAS SUCCESSFULLY

1 COMPLETED, AN] alcoholism screening, evaluation, referral, and [EDUCATION
2 AND REHABILITATION TREATMENT] program requirements of the
3 Department of Health and Social Services under AS 28.35.030(h).

4 * Sec. 15. AS 28.15.201 is amended by adding a new subsection to read:

5 (e) A court revoking a driver's license, privilege to drive, or privilege to obtain
6 a license under AS 28.15.181(c)(1), or the department when revoking a driver's
7 license, privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may
8 grant limited license privileges for the final 30 days during which the license is
9 revoked, if the person's driver's license is not revoked, suspended, denied, or canceled
10 under another provision of law. During the remainder of the probationary period
11 imposed under AS 28.35.030(b)(1)(A)(i) that follows the period of revocation
12 imposed under AS 28.15.181(c)(1), a person may only obtain limited license
13 privileges. The court revoking the license and privileges may grant limited license
14 privileges necessary to enable the person to earn a livelihood without excessive risk or
15 danger to the public. If the court grants limited license privileges, the court shall
16 require that the person only operate a vehicle that is equipped with a properly
17 functioning ignition interlock device and shall issue to the person a certificate valid for
18 the duration of the probation. The person who has received limited license privileges
19 under this subsection shall comply with AS 28.20 relating to proof of financial
20 responsibility. Upon successful completion of probation, the person may apply for a
21 new license under AS 28.15.211.

22 * Sec. 16. AS 28.15.211(d) is amended to read:

23 (d) At the end of a period of revocation or limitation following a revocation, a
24 person whose driver's license has been revoked may apply to the department for the
25 issuance of a new license, but shall submit to reexamination, pay all required fees
26 including a reinstatement fee, and, if the license was revoked under
27 AS 28.15.181(a)(5) or (8), submit proof to the court or the department that the
28 person has met the alcoholism screening, evaluation, referral, and program
29 requirements of the Department of Health and Social Services under
30 AS 28.35.030(h) [OF

31 (1) ENROLLMENT IN AND COMPLIANCE WITH OR

1 COMPLETION OF AN ALCOHOLISM EDUCATION AND REHABILITATION
2 TREATMENT PROGRAM APPROVED UNDER AS 47.37 IF THE PERSON WAS
3 SENTENCED UNDER AS 28.15.181(c)(1); OR

4 (2) COMPLETION OF AND PAYMENT FOR AN ALCOHOLISM
5 EDUCATION AND REHABILITATION TREATMENT PROGRAM APPROVED
6 UNDER AS 47.37 IF THE PERSON WAS CONVICTED UNDER
7 AS 28.15.181(c)(2) - (4)].

8 * Sec. 17. AS 28.15.271(b) is amended to read:

9 (b) In addition to the fees under (a) of this section,

10 (1) a person who renews a driver's license by mail shall pay a fee of
11 \$1;

12 (2) a person who applies for a limited driver's license under
13 AS 28.15.201 shall pay a fee of \$100; and

14 (3) a person who applies for reinstatement of a driver's license under
15 AS 28.15.211 shall pay a fee of

16 (A) \$100 if the person's driver's license has, within the 10 years
17 preceding the application, been suspended, revoked, or limited under the
18 provisions of this chapter, except as provided by (C) of this paragraph, only
19 once; [OR]

20 (B) \$250 if the person's driver's license has, within the 10 years
21 preceding the application, been suspended, revoked, or limited under the
22 provisions of this chapter, except as provided by (D) of this paragraph, two
23 or more times;

24 (C) \$200 if the person's driver's license has, within the 10
25 years preceding the application, been revoked under AS 28.35.030 only
26 once; or

27 (D) \$500 if the person's driver's license has, within the 10
28 years preceding the application, been revoked under AS 28.35.030 two or
29 more times.

30 * Sec. 18. AS 28.15.281 is amended by adding a new subsection to read:

31 (c) A person who violates (b) of this section by knowingly allowing a person

1 who is not validly licensed as a result of a conviction under AS 28.35.030(n) to drive a
2 motor vehicle is, upon conviction, guilty of a class A misdemeanor, and the court shall

3 (1) revoke the person's driver's license, privilege to drive, or privilege
4 to obtain a license for 30 days;

5 (2) impose a minimum fine of \$1,000; and

6 (3) if the person has been previously convicted under this section,
7 require the person to complete an alcoholism program required under
8 AS 28.35.030(h).

9 * Sec. 19. AS 28.15.291(b) is amended to read:

10 (b) Upon conviction under (a) of this section, the court

11 (1) shall impose a minimum sentence of imprisonment

12 (A) if the person has not been previously convicted, of not less
13 than 10 days with 10 days suspended, including a mandatory condition of
14 probation that the defendant complete not less than 80 hours of community
15 work service;

16 (B) if the person has been previously convicted, of not less than
17 10 days;

18 (C) if the person's driver's license, privilege to drive, or
19 privilege to obtain a license was revoked under circumstances described in
20 AS 28.15.181(c)(1) or (2) [AS 28.15.181(c)(1),] or if the person was driving in
21 violation of a limited license issued under AS 28.15.201(d) or (e) following
22 that revocation, of not less than 20 days with 10 days suspended, and a fine of
23 not less than \$500, including a mandatory condition of probation that the
24 defendant complete not less than 80 hours of community work service;

25 (D) if the person's driver's license, privilege to drive, or
26 privilege to obtain a license was revoked under circumstances described in
27 AS 28.15.181(c)(3), (4), or (5) [AS 28.15.181(c)(2), (3), OR (4)] or if the
28 person was driving in violation of a limited license issued under
29 AS 28.15.201(d) following that revocation, of not less than 30 days and a fine
30 of not less than \$1,000;

31 (2) may impose additional conditions of probation;

1 (3) may not

2 (A) suspend execution of sentence or grant probation except on
3 condition that the person serve a minimum term of imprisonment and perform
4 required community work service as provided in (1) of this subsection;

5 (B) suspend imposition of sentence; and

6 (4) shall revoke the person's license, privilege to drive, or privilege to
7 obtain a license, and the person may not be issued a new license or a limited license
8 nor may the privilege to drive or obtain a license be restored for an additional period
9 of not less than 90 days after the date that the person would have been entitled to
10 restoration of driving privileges.

11 * Sec. 20. AS 28.33.030 is amended to read:

12 Sec. 28.33.030. Operating a commercial motor vehicle while under the
13 influence of an alcoholic beverage or controlled substance [INTOXICATED]. (a)
14 A person commits the crime of operating a commercial motor vehicle while under the
15 influence of an alcoholic beverage or controlled substance [INTOXICATED] if the
16 person operates a commercial motor vehicle

17 (1) while under the influence of an alcoholic beverage
18 [INTOXICATING LIQUOR] or any controlled substance;

19 (2) when, as determined by a chemical test taken within four hours
20 after the alleged offense was committed, there is 0.04 percent or more by weight of
21 alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of
22 blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's
23 breath; or

24 (3) while under the combined influence of an alcoholic beverage
25 [INTOXICATING LIQUOR] and a controlled substance.

26 (b) Operating a commercial motor vehicle while under the influence of an
27 alcoholic beverage or controlled substance [INTOXICATED] is a class A
28 misdemeanor.

29 (c) The sentencing of a person convicted under this section shall be in
30 accordance with the minimum periods of imprisonment, fines, rehabilitative treatment,
31 and other provisions of AS 28.35.030, as if the person had been convicted of a

1 violation of AS 28.35.030. For purposes of sentencing, convictions for operating a
2 commercial motor vehicle while under the influence of an alcoholic beverage or
3 controlled substance [INTOXICATED] under this section, and for refusal to submit
4 to a chemical test under AS 28.33.032, if arising out of a single transaction, are
5 considered one previous conviction.

6 * Sec. 21. AS 28.33.031(a) is amended to read:

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

9 (1) of the person's breath if lawfully arrested for an offense arising out
10 of acts alleged to have been committed when the person was operating the commercial
11 motor vehicle while under the influence of an alcoholic beverage or controlled
12 substance [INTOXICATED]; the test or tests may be administered at the direction of
13 a law enforcement officer who has probable cause [REASONABLE GROUNDS] to
14 believe that the person was operating a commercial motor vehicle while under the
15 influence of an alcoholic beverage or controlled substance [INTOXICATED] in
16 violation of AS 28.33.030 or AS 28.35.030;

17 (2) of the person's breath and blood for the purpose of determining the
18 alcoholic content of the person's breath and blood and is considered to have given
19 consent to a chemical test or tests of the person's blood and urine for the purpose of
20 determining the presence of controlled substances in the person's blood and urine if
21 the person is involved in a motor vehicle accident that causes death or serious physical
22 injury to another person; the test or tests may be administered at the direction of a law
23 enforcement officer who has probable cause [REASONABLE GROUNDS] to
24 believe that the person was operating a commercial motor vehicle that was involved in
25 an accident causing death or serious physical injury to another person.

26 * Sec. 22. AS 28.33.031(c) is amended to read:

27 (c) A person who operates a commercial motor vehicle is considered to have
28 given consent to a preliminary breath test, at the direction of a law enforcement
29 officer, for the purpose of determining the alcoholic content of the person's blood or
30 breath. A law enforcement officer may administer a preliminary breath test if the
31 officer has probable cause [REASONABLE GROUNDS] to believe that the person's

1 ability to operate a commercial motor vehicle is impaired by the ingestion of alcoholic
2 beverages and that

3 (1) the commercial motor vehicle caused injury to person or property;

4 (2) the person violated the provisions of AS 28.33.130(a) or violated
5 the terms of an out-of-service order issued under AS 28.33.130; or

6 (3) the person unlawfully operated a commercial motor vehicle; in this
7 paragraph, "unlawfully" means in violation of any federal, state, or municipal statute,
8 regulation, or ordinance.

