

HB

342

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB342-LAW-CDCO-2-13
 Bill Version: HB 342
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to driving while intoxicated..." RDU Criminal
 Component Criminal Justice Litigation
 Sponsor Representative Gatto
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 28.35.030 by adding a minor change to clarify that a person convicted of driving under the influence of an alcoholic beverage, inhalant, or controlled substance is guilty of a class A misdemeanor even though the fine exceeds the maximum fine for a class a misdemeanor.

 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 2/13/04 12:29 PM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/13/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB342-ACS-TC-1-29-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title DUI Fines BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Gatto
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 342.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division: Alaska Court System Date/Time 1/29/04 4:27 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 1/29/2004
 Agency: Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB342-DPS-ASTD-2-2-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Public Safety
 Title An act relating to driving while intoxicated... RDU Alaska State Troopers
 Component AST Detachment
 Sponsor Representative Gatto
 Requester House Judiciary Component No. 2325

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 If passed, this bill will provide enhanced sentencing for those convicted of DUI. It establishes exceptions to the maximum amount of fines for class A misdemeanors and class C felonies related to DUI convictions. It also establishes "triggering" mechanisms for the enhanced fines based on the blood alcohol level of the defendant.

 No fiscal impact.

Prepared by: Lieutenant Al Storey Phone 269-4532
 Division: Alaska State Troopers Date/Time 2/2/04 11:39 AM
 Approved by: Commissioner William Tandeske Date 2/2/2004
 Agency: Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB342
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to DWI... BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representative Gatto
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 This bill will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Doubling and quadrupling the fines for convictions for DUI, depending on the results of a blood or breath/alcohol test, will likely result in more cases handled by the Agency going to trial because of the exposure to increased penalties. Trials are more costly for the Agency than cases resolved short of trial. It is also very likely that the Agency will bear the additional collective cost of challenging this bill on constitutional grounds for violations of equal protection. Because of the inability to predict with any certainty the extent of the fiscal impact this bill will generate, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time January 16, 2004
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 342
 () Publish Date: _____

Revision Date/Time (Note if correction): _____
 Title "An act relating to driving while intoxicated..."

Dept. Affected: Corrections
 RDU Administration & Operations
 Component: Institution Director's Office

Sponsor Representative Gatto
 Requester _____

Component No. 1381

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel	*	*	*	*	*	*
Contractual	*	*	*	*	*	*
Supplies	*	*	*	*	*	*
Equipment	*	*	*	*	*	*
Land & Structures	*	*	*	*	*	*
Grants & Claims	*	*	*	*	*	*
Miscellaneous	*	*	*	*	*	*
TOTAL OPERATING						

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	*	*	*	*	*	*
1003 GF Match	*	*	*	*	*	*
1004 GF	*	*	*	*	*	*
1005 GF/Program Receipts	*	*	*	*	*	*
1037 GF/Mental Health	*	*	*	*	*	*
Other (Specify Type--Do not abbreviate)	*	*	*	*	*	*
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time	0	0	0	0	0	0
Part-time	0	0	0	0	0	0
Temporary	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

At this time, the department does not anticipate a fiscal impact due to the passage of this legislation.

Prepared by: Jerry D. Burnett, Director
 Division: Administrative Services
 Approved by: Portia C.K. Parker, Deputy Commissioner
 Agency: Department of Corrections

Phone (907) 465-3339
 Date/Time 2/2/04 12:13 PM
 Date 2/2/2004

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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


State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM

February 4, 2004

SUBJECT: Doubling of Fines based upon BAC (HB 342)

TO: Representative Carl Gatto
Attn: Cody

FROM: Gerald P. Luckhaupt 
Legislative Counsel

You have asked how the doubling or quadrupling of fines for certain blood alcohol levels (sec. 3 of the bill) would work. From sec. 3 of the bill I presume that the court would impose the relevant fine under 28.35.030(b)(1) or (n)(1), subject to the mandatory minimum required to be imposed under those subsections, and then the court would double that amount.