9 * Sec. 23. AS 28.33.033(a) is amended to read:

10 (a) Upon the trial of a civil or criminal action or proceedings arising out of
11 acts alleged to have been committed by a person operating a commercial motor
12 vehicle while under the influence of an alcoholic beverage [INTOXICATED] in
13 violation of AS 28.33.030, the following rules apply with regard to the amount of
14 alcohol in the person's blood or breath at the time alleged:

15 (1) if there was less than 0.04 percent by weight of alcohol in the
16 person's blood, or less than 40 milligrams of alcohol per 100 milliliters of the person's
17 blood, or less than 0.04 grams of alcohol per 210 liters of the person's breath, that fact
18 does not give rise to a presumption that the person was or was not under the influence
19 of an alcoholic beverage [INTOXICATING LIQUOR], but that fact may be
20 considered with other competent evidence in determining whether the person was
21 under the influence of an alcoholic beverage [INTOXICATING LIQUOR];

22 (2) if there was 0.04 percent or more by weight of alcohol in the
23 person's blood, or 40 milligrams or more of alcohol per 100 milliliters of the person's
24 blood, or 0.04 grams or more of alcohol per 210 liters of the person's breath, it is
25 presumed that the person was under the influence of an alcoholic beverage
26 [INTOXICATING LIQUOR].

27 * Sec. 24. AS 28.33.033(c) is amended to read:

28 (c) The provisions of (a) of this section may not be construed to limit the
29 introduction of any other competent evidence bearing upon the question of whether
30 the person was or was not under the influence of an alcoholic beverage
31 [INTOXICATING LIQUOR].

1 * Sec. 25. AS 28.33.140(a) is amended to read:

2 (a) In addition to the court action provided in AS 28.15.181, conviction of any
3 of the following offenses is grounds for immediate disqualification from driving a
4 commercial motor vehicle for the periods set out in this section:

5 (1) operating a commercial motor vehicle while under the influence
6 of an alcoholic beverage or controlled substance [INTOXICATED] in violation of
7 AS 28.33.030;

8 (2) refusal to submit to a chemical test in violation of AS 28.35.032;

9 (3) operating a motor vehicle while under the influence of an
10 alcoholic beverage or controlled substance [INTOXICATED] in violation of
11 AS 28.35.030;

12 (4) leaving the scene of an accident in violation of AS 28.35.060, or
13 failing to file, or providing false information in, an accident report in violation of
14 AS 28.35.110;

15 (5) a felony under state or federal law, which was facilitated because
16 the person used a commercial motor vehicle;

17 (6) a serious traffic violation; or

18 (7) driving after being placed out of service in violation of regulations
19 adopted under AS 28.05.011.

20 * Sec. 26. AS 28.35.030(a) is amended to read:

21 (a) A person commits the crime of driving while under the influence of an
22 alcoholic beverage or controlled substance [INTOXICATED] if the person operates
23 or drives a motor vehicle or operates an aircraft or a watercraft

24 (1) while under the influence of an alcoholic beverage, intoxicating
25 liquor, or any controlled substance;

26 (2) when, as determined by a chemical test taken within four hours
27 after the alleged offense was committed, there is 0.08 [0.10] percent or more by
28 weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per
29 100 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210
30 liters of the person's breath; or

31 (3) while the person is under the combined influence of an alcoholic

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beverage, an intoxicating liquor, and a controlled substance.

* Sec. 27. AS 28.35.030(b) is amended to read:

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage or controlled substance [INTOXICATED] is a class A misdemeanor. Upon conviction,

(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 \$500 [\$250] if the person has not been previously convicted, except that if

(i) there were no aggravating circumstances associated with the acts upon which the conviction is based and, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.1 percent but not more than 0.1 percent by weight of alcohol in the person's blood or 80 milligrams but not more than 100 milligrams of alcohol per 100 milliliters of blood, or when there is 0.08 grams but not more than 0.10 grams of alcohol per 210 liters of the person's breath, the court shall suspend the execution of the sentence of imprisonment upon the condition that the person successfully completes one year of probation during which the person does not commit an alcohol-related offense or a traffic offense, the person successfully completes the program requirements imposed under (h) of this section, the person pays the cost of treatment required under (h) of this section, the person performs three days of community service, and the person pays the fine imposed by the court under this subparagraph: upon determination by the court that the person has satisfied the terms of probation, the court shall discharge the defendant; however, if the court determines that the terms of probation have not been satisfied within one year from the date on which the terms were set by the court, the court shall require the execution of the sentence of imprisonment determined under this

1 subparagraph:

2 (ii) the person had, as determined by a chemical test
3 taken within four hours after the alleged offense was committed,
4 more than 0.10 percent by weight of alcohol in the person's blood
5 or more than 100 milligrams of alcohol per 100 milliliters of blood,
6 or when there are more than 0.10 grams of alcohol per 210 liters of
7 the person's breath, the court shall impose a fine of \$1,500;

8 (B) not less than 30 days, or not less than 20 days if the
9 person performs 10 days of community service, and a fine of not less than
10 \$3,000 [\$500] if the person has been previously convicted once, except as
11 provided under (q) of this section;

12 [(C) NOT LESS THAN 60 DAYS AND A FINE OF NOT
13 LESS THAN \$1,000 IF THE PERSON HAS BEEN PREVIOUSLY
14 CONVICTED TWICE AND IS NOT SUBJECT TO PUNISHMENT UNDER
15 (n) OF THIS SECTION;

16 (D) NOT LESS THAN 120 DAYS AND A FINE OF NOT
17 LESS THAN \$2,000 IF THE PERSON HAS BEEN PREVIOUSLY
18 CONVICTED THREE TIMES AND IS NOT SUBJECT TO PUNISHMENT
19 UNDER (n) OF THIS SECTION;

20 (E) NOT LESS THAN 240 DAYS AND A FINE OF NOT
21 LESS THAN \$3,000 IF THE PERSON HAS BEEN PREVIOUSLY
22 CONVICTED FOUR TIMES AND IS NOT SUBJECT TO PUNISHMENT
23 UNDER (n) OF THIS SECTION;

24 (F) NOT LESS THAN 360 DAYS AND A FINE OF NOT
25 LESS THAN \$4,000 IF THE PERSON HAS BEEN PREVIOUSLY
26 CONVICTED MORE THAN FOUR TIMES AND IS NOT SUBJECT TO
27 PUNISHMENT UNDER (n) OF THIS SECTION;]

28 (2) the court may not, except as provided under (1)(A)(i) of this
29 subsection,

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

subsection;

(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 to be forfeited under AS 28.35.036.

* Sec. 28 AS 28.35.030(d) is amended to read:

(d) Except as prohibited by federal law or regulation, every provider of treatment programs to which persons are ordered under [(h) OF] this section shall supply the judge, prosecutor, defendant, and an agency involved in the defendant's treatment with information and reports concerning the defendant's past and present assessment, treatment, and progress [ALASKA COURT SYSTEM WITH THE INFORMATION REGARDING THE CONDITION AND TREATMENT OF THOSE PERSONS AS THE SUPREME COURT MAY REQUIRE BY RULE]. Information compiled under this subsection is confidential and may only be used in connection with court proceedings involving the defendant or the defendant's treatment [BY A COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION, OR BY AN OFFICER OF THE COURT IN PREPARING A PRESENTENCE REPORT FOR THE USE OF THE COURT IN SENTENCING A PERSON CONVICTED UNDER THIS SECTION].

* Sec. 29. AS 28.35.030(h) is amended to read:

(h) The court shall order a person convicted under this section to satisfy the screening, evaluation, referral, and program requirements of an alcohol safety action program if such a program is available in the community where the person resides, or a private or public treatment facility approved by the division of alcoholism and drug abuse, of the Department of Health and Social Services, under AS 47.37 to make referrals for rehabilitative treatment or to provide rehabilitative treatment. The Department of Health and Social Services shall, by regulation, establish standards for clinically appropriate treatment required under this subsection. The treatment standards established under this subsection must include compliance with alcohol or drug treatment, anger management, counseling,

" MAY NOT EXCEED ^{\$} 2000 " ISSUE

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1 parent training, and domestic violence prevention. If a person is convicted under
2 (n) of this section, the court shall order the person to be evaluated as required by this
3 subsection before the court imposes sentence for the offense. Treatment required
4 under this subsection shall occur, as much as possible, when the person is
5 incarcerated. The cost of treatment required under this subsection shall be paid
6 to the state by the person being treated. The cost of treatment required to be
7 paid to the state under this subsection may not exceed \$2,000. Upon the person's
8 conviction, the court shall include reimbursement of the cost of treatment as a
9 part of the sentence. Except for reimbursement from a permanent fund dividend
10 as provided in this subsection, payment of the cost of treatment is not required if
11 the court determines the person is indigent. For costs of treatment that are not
12 paid by the person as required by this subsection, the state shall seek
13 reimbursement from the person's permanent fund dividend as provided in
14 AS 43.23.065. In this subsection, "cost of treatment" does not include costs
15 incurred as a result of treatment not required under the treatment standards
16 established under this subsection.

17 * Sec. 30. AS 28.35.030(k) is amended to read:

18 (k) Imprisonment required under (b)(1)(A) or (B) of this section shall be
19 served at a community residential center or, if a community residential center is not
20 available, at another appropriate place determined by the commissioner of corrections.
21 The cost of imprisonment resulting from the sentence imposed under (b)(i) of this
22 section shall be paid to the state by the person being sentenced provided, however, that
23 the cost of imprisonment required to be paid under this subsection may not exceed
24 \$2,000 [~~\$1,000~~]. Upon the person's conviction, the court shall include the costs of
25 imprisonment as a part of the judgment of conviction. Except for reimbursement from
26 a permanent fund dividend as provided in this subsection, payment of the cost of
27 imprisonment is not required if the court determines the person is indigent. For costs
28 of imprisonment that are not paid by the person as required by this subsection, the
29 state shall seek reimbursement from the person's permanent fund dividend as provided
30 under AS 43.23.065. While at the community residential center or other appropriate
31 place, a person sentenced under (b)(1)(A) of this section shall perform at least 24

1 hours of community service work, and a person sentenced under (b)(1)(B) of this
 2 section shall perform at least 160 hours of community service work, as required by the
 3 director of the community residential center or other appropriate place. In this
 4 subsection, "appropriate place" means a facility with 24-hour on-site staff supervision
 5 that is specifically adapted to provide a residence, and includes a correctional center,
 6 [RESIDENTIAL TREATMENT FACILITY, HOSPITAL,] halfway house, group
 7 home, work farm, work camp, or other place that provides varying levels of
 8 restriction: "appropriate place" does not mean a residential treatment facility or a
 9 hospital.

10 * Sec. 31. AS 28.35.030(n) is amended to read:

11 (n) A person is guilty of a class C felony if the person is convicted under (a)
 12 of this section [OF DRIVING WHILE INTOXICATED] and has been previously
 13 convicted two or more times since January 1, 1996, and within the 10 [FIVE] years
 14 preceding the date of the present offense. For purposes of determining minimum
 15 sentences based on previous convictions, the provisions of (o)(4) of this section apply.
 16 Upon conviction, the court

17 (1) shall impose a fine of not less than \$10,000 [\$5,000] and, except as
 18 provided under (q) of this section, a minimum sentence of imprisonment of not less
 19 than

20 (A) 240 [120] days if the person has been previously convicted
 21 twice;

22 (B) 480 [240] days if the person has been previously convicted
 23 three times;

24 (C) two years [360 DAYS] if the person has been previously
 25 convicted four or more times;

26 (2) may not

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

30 (B) suspend imposition of sentence;

31 (3) shall permanently revoke the person's driver's license, privilege to

1 drive, or privilege to obtain a license subject to restoration of the license under (p)
2 of this section [UNDER AS 28.15.181(c)];

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

7 (5) shall [MAY] also order forfeiture under AS 28.35.036 of the
8 vehicle, watercraft, or aircraft used in the commission of the offense, subject to
9 remission under AS 28.35.037; and

10 (6) shall order the department to revoke the registration for any
11 vehicle registered by the department in the name of the person convicted under
12 this subsection; if a person convicted under this subsection is a registered co-
13 owner of a vehicle, the department shall reissue the vehicle registration and omit
14 the name of the person convicted under this subsection.

15 * Sec. 32. AS 28.35.030(o) is amended to read:

16 (o) In this section,

17 (1) REPEALED

18 (2) "operate an aircraft" means to [USE,] navigate, pilot, or taxi an
19 aircraft in the airspace over this state, or upon the land or water inside this state;

20 (3) "operate a watercraft" means to navigate [OR USE] a vessel used
21 or capable of being used as a means of transportation on water for recreational or
22 commercial purposes on all waters, fresh or salt, inland or coastal, inside the territorial
23 limits or under the jurisdiction of the state;

24 (4) "previously convicted" means having been convicted in this or
25 another jurisdiction, [WITHIN 10 YEARS PRECEDING THE DATE OF THE
26 PRESENT OFFENSE,] of any of the following offenses; however, convictions for any
27 of these offenses, if arising out of a single transaction and a single arrest, are
28 considered one previous conviction:

29 (A) operating a motor vehicle, aircraft, or watercraft while
30 under the influence of an alcoholic beverage or controlled substance
31 [INTOXICATED,] in violation of this section or in violation of another law or

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ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under (a)(2) of this section;

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

(C) operating a commercial motor vehicle while under the influence of an alcoholic beverage or controlled substance [INTOXICATED] in violation of AS 28.33.030 or in violation of another law or ordinance with similar elements, except that the other law or ordinance may provide for a lower level of alcohol in the person's blood or breath than imposed under AS 28.33.030(a)(2).

* Sec. 33. AS 28.35.030 is amended by adding new subsections to read:

(p) Upon request, the department shall review a driver's license revocation imposed under (n)(3) of this section and shall restore the driver's license if

(1) the license has been revoked for a period of at least 10 years;

(2) the person has not been convicted of a criminal offense since the license was revoked; and

(3) the person provides proof of financial responsibility.

(q) If a person is convicted under this section and the person had, as determined by a chemical test taken within four hours after the alleged offense was committed, 0.16 percent or more by weight of alcohol in the person's blood or 160 milligrams or more of alcohol per 100 milliliters of blood, or when there are 0.16 grams or more of alcohol per 210 liters of the person's breath, the court shall

(1) add six months to the minimum sentence of imprisonment otherwise required under this section; and

(2) require the person to complete a 30-day residential alcoholism treatment program under (h) of this section if such a program is available in the community where the person resides.

(r) A person who fails to satisfy alcoholism treatment requirements imposed by the court or an authorized agency under (h) of this section is not eligible for good

1 time deductions credited under AS 33.20.

2 (s) If a person is convicted under this section and has been previously
3 convicted, the court shall order the person to surrender the registration plates for any
4 vehicle registered or co-registered in the person's name. The person shall surrender
5 the registration plates to the department by the close of the next business day. A
6 person other than the person convicted under this section who applies to register a
7 motor vehicle that has registration plates that were required to be surrendered under
8 this section but that were not surrendered as required by this subsection may not
9 register the vehicle unless the person registering the vehicle provides proof
10 satisfactory to the department that the person did not know that the registration plates
11 were required to be surrendered under this subsection or the person pays twice the
12 applicable registration fee required under AS 28.10.421.

13 * Sec. 34. AS 28.35.031(a) is amended to read:

14 (a) A person who operates or drives a motor vehicle in this state or who
15 operates an aircraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(2)] or who
16 operates a watercraft as defined in AS 28.35.030(o) [AS 28.35.030(o)(3)] shall be
17 considered to have given consent to a chemical test or tests of the person's breath for
18 the purpose of determining the alcoholic content of the person's blood or breath if
19 lawfully arrested for an offense arising out of acts alleged to have been committed
20 while the person was operating or driving a motor vehicle or operating an aircraft or a
21 watercraft while under the influence of an alcoholic beverage or controlled
22 substance [INTOXICATED] or if lawfully arrested under AS 28.35.280 for the
23 offense of minor operating a vehicle after consuming alcohol. The test or tests shall
24 be administered at the direction of a law enforcement officer who has probable cause
25 [REASONABLE GROUNDS] to believe that the person was operating or driving a
26 motor vehicle or operating an aircraft or a watercraft in this state while under the
27 influence of an alcoholic beverage or controlled substance [INTOXICATED] or
28 that the person was a minor operating a vehicle after consuming alcohol.

29 * Sec. 35. AS 28.35.031(b) is amended to read:

30 (b) A person who operates or drives a motor vehicle in this state or who
31 operates an aircraft or watercraft shall be considered to have given consent to a

1 preliminary breath test for the purpose of determining the alcoholic content of the
2 person's blood or breath. A law enforcement officer may administer a preliminary
3 breath test at the scene of the incident if the officer has probable cause
4 [REASONABLE GROUNDS] to believe that a person's ability to operate a motor
5 vehicle, aircraft, or watercraft is impaired by the ingestion of alcoholic beverages and
6 that the person

7 (1) was operating or driving a motor vehicle, aircraft, or watercraft that
8 is involved in an accident;

9 (2) committed a moving traffic violation or unlawfully operated an
10 aircraft or watercraft; in this paragraph, "unlawfully" means in violation of any
11 federal, state, or municipal statute, regulation, or ordinance, except for violations that
12 do not provide reason to believe that the operator's ability to operate the aircraft or
13 watercraft was impaired by the ingestion of alcoholic beverages; or

14 (3) was operating or driving a motor vehicle in violation of
15 AS 28.35.029(a).

16 * Sec. 36. AS 28.35.031(g) is amended to read:

17 (g) A person who operates or drives a motor vehicle in this state shall be
18 considered to have given consent to a chemical test or tests of the person's breath and
19 blood for the purpose of determining the alcoholic content of the person's breath and
20 blood and shall be considered to have given consent to a chemical test or tests of the
21 person's blood and urine for the purpose of determining the presence of controlled
22 substances in the person's blood and urine if the person is involved in a motor vehicle
23 accident that causes death or serious physical injury to another person. The test or
24 tests may be administered at the direction of a law enforcement officer who has
25 probable cause [REASONABLE GROUNDS] to believe that the person was
26 operating or driving a motor vehicle in this state that was involved in an accident
27 causing death or serious physical injury to another person.

28 * Sec. 37. AS 28.35.031 is amended by adding a new subsection to read:

29 (h) Nothing in this section shall be construed to restrict searches or seizures
30 under a warrant issued by a judicial officer.

31 * Sec. 38. AS 28.35.032(a) is amended to read:

1 (a) If a person under arrest for operating a motor vehicle or aircraft while
2 under the influence of an alcoholic beverage or controlled substance
3 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
4 chemical test authorized under AS 28.33.031(a)(1) or AS 28.35.031(a), or if a person
5 involved in a motor vehicle accident that causes death or serious physical injury to
6 another person refuses the request of a law enforcement officer to submit to a
7 chemical test authorized under AS 28.33.031(a)(2) or AS 28.35.031(g), after being
8 advised by the officer that the refusal will result in the denial or revocation of the
9 driver's license, privilege to drive, or privilege to obtain a license, that the refusal may
10 be used against the person in a civil or criminal action or proceeding arising out of an
11 act alleged to have been committed by the person while operating a motor vehicle or
12 aircraft while under the influence of an alcoholic beverage or controlled substance
13 [INTOXICATED], and that the refusal is a crime, a chemical test may not be given,
14 except as provided by AS 28.35.035. If a person under arrest for operating a watercraft
15 while under the influence of an alcoholic beverage or controlled substance
16 [INTOXICATED] refuses the request of a law enforcement officer to submit to a
17 chemical test authorized under AS 28.35.031(a), after being advised by the officer that
18 the refusal may be used against the person in a civil or criminal action or proceeding
19 arising out of an act alleged to have been committed by the person while operating a
20 watercraft while under the influence of an alcoholic beverage or controlled
21 substance [INTOXICATED], and that the refusal is a crime, a chemical test may not
22 be given, except as provided by AS 28.35.035.