GPL:lmb
04-019.lmb

ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair
Rep. Tom Anderson, Vice-Chair
Rep. Jim Holm
Rep. Dan Ogg
Rep. Ralph Samuels
Rep. Les Gara
Rep. Max Gruenberg



State Capitol, Room 120
Juneau, AK 99801-1182
(907) 465-4990
Fax (907) 465-6592

House Judiciary Committee

Memorandum

To: Gerry Luckhaupt, Leg. Legal
From: Vanessa Tondini, Committee Aide
House Judiciary Committee
Date: March 2, 2004
Re: CS Request

Please create a work draft House Judiciary Committee Substitute for work order # 23-LS1292\H, HB 342, incorporating the attached four amendments (A# 1, 2 (as amended), 3 & 4). Amendment #2 was amended by adding addition language into the title (see text of A #2) and also by two additional conceptual amendments that are attached as well. I'm sorry this is so confusing! Please feel free to use all the "conceptual authority" necessary. The bill was passed out of committee yesterday.

If you have any questions, please call me at 4990. Thank you very much and good luck!

The information attached to this memo is **CONFIDENTIAL** an/or privileged. It is intended to be reviewed initially by only the individual named above. If the reader of this Memorandum is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination, or copying of the information contained herein is prohibited. If you have received this in error, please immediately notify the sender by telephone and return this to the sender at the above address.

HB 342 - by Rep. Gruenberg
A#1 - PASSED.

P.2, L.20

Delete "or by the commissioner of administration"

conceptual
AMENDMENT #2 - PASSED
(as amended)

OFFERED IN THE HOUSE

BY REPRESENTATIVE ANDERSON

TO: CSHB 342(), Draft Version "H"

1 Page 1, lines 1 - 2:

2 Delete all material and insert:

3 **""An Act relating to driving while under the influence, to alcohol-related**
4 **offenses, ~~and to the issuance of limited drivers' licenses;~~ and providing for an effective**
5 **date.""**

6

7 Page 2, following line 23:

8 Insert a new bill section to read:

9 **** Sec. 2. AS 28.15.201(d) is amended to read:**

10 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
11 a license under AS 28.15.181(c), or the department when revoking a driver's license,
12 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
13 limited license privileges [FOR THE FINAL 60 DAYS DURING WHICH THE
14 LICENSE IS REVOKED] if

15 (1) the revocation was for a misdemeanor conviction under
16 AS 28.35.030(a) and not for a violation of AS 28.35.032;

17 (2) the person (A) has not been previously convicted and the court or
18 department requires the person to use an ignition interlock device as described in
19 AS 12.55.102 during the period of the limited license if a provider for the device
20 is located within 100 miles of the residence or domicile of the person; or, (B) has
21 been previously convicted and the court or the department requires the person to
22 use an ignition interlock device as described in AS 12.55.102 during the period of
23 the limited license; in this paragraph, "previously convicted" has the meaning given

1 in AS 28.35.030 and also includes convictions based on laws presuming that the
2 person was under the influence of intoxicating liquor if there was 0.08 percent or more
3 by weight of alcohol in the person's blood;

4 (3) the court or the department determines that the person's ability to
5 earn a livelihood would be severely impaired without a limited license;

6 (4) the court or the department determines that a limitation under (a) of
7 this section can be placed on the license that will enable the person to earn a livelihood
8 without excessive danger to the public; and

9 (5) the court or the department determines that the person is enrolled in
10 and is in compliance with, or has successfully completed the alcoholism screening,
11 evaluation, referral, and program requirements of the Department of Health and Social
12 Services under AS 28.35.030(h)."

13
14 Renumber the following bill sections accordingly.

15
16 Page 5, line 29, following "Act":

17 Insert ", except that references to prior convictions include those occurring before the
18 effective date of this Act."

CSHB 342 (version "#")

Conceptual Amendment to A.#2 (H.4) - PASSED

Applies to 1st offenders only

P. 2, L. 5

Alter "license"

Insert "or that there are other compelling health or safety reasons that ^{would} require the issuance of a limited license"

P. 2, L. * 7

After ~~public~~ "livelihood"

Insert "or if there are other compelling health or safety reasons that would require the issuance of a limited license"
... without excessive danger to the public
(applying to both criteria)

conceptual as to where to insert in (4) & how to state grammatically & logically correct

CSHB 342 (version H)

Conceptual A. to A#2 PASSED.