23 * Sec. 39. AS 28.35.032(e) is amended to read:

24 (e) The refusal of a person to submit to a chemical test authorized under
25 AS 28.33.031(a) or AS 28.35.031(a) or (g) is admissible evidence in a civil or criminal
26 action or proceeding arising out of an act alleged to have been committed by the
27 person while operating or driving a motor vehicle or operating an aircraft or watercraft
28 while under the influence of an alcoholic beverage or controlled substance
29 [INTOXICATED].

30 * Sec. 40. AS 28.35.032(j) is amended to read:

31 (j) For purposes of this section, convictions for operating or driving while

1 under the influence of an alcoholic beverage or controlled substance
2 [INTOXICATED] under AS 28.33.030 or AS 28.35.030 and for refusal to submit to a
3 chemical test under this section, if arising out of a single transaction and a single
4 arrest, are considered one previous conviction.

5 * Sec. 41. AS 28.35.033(a) is amended to read:

6 (a) Upon the trial of a civil or criminal action or proceeding arising out of acts
7 alleged to have been committed by a person while operating or driving a motor vehicle
8 or operating an aircraft or a watercraft while under the influence of an alcoholic
9 beverage or controlled substance [INTOXICATED], the amount of alcohol in the
10 person's blood or breath at the time alleged shall give rise to the following
11 presumptions:

12 (1) If there was 0.04 [0.05] percent or less by weight of alcohol in the
13 person's blood, or 40 [50] milligrams or less of alcohol per 100 milliliters of the
14 person's blood, or 0.04 [0.05] grams or less of alcohol per 210 liters of the person's
15 breath, it shall be presumed that the person was not under the influence of an
16 alcoholic beverage [INTOXICATING LIQUOR].

17 (2) If there was in excess of 0.04 [0.05] percent but less than 0.08
18 [0.10] percent by weight of alcohol in the person's blood, or in excess of 40 [50] but
19 less than 80 [100] milligrams of alcohol per 100 milliliters of the person's blood, or in
20 excess of 0.04 [0.05] grams but less than 0.08 [0.10] grams of alcohol per 210 liters of
21 the person's breath, that fact does not give rise to any presumption that the person was
22 or was not under the influence of an alcoholic beverage [INTOXICATING
23 LIQUOR], but that fact may be considered with other competent evidence in
24 determining whether the person was under the influence of an alcoholic beverage
25 [INTOXICATING LIQUOR].

26 (3) [REPEALED]

27 (4) If there was 0.08 [0.10] percent or more by weight of alcohol in
28 the person's blood, or 80 [100] milligrams or more of alcohol per 100 milliliters of the
29 person's blood, or 0.08 [0.10] grams or more of alcohol per 210 liters of the person's
30 breath, it shall be presumed that the person was under the influence of an alcoholic
31 beverage [INTOXICATING LIQUOR].

1 * Sec. 42. AS 28.35.033(e) is amended to read:

2 (e) The person tested may have a physician, or a qualified technician, chemist,
3 registered nurse, or other qualified person of the person's own choosing administer a
4 chemical test in addition to the test administered at the direction of a law enforcement
5 officer. The failure or inability to obtain an additional test by a person does not
6 preclude the admission of evidence relating to the test taken at the direction of a law
7 enforcement officer; the fact that the person under arrest sought to obtain such an
8 additional test, and failed or was unable so to do, is likewise admissible in evidence.
9 The person who administers the chemical test shall clearly and expressly inform
10 the person tested of that person's right to an independent test described under
11 this subsection. and, if the person being tested requests an independent test, the
12 department shall make reasonable and good-faith efforts to assist the person
13 being tested in contacting a person qualified to perform an independent chemical
14 test of the person's breath or blood.

15 * Sec. 43. AS 28.35.035(a) is amended to read:

16 (a) If a person is under arrest for an offense arising out of acts alleged to have
17 been committed while the person was operating a motor vehicle, aircraft, or watercraft
18 while under the influence of an alcoholic beverage or controlled substance
19 [INTOXICATED], and that arrest results from an accident that causes death or
20 physical injury to another person, a chemical test may be administered without the
21 consent of the person arrested to determine the amount of alcohol in that person's
22 breath or blood or to determine the presence of controlled substances in that person's
23 blood and urine.

24 * Sec. 44. AS 28.35.035(c) is amended to read:

25 (c) If a chemical test is administered to a person under (a), ~~(b)~~, or (d) of
26 this section, that person is not subject to the penalties for refusal to submit to a
27 chemical test provided by AS 28.35.032.

28 * Sec. 45. AS 28.35.035 is amended by adding a new subsection to read:

29 (d) If a person is under arrest for operating a motor vehicle, aircraft, or
30 watercraft while intoxicated and exigent circumstances preclude the administration of
31 a chemical test of the person's breath under AS 28.33.031(a) or AS 28.35.031(a), a

1 chemical test may be administered without the consent of the person arrested for the
2 purpose of determining the amount of alcohol in that person's blood or to determine
3 the presence of a controlled substance in the person's blood or urine.

4 * Sec. 46. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or 28.35.032, the state
6 shall [MAY] move the court to order the forfeiture of the motor vehicle [,] or aircraft
7 involved in the commission of the offense if the convicted person has been previously
8 convicted in this or another jurisdiction [OF MORE THAN ONE OF THE
9 FOLLOWING OFFENSES] or has [MORE THAN ONCE] been previously convicted
10 of one of the following offenses:

11 (1) driving while under the influence of an alcoholic beverage or
12 controlled substance [INTOXICATED] under AS 28.35.030 or another law or
13 ordinance with substantially similar elements; or

14 (2) refusal to submit to a chemical test under AS 28.35.032 or another
15 law or ordinance with substantially similar elements.

16 * Sec. 47. AS 28.35 is amended by adding a new section to read:

17 **Article 7. Alaska Repeat Offender Status System.**

18 **Sec. 28.35.300. Alaska driving while under the influence offenders status**
19 **system.** The department shall establish and maintain a database of persons who are
20 convicted under AS 28.35.030(n). The database shall be accessible to the public for
21 the purpose of determining if a person is prohibited by law from registering a vehicle.

22 * Sec. 48. AS 47.37.040(14) is amended to read:

23 (14) cooperate with the Department of Public Safety and the
24 Department of Transportation and Public Facilities in establishing and conducting
25 programs designed to deal with the problem of persons operating motor vehicles while
26 under the influence of an alcoholic beverage or controlled substance
27 [INTOXICATED OR UNDER THE INFLUENCE OF DRUGS], and develop and
28 approve alcohol information courses required to be taken by drivers under AS 28.15 or
29 made available to drivers to reduce points assessed for violation of traffic laws;

30 * Sec. 49. The uncodified law of the State of Alaska is amended by adding a new section to
31 read:

1 APPLICABILITY. (a) Section 6 of this Act applies to registration of a motor vehicle
2 that occurs on or after the effective date of this Act.

3 (b) This Act applies to offenses committed on or after the effective date of this Act,
4 except that references to previous convictions include convictions occurring before, on, or
5 after the effective date of this Act.

6 * Sec. 50. Section 47 of this Act takes effect July 1, 2002.

7 * Sec. 51. Except as provided in sec. 50 of this Act, this Act takes effect July 1, 2001.

CS HOUSE BILL 4 (TRA) FISCAL NOTES SUMMARY

Expenditures/Revenues

Operating Expenses	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07
Personal Services	1498.5	1559.1	1600.9	1648.5	1648.5	1648.5
Travel	34.9	36.7	38.4	40.2	40.2	40.2
Contractual	670	695.6	723.2	748.8	761.2	761.2
Supplies	19.3	20.3	21.2	22.2	22.2	22.2
Equipment	83.3	11.5	11.5	11.5	9.1	9.1
Land & Structures						
Grants & Claims	634.6	634.6	634.6	634.6	634.6	634.6
Miscellaneous	30139.8	30795.6	30863.6	30970.9	31075.2	31075.2
TOTAL OPERATING	33080.4	33753.4	33893.4	34076.7	34191.0	34191.0

Capital Expenditures

Change in Revenues

FUND SOURCE

1002 Federal Receipts						
1003 GF Match						
1004 GF	32781.1	33444.1	33584.1	33703.4	33881.7	33881.7
1005 GF/Program Receipts	120.0	130.0	130.0	130.0	130.0	130.0
1037 GF/Mental Health						
Other (1156 Receipt Supported)	170.3	179.3	179.3	179.3	179.3	179.3
TOTAL	33080.4	33753.4	33893.4	34012.7	34191.0	34191.0

POSITIONS

Full-time	33.5	34.0	34.5	35.0	35.0	35.0
Part-time	7.0	7.0	7.0	7.0	7.0	7.0
Temporary						

Consists of:

- Health & Social Services (Juvenile Justice: Bethel Youth Facility)
- Health & Social Services (Juvenile Justice: Johnson Youth Facility)
- Health & Social Services (Alcohol & Drug Abuse Svcs: Alcohol Safety Action Program)
- Health & Social Services (Alcohol & Drug Abuse Svcs: Alcohol/Drug Abuse Grants)
- Corrections
- Administration (Div Motor Vehicles)
- Administration (Public Defender)
- Public Safety (State Troopers)
- Court System

Prepared by Sharron O'Dell, Acting Transportation Aide
27-Feb-01

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB4 (TRA)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: Relating to operating motor vehicles under the BRU: Juvenile Justice
influence Component: Bethel Youth Facility
Sponsor: Representative Rokeberg
Requester: House (TRA) Component Number: 319

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	5.0	5.0	5.0	5.0	5.0	5.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	5.0	5.0	5.0	5.0	5.0	5.0

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	5.0	5.0	5.0	5.0	5.0	5.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	5.0	5.0	5.0	5.0	5.0	5.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Increased costs would occur at the smaller facilities where holding juveniles for a longer period of time would lead to increased overtime costs for the additional days of stay at the youth facility.

Prepared by: George Buhite, Director Phone 465-2212
Division: Juvenile Justice Date/Time 2/27/01 8:48 AM
Approved by: Karen Perdue, Commissioner Date 2/27/01 8:48 AM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB4 (TRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: Relating to operating motor vehicles under the BRU: Juvenile Justice
influence Component: Johnson Youth Facility
 Sponsor: Representative Rokeberg
 Requester: House (TRA) Component Number: 267

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	15.0	15.0	15.0	15.0	15.0	15.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	15.0	15.0	15.0	15.0	15.0	15.0

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	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	15.0	15.0	15.0	15.0	15.0	15.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Increased costs would occur at the smaller facilities where holding juveniles for a longer period of time would lead to increased overtime costs for the additional days of stay at the youth facility.

Prepared by: George Buhite, Director Phone 465-2212
 Division: Juvenile Justice Date/Time 2/27/01 8:48 AM
 Approved by: Karen Perdue, Commissioner Date 2/27/01 8:48 AM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: CS HB 4 (TRA)
() Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
Title: An Act relating to offenses involving operating BRU: Alcohol & Drug Abuse Svcs
a motor vehicle Component: Alcohol Safety Action Program
Sponsor: Rep Rokeberg
Requester: House (TRA) Component Number: 305

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	60.0	60.0	60.0	60.0	60.0	60.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	52.4	52.4	52.4	52.4	52.4	52.4
Miscellaneous						
TOTAL OPERATING	112.4	112.4	112.4	112.4	112.4	112.4

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	112.4	112.4	112.4	112.4	112.4	112.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	112.4	112.4	112.4	112.4	112.4	112.4

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 26 lowers the blood alcohol content from .10 to .08. It is estimated that this will result in a 10% increase in number of DUI cases resulting in convictions and mandatory referral to Alcohol Safety Action Programs (ASAP) and subsequently for treatment. Of these additional cases DHSS estimates that 100% would be referred to an ASAP. The costs to handle these additional cases is \$112.4. We estimate that 65-70% of these cases will be handled by the ASAP office in Anchorage, which is operated by employees of the Division of Alcoholism and Drug Abuse.

Prepared by: Ernest Turner, Director Phone 465-2071
Division: Alcoholism and Drug Abuse Date/Time 2/26/01 4:30 PM
Approved by: Karen Perdue, Commissioner Date 2/27/01 8:48 AM
Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: CS HB 4 (TRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Health & Social Services
 Title: An Act relating to offenses involving operating a motor vehicle BRU: Alcohol & Drug Abuse Svcs
 Component: Alcohol/Drug Abuse Grants
 Sponsor: Rep Rokeberg
 Requester: House (TRA) Component Number: 1239

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims	582.2	582.2	582.2	582.2	582.2	582.2
Miscellaneous						
TOTAL OPERATING	582.2	582.2	582.2	582.2	582.2	582.2

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	582.2	582.2	582.2	582.2	582.2	582.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	582.2	582.2	582.2	582.2	582.2	582.2

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Section 26 lowers the blood alcohol content from .10 to .08. It is estimated that this will result in a 10% increase in number of DUI cases resulting in convictions and mandatory referral to Alcohol Safety Action Programs and subsequently for treatment. Of these additional cases DHSS estimates that 75% would be treated in a public program. Due to existing wait capacity and waitlist an additional \$582.2 is required to fund the capacity required to provide the mandated treatment required.

Prepared by: Ernest Turner, Director Phone 465-2071
 Division: Alcoholism and Drug Abuse Date/Time 2/26/01 4:30 PM
 Approved by: Karen Perdue, Commissioner Date 2/27/01 8:48 AM
 Agency: Department of Health & Social Services

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: CSHB 4 (H. Trans.)
 () Publish Date: _____

02/24/01 3:00 p.m. Dept. Affected: Corrections
 Title: An Act relating to offenses involving operating BRU: 271
a motor vehicle, aircraft, or watercraft while under the influence Component: All
 Sponsor: Representative Rokeberg
 Requester: House Transportation Committee Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous	29,345.3	30,001.1	30,069.1	30,176.4	30,280.7	30,280.7
TOTAL OPERATING	29,345.3	30,001.1	30,069.1	30,176.4	30,280.7	30,280.7

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

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF	29,046.0	29,691.8	29,759.8	29,867.1	29,971.4	29,971.4
1005 GF/Program Receipts	120.0	130.0	130.0	130.0	130.0	130.0
1037 GF/Mental Health						
Other - 1156 Receipt supported serv.	179.3	179.3	179.3	179.3	179.3	179.3
TOTAL	29,345.3	30,001.1	30,069.1	30,176.4	30,280.7	30,280.7

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will make extensive changes in the current statutes regarding driving while intoxicated. Because of the volume of the bill, we will only address the specific sections that affect the Department of Corrections.

Sec. 4. Changes the presumptive sentencing regarding Manslaughter to add a provision for Manslaughter as a result of DWI. It will change the presumptive sentence from 5 years to seven. This change will result in an increased cost to DOC of \$107,360 in FY05 and \$211,640 in subsequent years.

Sec. 26. Changes the threshold for DWI presumption from .10 to .08. It is estimated by Department of Law that although this may not increase arrests by a large amount, it will increase convictions by 10%. In FY00 there were 4118 misdemeanor convictions for DWI and 200 felony convictions. Estimating a 10% increase and taking into account the increased cost of treatment provision as well as the diversion program proposed in this bill, it is estimated that the increased cost of incarceration will come to \$1,004,990 in FY02, \$977,637 in FY03, and \$1,011,604 in \$1,045,571

Prepared by: Candace Brower Phone 465-4652
 Division: Commissioner's Office Date/Time 2/24/01 3:50 PM
 Approved by: Margaret Pugh, Commissioner Date 2/27/01
 Agency: Department of Corrections

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION
DEPARTMENT OF CORRECTIONS

BILL NO. CSHB4
PAGE 2 of 2
DATE 2/24/01

in subsequent years.

Sec. 27. This section makes the minimum sentence for second time offenders 30 days, or not less than 20 days if the person performs 10 days of community work service. In FY00 there were an estimated 824 second time DWI offenders. We assume that one-half will opt to complete the 10 days CWS. The other half will serve their extra 10 days in the CRC. Including statutory good time, 412 offenders will serve 7 days @ \$64.00/day for a total of \$184,576.

Sec. 29. This section increases cost of imprisonment to be charged to the offender from up to \$1,000 to up to \$2,000. The increased charge for incarceration to \$2,000 does not make a large difference in receipts to the DOC. The current minimum sentence for second time offenders is 20 days. With good time, someone would serve 13 days. This is served in a Community Residential Center @ \$64.00/day. That totals \$832. Offenders are already required to pay up to \$1,000 for cost of care. If the penalty is increased to 30 days, then the increase in cost of care will be made up for by the additional requirement. The requirement for payment is for misdemeanants only.

This section also requires treatment to occur as much as possible while the offender is incarcerated. This applies to felony DWI offenders. It is estimated that there will be approximately 240 felony offenders in FY02. It is estimated that one-half of those will require Intensive Outpatient Treatment at \$2500 per person for a total of \$300,000. It is estimated that one-half will require Residential Treatment at a cost of \$6380 per offender for a total of \$765,600. The total cost of treatment the first year would be \$1,065,600. The second and subsequent years, it is estimated there will be at least 260 felons for a total treatment cost of \$1,154,400

Sec. 31. This section changes the 5-year look-back to a 10-year look-back, phasing it in over a 5 year period. It is estimated this will result in an increase of 19 felons the first year and 38 in subsequent years for a cost of \$418,000 the first year and \$836,000 the second year.

This section also doubles the minimum sentencing for felony offenders. Using 240 as the number of expected convicted DWI felons in FY02, and estimating that 80% of those will be third time offenders, 192 will serve an additional 80 days. I will utilize the cost of \$88/day to estimate these costs as that is the average cost if an offender serves half of their sentence in a prison bed and half in a community residential center. The cost for third time offenders will be \$1,351,680. Estimating that 15% will be 4th time offenders, that would result in 36 offenders serving an additional 160 days @ \$88/day equals \$506,880. The remaining 5% (12 offenders) will serve an additional 244 days for a total of \$257,664. The total cost of this provision for the first fiscal year will be \$2,116,224.

Sec. 32. This section takes away the language in the current statute that provides a 10-year look-back for second time offenders. It is estimated that 3% of the 824 second time offenders will be affected by this removal. The result will be an additional 26 offenders serving a term for second time offense rather than first for a total of \$27,456.

Sec. 33. This section increases the sanctions for those offenders whose BRAC is .16 or greater. It would add an additional 6 months in prison for those offenders. Based on DMV records, 70% of all DWI offenders have a .15 or greater BRAC. Estimating that 60% have greater than .16, 2590 offenders would be sentenced to the additional 6 months. It is estimated that one-half of these offenders would complete treatment and receive good time, serving an additional 4 months and one-half would not complete treatment and would serve the entire 6 months. The cost to DOC for this provision is \$24,349,208. This section also takes away good time for all those DWI offenders who do not complete treatment as imposed. It is impossible to evaluate the cost of this to the Dept.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 4 (TRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: An act relating to offenses involving operating BRU: Motor Vehicles
a motor vehicle, aircraft, or watercraft while under..... Component: _____
 Sponsor: Representative Rokeberg
 Requester: House Transportation Component Number: 2348

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	794.5	794.5	794.5	794.5	794.5	794.5

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	794.5	794.5	794.5	794.5	794.5	794.5
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	794.5	794.5	794.5	794.5	794.5	794.5

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	13	13	13	13	13	13
Part-time	1	1	1	1	1	1
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This analysis contains only the total estimated funding amount because DMV has not had sufficient time to complete a detailed analysis of this complex bill. The fiscal impact can be separated into the following major areas:

Section 6. This requires DMV to refuse to register a vehicle if the owner has a license suspension or revocation.