1) Delete any reference to a mileage requirement (100 miles) for ignition interlocks

2) Create a "tier system" as follows:
(for the granting of limited licenses)

tier 1: 1st offense - within last 60 days
can be granted limited license
(for limited purposes stated in stat.) without
ignition interlock

tier 2: 1st offense - before last 60 days
Court may require ignition interlock

tier 3: Repeat offender - must have
ignition interlock *to get limited license

Amendment 3 - PASSED Gara

HB 342 (vers. H)

Page 5 line 14-15, after "the person's breath,"

Delete: "the court shall double the fine imposed under (b)(1) or (n)(1) of this section"

Insert: "the court shall increase the fine imposed under (b)(1) or (n)(1) of this section by the lesser of one-third or \$500"

Page 5 line 21-22, after ""the person's breath,"

Delete: "the court shall triple the fine imposed under (b)(1) or (n)(1) of this section"

Insert: "the court shall increase the fine imposed under (b)(1) or (n)(1) of this section by the lesser of one-half or \$1,000"

AMENDMENT #4 - PASSED

OFFERED IN THE HOUSE

TO: CSHB 342(), Draft Version "H"

- 1 Page 5, line 30:
- 2 Delete "July 1, 2004"
- 3 Insert "January 1, 2005"

23-LS1292VH
Luckhaupt
2/23/04

CS FOR HOUSE BILL NO. 342()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GATTO

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to driving while under the influence and to alcohol related offenses;
2 and providing for an effective date."

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

4 * Section 1. AS 12.55.102 is amended to read:

5 Sec. 12.55.102. Alcohol related offenses. (a) The court may order as a
6 condition of probation or generally as part of a sentence that a defendant convicted
7 of an offense involving the use, consumption, or possession of an alcoholic beverage
8 may not operate a motor vehicle during the period of probation unless the vehicle is
9 equipped with a properly functioning, monitored, and maintained ignition interlock
10 device. A condition of probation or sentence imposed under this subsection takes
11 effect after any period of license revocation imposed under AS 28.15.165(d) or
12 28.15.181(c).

13 (b) The court, in imposing probation or a condition of a sentence under (a) of
14 this section, may allow the defendant limited privileges to drive a motor vehicle

1 without an ignition interlock device if the court determines that the defendant is
2 required as a condition of employment to drive a motor vehicle owned or leased by the
3 defendant's employer and that the defendant's driving will not create substantial
4 danger. If the court imposes probation described by this subsection, the court shall
5 require the defendant to notify the defendant's employer of the probation, and shall
6 require that the defendant, while driving the employer's vehicle, carry a letter from the
7 employer authorizing the defendant to drive that vehicle.

8 (c) A court imposing a condition of probation under this section shall require
9 the surrender of the driver's license and shall issue to the defendant a certificate valid
10 for the duration of the probation or a copy of the defendant's judgment of conviction.
11 The defendant shall pay all costs associated with fulfilling the condition of probation,
12 including installation, repair, and monitoring of an ignition interlock device.

13 (d) The court may include the cost of the ignition interlock device as a part of
14 the fine required to be imposed against the defendant under AS 28.35.030(b) or (n) or
15 28.35.032(g) or (p).

16 (e) In this section,

17 (1) "ignition interlock device" means equipment designed to prevent a
18 motor vehicle from being operated by a person who has consumed an alcoholic
19 beverage, and that has been certified by the commissioner of corrections under
20 AS 33.05.020(c) or by the commissioner of administration;

21 (2) "motor vehicle" has the meaning given in AS 28.40.100, but
22 does not include snow machines and all-terrain vehicles not designed for and not
23 operated on highways or roads.