Cost - \$546.0 10 PFT/1 PPT

Section 26. DMV estimates DWI arrests will increase by 15% when BAC is reduced to .08. Requests for hearings will increase and an additional hearing officer and support person will be needed. Cost - \$120.0 2 PFT

Section 31. This section requires DMV to revoke the registration of vehicles owned by the offender. Cost - \$50.0 1 PFT

Section 47. This section requires DMV to establish and maintain a public database of felony DWI offenders. Cost - \$78.5

Prepared by: Charles R. Hosack Phone 269-5559
 Division: Motor Vehicles Date/Time 2/26/01
 Approved by: Jim Duncan, Commissioner Date 2/26/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CS HB 4 (TRA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title: "An Act relating to offenses involving operating a motor vehicle..." BRU: Legal & Advocacy
 Component: Public Defender Agency
 Sponsor: Representative Rokeberg
 Requester: (H) TRA Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	786.6	829.9	871.7	919.3	919.3	919.3
Travel	27.4	29.2	30.9	32.7	32.7	32.7
Contractual	160.1	173.3	186.4	199.6	199.6	199.6
Supplies	16.8	17.8	18.7	19.7	19.7	19.7
Equipment	83.3	11.5	11.5	11.5	9.1	9.1
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	1,074.2	1,061.7	1,119.2	1,182.8	1,180.4	1,180.4

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	1,074.2	1,061.7	1,119.2	1,182.8	1,180.4	1,180.4
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	1,074.2	1,061.7	1,119.2	1,132.8	1,180.4	1,180.4

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	12.5	13.0	13.5	14.0	14.0	14.0
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The following pages list the expected costs of Section 26 (.08), Sections 31 and 46(Vehicle Forfeiture), Section 33 (.16 Enhancement), and Section 31 (Look-Back).

In addition, the increased fines, fees, and license revocation periods set out in various sections of the bill will also have some fiscal impact and there may be additional fiscal impact from other parts of the bill that are not listed on pages 2-4 of this analysis.

Prepared by: Barbara Brink, Director Phone: (907) 334-4414
 Division: Public Defender Agency Date/Time: 2/26/01 12:00 AM
 Approved by: Jim Duncan, Commissioner Date: 2/26/01
 Agency: Department of Administration

For distribution information, call the Governor's Legislative Office

PUBLIC DEFENDER AGENCY
HB 4 FISCAL NOTE

Sec. 26 - 0.08	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	98.9	98.9	98.9	98.9	98.9	98.9
Travel	3.7	3.7	3.7	3.7	3.7	3.7
Contractual	27.3	27.3	27.3	27.3	27.3	27.3
Supplies	2.2	2.2	2.2	2.2	2.2	2.2
Equipment	8.5	0.8	0.8	0.8	0.8	0.8
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	140.6	132.9	132.9	132.9	132.9	132.9
POSITIONS						
Full-time	1	1	1	1	1	1
Part-time						
Temporary						

Sec. 31&46-Forfeiture	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	197.1	197.1	197.1	197.1	197.1	197.1
Travel	6.5	6.5	6.5	6.5	6.5	6.5
Contractual	22.0	22.0	22.0	22.0	22.0	22.0
Supplies	4.0	4.0	4.0	4.0	4.0	4.0
Equipment	26.0	2.6	2.6	2.6	2.6	2.6
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	255.6	232.2	232.2	232.2	232.2	232.2
POSITIONS						
Full-time	4	4	4	4	4	4
Part-time						
Temporary						

Sec. 33-0.16 Enhanc'm't	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	448.8	448.8	448.8	448.8	448.8	448.8
Travel	15.5	15.5	15.5	15.5	15.5	15.5
Contractual	97.7	97.7	97.7	97.7	97.7	97.7
Supplies	9.7	9.7	9.7	9.7	9.7	9.7
Equipment	45.5	4.5	4.5	4.5	4.5	4.5
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	617.2	576.2	576.2	576.2	576.2	576.2

POSITIONS

Full-time	7	7	7	7	7	7
Part-time						
Temporary						

Sec. 31-Look-Back	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	41.8	85.1	126.9	174.5	174.5	174.5
Travel	1.7	3.5	5.2	7.0	7.0	7.0
Contractual	13.1	26.3	39.4	52.6	52.6	52.6
Supplies	0.9	1.9	2.8	3.8	3.8	3.8
Equipment	3.3	3.6	3.6	3.6	1.2	1.2
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	60.8	120.4	177.9	241.5	239.1	239.1

POSITIONS

Full-time	0.5	1.0	1.5	2.0	2.0	2.0
Part-time						
Temporary						

TOTAL PUBIC DEFENDER	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	786.6	829.9	871.7	919.3	919.3	919.3
Travel	27.4	29.2	30.9	32.7	32.7	32.7
Contractual	160.1	173.3	186.4	199.6	199.6	199.6
Supplies	16.8	17.8	18.7	19.7	19.7	19.7
Equipment	83.3	11.5	11.5	11.5	9.1	9.1
Land & Structures						
Grants & Claims						
Miscellanecus						
TOTAL OPERATING	1,074.2	1,061.7	1,119.2	1,182.8	1,180.4	1,180.4
POSITIONS						
Full-time	12.5	13.0	13.5	14.0	14.0	14.0
Part-time						
Temporary						

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 4(TRA)
 () Publish Date: _____
 Dept. Affected: Public Safety
 BRU: AST Detachment
 Component: ST Detachment
 Component Number: 2325

Revision Date/Time (Note if correction): _____
 Title: Registration of Motor Vehicle, Operating Motor Vehicle, Aircraft, Watercraft while intoxicated & Drivers License
 Sponsor: Representative Rokeberg
 Requester: House Transportation Committee

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	47.6	47.6	47.6	47.6	47.6	47.6
Travel	7.5	7.5	7.5	7.5	7.5	7.5
Contractual	391.5	391.5	391.5	391.5	391.5	391.5
Supplies	2.5	2.5	2.5	2.5	2.5	2.5
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	449.1	449.1	449.1	449.1	449.1	449.1

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	449.1	449.1	449.1	449.1	449.1	449.1
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	449.1	449.1	449.1	449.1	449.1	449.1

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation will require one full-time Procurement Specialist I, range 14 position, to manage the forfeiture inventory (450 vehicles and 50 snow-machines). Included in this analysis are the transportation costs, storage costs, DMV Fees, and I/M Test Fees. The transportation costs assume twenty-five percent of the vehicles would require long-distance transportation (vehicle transport contractor - \$900 per vehicle) and seventy-five percent by short-distance (towing companies - \$50 per vehicle). The storage of vehicle (\$450 annually) and snow-machine (\$350 annually) would be contracted out to general automobile/RV storage facilities. The following costs are not included in this fiscal note: the administrative fee charged for the sale of vehicles (5% - 10% of sale proceeds); loan payoff of vehicles forfeited; and secure arrangements for vehicle storage. See attached sheet for additional details.

Prepared by: Lt. Steve Dunnagan Phone 269-4532
 Division: Alaska State Troopers Date/Time 2/21/01 10:00 AM
 Approved by: Commissioner Glenn Godfrey Date 2/21/01
 Agency: Department of Public Safety

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

CSHB 4(TRA)

CSHB 4(TRA) - Vehicles Forfeited on 2nd DWI Offense

		Procurement Specialist I, Range 14, Anchorage	47,600		
		Travel for Auctions	7,500		
Type	Location	Vendor	Shipment or Annual Cost	Est. Annual #	Cost
Vehicle	Long Distance (25%)	AK Veh Tran	\$ 900	115	\$ 103,500
Vehicle	Short Distance (75%)	Towing Co.	\$ 50	335	\$ 16,750
I/M Test	Fbx/Anc - 30% of 450	Xpress Lube	\$ 55	135	\$ 7,425
DMV Fees		DMV	\$ 78	450	\$ 35,100
Snowmachine Storage	Anch, Palmer, Fbx	Auto / RV	\$ 350	50	\$ 17,500
Vehicle Storage	Anch, Palmer, Fbx	Auto / RV	\$ 450	450	\$ 202,500
Contractual Cost for One Position (phones, computer, postage, DP Svc)					\$ 8,700
Total Contractual Costs					\$ 391,475
Office and DP Supplies for One Position			Total Supply Costs		\$ 2,500
TOTAL					\$ 449,075

Assumption: 1,000 convictions, 50% forfeited (450 vehicles and 50 snowmachines).
 Analysis does not include: 1. secure arrangement for vehicle storage. 2. Sale of Vehicle
 5% Admin Fee. 3. Vehicle Loan Payoff - forfeited vehicles.

Option - Vehicle Forfeited on 3rd DWI Offense

		Procurement Specialist I, Range 14, Anchorage	47,600		
		Travel for Auctions	5,000		
Type	Location	Vendor	Shipment or Annual Cost	Est. Annual #	Cost
Snowmachine	Bethel/Nome - Anc	NAC	\$ 210	50	\$ 10,500
Vehicle	Long Distance (25%)	AK Veh Tran	\$ 900	50	\$ 45,000
Vehicle	Short Distance (75%)	Towing Co.	\$ 50	150	\$ 7,500
I/M Test	Fbx/Anc - 30% of 200	Xpress Lube	\$ 55	60	\$ 3,300
DMV Fees		DMV	\$ 78	200	\$ 15,600
Snowmachine Storage	Anch, Palmer, Fbx	Auto / RV	\$ 350	50	\$ 17,500
Vehicle Storage	Anch, Palmer, Fbx	Auto / RV	\$ 450	200	\$ 90,000
Contractual Cost for Position (phones, computer, postage, DP Svc)					\$ 8,700
Total Contractual Costs					\$ 198,100
Office and DP Supplies for Position			Total Supply Costs		\$ 2,500
TOTAL					\$ 253,200

Assumption: 500 convictions, 50% forfeited (200 vehicles and 50 snowmachines).
 Analysis does not include: 1. secure arrangement for vehicle storage. 2. Sale of Vehicle
 5% Admin Fee. 3. Vehicle Loan Payoff - forfeited vehicles.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

BILL NO. HB 4

Revision Date/Time (Note if correction) Work Draft 2/16/01 Dept. Affected _____
 Title Omnibus DWI Bill BRU Alaska Court System
 Component Trial Courts
 Sponsor Rep. Norrnan Rokeberg
 Requester House Transportation Committee Component No. 768

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services	584.3	601.6	601.6	601.6	601.6	601.6
Travel						
Contractual	118.4	130.8	145.3	157.7	170.1	170.1
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	702.7	732.4	746.9	759.3	771.7	771.7

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	702.7	732.4	746.9	759.3	771.7	771.7
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	702.7	732.4	746.9	759.3	771.7	771.7

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time	7	7	7	7	7	7
Part-time	6	6	6	6	6	6
Temporary						

ANALYSIS: (Attach a separate page if necessary)

See Attached

Prepared by: Douglas Wooliver Phone 463-4750
 Division Alaska Court System Date/Time 2/23/01 @ 2:15 P.M.
 Approved by: Stephanie Cole Date _____
 Agency Alaska Court System

For distribution information, call the Governor's Legislative Office

Fiscal Analysis
Draft CSHB 4 (22-LS0046\P Ford 2/16/01)
Alaska Court System

Draft CSHB 4 (22-LS0046\P Ford 2/16/01) makes several changes to the statutes relating to the offense of driving while intoxicated. Some of those changes will have a fiscal impact on the court system.

Section 26 lowers the BAC necessary for a DWI violation under AS 28.35.030(a)(2) from .1 to .08. National studies show that other states that have made this change have experienced a 10% increase in DWI filings. Based on that assumption, the court system would see an increase of 500 misdemeanors and 28 felony filings a year.

Section 31 is a five-year phase-in of a new 10-year look-back for felony DWI offenses. The Department of Law estimates that the phase-in will result in 64 new felony filings in year one, 128 in year two, 192 in year three, 256 in year four, and 320 in year five. This fiscal note is based on those estimates and on a 10% felony trial rate.

Sections 31 and 46 call for mandatory vehicle forfeiture for all second and subsequent DWI offenders. A court hearing is required for each forfeiture. The Department of Law estimates that this change will result in 800 forfeiture hearings. This note is based on that estimate and assumes that each hearing will last 15 minutes.

Section 33 adds six months to the sentence of any person charged with a DWI if that person's BAC is .16 or higher. The Department of Corrections estimates a total of 2,150 state and municipal offenders will fall into this category. Although the trial rate for misdemeanor offenses is generally very low, the amount of jail time required under this section and the number of cases involved suggests that the court system will see a significant number of trials. This note assumes a 5% trial rate for the misdemeanor cases that fall into this category¹.

¹ This note assumes that all of our current 287 felony offenders fall into this .16 or higher category but that the trial rates in those cases will not change.

Alaska Court System

Fiscal Note Calculations for Draft CSHB4 Dated 2/16/01

2/23/01

Increase in 64 - 320 New Felonies FY02 thru FY06 (Part A):

	FY02	FY03	FY04	FY05	FY06
<u>Superior Court:</u>					
Jury Costs	14,476	26,884	41,360	53,768	66,176
Superior Court Judge	138,467	142,300	142,300	142,300	142,300
Law Clerk for Superior Court Judge	48,130	49,400	49,400	49,400	49,400
Secretary	41,997	43,050	43,050	43,050	43,050
In-Court Clerk	41,997	43,050	43,050	43,050	43,050
	270,591	277,800	277,800	277,800	277,800
Fiscal Note Total for 64 - 320 New Felonies (Part A)					
	285,067	304,684	319,160	331,568	343,976

Enhanced Penalties for BAC above .16 (Part B):

An estimated 2,150 cases would fall in this category, 287 of these cases would be handled by the superior court. Using a 5% district court trial rate on the remaining 1863 cases:

District Court:

Jury Costs	97,713	97,713	97,713	97,713	97,713
District Court Judge	121,005	125,388	125,388	125,388	125,388
District Court Judge Pro Tem (2 months)	20,168	20,898	20,898	20,898	20,898
Secretary	41,997	43,050	43,050	43,050	43,050
In-Court Clerk	41,997	43,050	43,050	43,050	43,050
In-Court Clerk PPT (2 months)	7,000	7,175	7,175	7,175	7,175
	232,166	239,561	239,561	239,561	239,561
Fiscal Note Total for Enhanced Penalties for BAC of .16 (Part B)					
	329,879	337,274	337,274	337,274	337,274

In an average work year there are 248 possible work days excluding vacation time

94 trials @ 3 work days equals 282 work days and would require 2 additional months of judge and clerk time

Vehicle Forfeitures (Part C):

800 new hearings, 287 of which would be handled in conjunction with a superior court case (felony)

513 hearings @ 15 minutes/hearing = 128.25 hours of hearing time (one month)

	FY02	FY03	FY04	FY05	FY06
<u>District Court:</u>					
District Court Judge Pro Tem (1 Month)	10,084	10,449	10,449	10,449	10,449
In-Court Clerk PPT (1 Month)	3,500	3,588	3,588	3,588	3,588
Fiscal Note for Vehicle Forfeitures (Part C)					
	13,584	14,037	14,037	14,037	14,037

Alaska Court System

Fiscal Note Calculations for Draft CSHB4 Dated 2/16/01

2/23/01

500 New Misdemeanors and 3 Felony Trials at .08 (Part D):

	FY02	FY03	FY04	FY05	FY06
Superior Court:					
Jury Costs	<u>6,204</u>	<u>6,204</u>	<u>6,204</u>	<u>6,204</u>	<u>6,204</u>
District Court Judge Pro Tem (5 Months)	50,419	52,245	52,245	52,245	52,245
In-Court Clerk PPT (5 Months)	<u>17,499</u>	<u>17,940</u>	<u>17,940</u>	<u>17,940</u>	<u>17,940</u>
	<u>67,918</u>	<u>70,185</u>	<u>70,185</u>	<u>70,185</u>	<u>70,185</u>
Fiscal Note for 500 Misdemeanors + 3 Felony Trials (Part D)					
	<u>74,122</u>	<u>76,389</u>	<u>76,389</u>	<u>76,389</u>	<u>76,389</u>

Cumulative Fiscal Note:					
Personal Services	584,258	601,583	601,583	601,583	601,583
Contractual	<u>118,393</u>	<u>130,801</u>	<u>145,277</u>	<u>157,685</u>	<u>170,093</u>
Cumulative Total	<u>702,651</u>	<u>732,384</u>	<u>746,860</u>	<u>759,268</u>	<u>771,676</u>
Funding Source:					
1004 GF	702,651	732,384	746,860	759,268	771,676
Positions:					
Full-time	7	7	7	7	7
Part-time	6	6	6	6	6

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

JUDICIARY COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT &
TOURISM, MEMBER

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Representative Norman Rokeberg

e-mail: Representative_Norman_Rokeberg@legis.state.ak.us

MEMORANDUM

TO: The Honorable Vic Kohring, Chairman
House Transportation Committee

FROM: Representative Norman Rokeberg *Norman/Rj*

DATE: February 15, 2001

RE: HB 4

Please schedule a hearing for House Bill 4 next week before the House Transportation Committee.

Attached are:

1. HB 4 - I am having a draft blank CS prepared and will provide you with a copy as soon as I have it.
2. Sponsor Statement
3. Sectional Analysis
4. Fiscal Notes: I would ask that you request fiscal notes from Court system, Administration (Public Defender and Motor Vehicles), Law, Corrections, Health & Social Services, Public Safety, Transportation.
5. "Setting Limits, Savings Lives: The Case for .08 BAC Laws". I am having more of these brochures delivered and will provide you with enough for your committee's use.
6. "Final Report of the DUI Prevention Task Force", Executive Summary and Summary of Task Force Recommendations.
7. "Federal Highway funding and State DWI Laws", Legislative Research Report
8. Pertinent portion of HR 539 from 106th Congress
9. "Responses to Statements Regarding .08 BAC Laws" from State Department of Transportation and Public Facilities, January 2001
10. "Annual Core Apportionments and Potential Penalties Under Sec. 163(a) for FY 2004 and Thereafter" from Alaska Highway Safety Office, DOT&PF, January 2001
11. Newspaper articles of interest:

- a. "Two die in 2-car wreck", Kenai Peninsula Clarion online, 21 April 2000
- b. "Troopers arrest man charged in double-fatal accident", 2 May 2000, Kenai Peninsula Clarion online, 2 May 2000
- c. "Pickup hits, kills bicyclist", Anchorage Daily News, 5 July 2000
- d. "3rd Wreck Pinned on Booze", Anchorage Daily News, 6 July 2000
- e. "Injured women improving", Anchorage Daily News, 7 July 2000
- f. "Accused drunken driver charged", The Frontiersman, 25 July 2000
- g. "Hit-run victim on bike path recalls 'outlandish' accident", Anchorage Daily News, 29 July 2000
- h. "Driver drunk in 6-fatality July wreck", Anchorage Daily News, 6 August 2000
- i. "Man faces 3rd DUI", KTUU story, 9 August 2000
- j. "DWI", Anchorage Daily News, 9 August 2000
- k. "Driver involved in fatal crash had had blood alcohol", Fairbanks Daily News-Miner, 17 October 2000
- l. "Family, friends express outrage", 12 October 2000, Anchorage Daily News
- m. "Woman arrested in connection with September death of Unalaska man", Kenai Peninsula Clarion online, 19 October 2000
- n. "Attorney calls drunken driving sentence one of most severe ever", Kenai Peninsula Clarion online, 16 November 2000
- o. "Legislature on right road with drunken-driving laws", Juneau Empire, 14 January 2001
- p. "DWI legislation", Fairbanks Daily News-Miner, 22 January 2001
- q. "Pick up your phones and pens a join the battle against drunken driving", Anchorage Daily News, 23 January 2001
- r. "Local legislators get an earful", The Alaska Star, 25 January 2001
- s. "Taking away the keys", Fairbanks Daily News-Miner, 2 February 2001
- t. "Money is no object; Alaskans are fed up with drunk drivers", Anchorage Daily News, 10 February 2001
- u. "State traffic accidents up 8.8 percent in 1999", Juneau Empire, 11 February 2001
- v. "The whole toolbox", Fairbanks Daily News-Miner, 12 February 2001
- w. "When drivers are outlaws", Anchorage Daily News, 13 February 2001
- x. "Mandatory sentences should go to drunk drivers who injure, kill", Anchorage Daily News, 14 February 2001

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SUPPLEMENTAL SPONSOR STATEMENT

CSHB 4 () P VERSION 2/16/01 FORD

FOR SECTIONS 37, 44, AND 45

By Representative Norman Rokeberg

Sections 37, 44, and 45 are intended to address opinions in several appellate court cases.

Drunk driving cases confront the police with a wide variety of situations, and they should have the tools needed to obtain necessary physical evidence of intoxication. In some cases, time becomes of the essence due to the delays (often caused by complications at the scene of an accident or the conduct of the drivers) in getting drivers to a location where a breath test can be administered. When this happens, or if the breath testing equipment is not functioning, these and other exigent circumstances should allow police to obtain a blood test. In other instances, the police may wish to present the matter to a judge for a warrant.

In *Sosa v. State*, 4 P.2d 951 (Alaska 2000), the Alaska Supreme Court held that the implied consent statutes provide the exclusive means for obtaining evidence of a driver's intoxication. The court reasoned that because AS 28.35.035 permits blood test only under two specified circumstances (where a crash results in a fatality or serious injury, and where a defendant is unconscious or otherwise incapable of refusal) the statutes, by implication, prohibit blood tests under any other circumstances. Accordingly, in *Sosa* itself the Supreme Court held that the fact that their Intoximeter was broken did not justify the Bethel police in obtaining a warrant for defendant Juan Sosa's blood. The warrant was invalid, and the evidence obtained as a result of the warrant had to be suppressed.

Section 37 adds a new section to AS 28.35.031, providing that the implied consent statute was not intended to prevent the police search warrants. This makes it clear that the legislature has adopted the view expressed by Justice Compton in his dissenting opinion in *Pena v. State*, 684 P. 2d 684, 868 (Alaska 1984). Justice Compton said: "There simply is nothing in the [implied consent] statutes to indicate that the legislature contemplated restricting searches pursuant to warrant, which derive from the statutory authority of the court, rather than the power of an officer to search an individual at the time of arrest."

Section 45 adds a new section to AS 28.35.035, authorizing the police to obtain a blood

sample where exigent circumstances prevent the police mentioned by the Alaska Court of Appeals in *Bass v. Municipality of Anchorage v. State*, 692 P.2d 961, 961 (Alaska App. 1984). In *Bass* the court justified its very narrow construction of AS 28.35.035 by saying: "Certainly it would have been easy for the legislature to say that the police could forcibly take a blood sample where there were exigent circumstances which prevented the police from administering a breath test." The concept of searches made under exigent circumstances is well-established. Because physical evidence of intoxication disappears rapidly with the passage of time, it is the intent of this section that, if the state can prove the police were unable to take a breath sample within a reasonable period of time, they would be allowed to draw blood.

These provisions thus allow the police to obtain blood test evidence of intoxication using the implied-consent procedure in Section 45 when time is of the essence, the testing equipment is not functioning, or there are other exigent circumstances. Section 37 provides an alternative so the police can, in their discretion, use the traditional method of obtaining a search warrant to obtain evidence.

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SPONSOR STATEMENT HOUSE BILL 4

An Act relating to offenses involving operating a motor vehicle, aircraft, or watercraft while under the influence of an alcoholic beverage or controlled substance; relating to implied consent to take a chemical test; relating to registration of motor vehicles; relating to presumptions arising from the amount of alcohol in a person's breath or blood; and providing for an effective date

All reasonable and responsible Alaskans can agree that driving drunk is inappropriate behavior. Drunk drivers can and do kill, maim, cause untold grief, pain, and cost fellow Alaskans money. Why should an Alaskan be afraid to drive a vehicle on Alaska's roads? The drunk driver needs to be separated from his or her vehicle and if the drunk won't separate themselves from that vehicle then it is up to the State to provide public safety for the rest of its citizens by accomplishing just that.

Over the past year, Alaska has seen the devastating results of poor decisions made by repeat offender drunk drivers. Even with all the educational promotion (don't drink and drive; use it, lose it; use a designated driver), the message is still not getting across to repeat offenders and many young people. It is unfortunate that most of the time these individuals are not caught and, when they are, it is apparent that some of them are not getting the message: **DO NOT DRINK AND DRIVE.**

House Bill 4 would increase fines and jail time for repeat offender drunk drivers. It would lower the blood alcohol content from .10 to .08. It mandates that the offender get treatment, pay for treatment (or a part of it), and get treatment while in jail -- no more sitting around and watching television while you serve your three days or whatever. It also creates the crime of vehicular homicide -- ten-year minimum for someone with no previous drunk driving convictions and 15-year minimum for someone with a drunk driving history. It sets up a DUI court that would be able to more completely track and control those offenders who want to take advantage of treatment opportunities and who haven't killed or maimed anyone.

The cost to implement the provisions of House Bill 4 is going to be high. But can we balance the cost to the state to that of a human being. What does the life of a

loved one cost? What does the treatment of an injured person cost? These people also drive around without a license and are uninsured so there is little to remote possibility that the injured Alaskan citizen will ever get reimbursed or receive non-state assistance with their costs. One of the main issues facing the legislature in this instance is the people's wish to maintain budget discipline -- a stand that I have been proud to maintain over the years. BUT in this instance, it is time to pay for the safety of our families. The fiscal impact will be great. If it saves one life, or saves one Alaskan from injury -- isn't it worth it?

Please support this legislation and let's separate the drunk from the vehicle!

ED 1:02/12/01

LEGAL SERVICES

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MEMORANDUM

January 16, 2001

SUBJECT: Sectional Summary of HB 4 - Driving while intoxicated.

TO: Representative Norman Rokeberg
Attn: Janet

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. Findings and intent section.

Section 2. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 3. Technical amendment relating to vehicular homicide.

Section 4. Creates the crime of vehicular homicide and defines the offense as a class A felony. Provides a minimum sentence of imprisonment of ten years for a first conviction and 15 years for a second or subsequent conviction.

Section 5. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 6. Technical amendment relating to vehicular homicide.

Section 7. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 8. Requires the department of administration to refuse to register a vehicle if the applicant does not have a driver's license due to suspension or revocation, fails to provide evidence of insurance, or fails to register the vehicle in the applicant's legal name.

Section 9. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 10. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 11. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 12. Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administrative suspension of a driver's license. Also changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 13. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 14. Provides for minimum periods of driver's license revocation after a person has been convicted of D.U.I. or convicted of refusing to take a breath test after being arrested for D.U.I.

Section 15. Technical amendment relating to the authority of the court to grant limited driver's license privileges following a conviction for D.U.I.

Section 16. Creates a provision that allows a person with a revoked driver's license to obtain limited driver's license privileges following a conviction for D.U.I. or refusal to take a breath test.

Section 17. Requires a person who loses their driver's license for D.U.I. or refusal to take a breath test to meet the terms of probation imposed under AS 28.35.030(b)(1)(A)(i), in order to have their license reissued. Also makes technical amendments relating to license revocation.

Section 18. Creates a new crime relating to knowingly allowing a person who has been convicted of felony D.U.I. to drive a vehicle you own or control. Defines the crime as a class A misdemeanor and provides minimum penalties.

Section 19. Technical amendment relating to driving with a canceled, suspended, or revoked driver's license, or in violation of a license limitation.

Section 20. Changes references to "driving while intoxicated" to "driving while under the influence of an alcoholic beverage or controlled substance".

Section 21. Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law. Also changes

references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 22. Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the commercial motor vehicle implied consent law.

Section 23. Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Also changes references to "intoxicating liquor" to "alcoholic beverage".

Section 24. Changes a reference to "intoxicating liquor" to "alcoholic beverage".

Section 25. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 26. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Also changes references to "intoxicating liquor" to "alcoholic beverage". Reduces the legal limit for being intoxicated from 0.10 to 0.08 percent of alcohol in a person's blood.

Section 27. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Changes the penalties for D.U.I.

Section 28. Adds provisions relating to alcoholism treatment for a person convicted of D.U.I.

Section 29. Increases the limit imposed on the cost of imprisonment required to be paid by a person convicted of D.U.I. Specifies that imprisonment for a person convicted of D.U.I. cannot be served at a residential treatment facility or a hospital.

Section 30. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Repeals the requirement that a third conviction for D.U.I. constitutes a class C felony only if the convictions occur within a five year period. Increases the penalties for a conviction under this section, including jail time, fine, loss of driver's license, and forfeiture of the vehicle used in the offense.

Section 31. Defines the terms "operate a motor vehicle" and "operate or drive a motor vehicle" as requiring control of a moving motor vehicle. Repeals a provision that limits prior convictions to those occurring within the past 10 years. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 32. Adds provisions relating to restoration of a driver's license following a D.U.I. conviction, relating to the penalty for D.U.I. when the offender has a blood alcohol level of 0.16 or more, and relating to failure to satisfy alcohol treatment requirements.

Section 33. Makes technical amendments relating to the implied consent law. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of the implied consent law.

Section 34. Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administering a breath test under the implied consent law.

Section 35. Repeals the phrase "reasonable grounds" and replaces it with "probable cause" for purposes of administering a breath or blood test under the implied consent law when there is a motor vehicle accident that causes death or serious physical injury.

Section 36. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 37. Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 38. Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 39. Changes references to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance". Also changes certain presumptions applicable to a civil or criminal action involving a person alleged to have driven while under the influence of an alcoholic beverage or controlled substance.

Section 40. Requires the police to inform a person undergoing a chemical test for intoxication of their right to have an independent chemical test and requires the department to make reasonable and good-faith efforts to assist the person to obtain an independent test.

Section 41. Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 42. Requires the state to seek forfeiture of a motor vehicle used in committing a D.U.I. or breath test offense. Changes a reference to driving "while intoxicated" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 43. Adds new provisions requiring registration of felony D.U.I. offenders.

Representative Norma Rokeberg

January 16, 2001

Page 5

Section 44. Changes a reference to driving "while intoxicated or under the influence of drugs" to driving "while under the influence of an alcoholic beverage or controlled substance".

Section 45. Repeals sec. 46 of this Act, relating to a D.U.I. court pilot project .

Section 46. Creates a pilot project that establishes a D.U.I. court in Anchorage.

Section 47. Applicability section.

Section 48. Effective date.

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01-018.glc