24 * Sec. 2. AS 28.35.030(b) is amended to read:

25 (b) Except as otherwise provided in [UNDER (n) OF] this section, driving
26 while under the influence of an alcoholic beverage, inhalant, or controlled substance is
27 a class A misdemeanor. A person convicted under this subsection is guilty of a
28 class A misdemeanor even though the person is required under (s) of this section
29 to pay a fine that exceeds the maximum fine for a class A misdemeanor. Except
30 as provided under (p) and (s) of this section, upon conviction,

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

1 (A) not less than 72 consecutive hours and a fine of not less
2 than \$1,500 if the person has not been previously convicted;

3 (B) not less than 20 days and a fine of not less than \$3,000 if
4 the person has been previously convicted once;

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

8 (D) not less than 120 days and a fine of not less than \$5,000 if
9 the person has been previously convicted three times and is not subject to
10 punishment under (n) of this section;

11 (E) not less than 240 days and a fine of not less than \$6,000 if
12 the person has been previously convicted four times and is not subject to
13 punishment under (n) of this section;

14 (F) not less than 360 days and a fine of not less than \$7,000 if
15 the person has been previously convicted more than four times and is not
16 subject to punishment under (n) of this section;

17 (2) the court may not

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

21 (B) suspend imposition of sentence;

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

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

31 * Sec. 3. AS 28.35.030(n) is amended to read:

1 (n) Except as otherwise provided in this section, a [A] person is guilty of a
2 class C felony if the person is convicted under (a) of this section and has been
3 previously convicted two or more times since January 1, 1996, and within the 10 years
4 preceding the date of the present offense. For purposes of determining minimum
5 sentences based on previous convictions, the provisions of (r)(4) of this section apply.
6 Subject to (s) of this section, upon [UPON] conviction, the court

7 (1) shall impose a fine of not less than \$10,000 and a minimum
8 sentence of imprisonment of not less than

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

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

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

14 (2) may not

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

18 (B) suspend imposition of sentence;

19 (3) shall permanently revoke the person's driver's license, privilege to
20 drive, or privilege to obtain a license subject to restoration of the license under (o) of
21 this section;

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

27 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
28 or aircraft used in the commission of the offense, subject to remission under
29 AS 28.35.037; and

30 (6) shall order the department to revoke the registration for any vehicle
31 registered by the department in the name of the person convicted under this

1 subsection; if a person convicted under this subsection is a registered co-owner of a
2 vehicle or is registered as a co-owner under a business name, the department shall
3 reissue the vehicle registration and omit the name of the person convicted under this
4 subsection.

5 * Sec. 4. AS 28.35.030 is amended by adding a new subsection to read:

6 (s) If a person is convicted under (a) of this section and it is determined by the
7 trier of fact that, as determined by a chemical test taken within four hours after the
8 offense was committed,

9 (1) there was at least 0.16 percent by weight of alcohol in the person's
10 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
11 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
12 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
13 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
14 of the person's breath, the court shall double the fine imposed under (b)(1) or (n)(1) of
15 this section and, if the offense was committed on a road system, require the person to
16 use an ignition interlock device as provided in AS 12.55.102 for a minimum of six
17 months after the person regains the privilege, including any limited privilege, to
18 operate a motor vehicle;

19 (2) there was 0.24 percent or more by weight of alcohol in the person's
20 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there
21 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall
22 triple the fine imposed under (b)(1) or (n)(1) of this section and, if the offense was
23 committed on a road system, require the person to use an ignition interlock device as
24 provided in AS 12.55.102 for a minimum of one year after the person regains the
25 privilege, including any limited privilege, to operate a motor vehicle.

26 * Sec. 5. The uncodified law of the State of Alaska is amended by adding a new section to
27 read:

28 **APPLICABILITY.** This Act applies only to acts committed on or after the effective
29 date of this Act.

30 * Sec. 6. This Act takes effect July 1, 2004.

Conceptual A. to A. #2^(H.4) - by Gruenberg

allow 1st offender to be given ~~limited license~~ ^{limited license} ~~with ignition interlock~~ ^{PASSED}

w/o ignition interlock

within ~~last~~ ^{last (final)} 60 days
if live w/in 100 miles

way law is now. ~~etc~~

Check w/ Gruenberg

Tier 1: 1st offense w/in last 60 days can be granted limited license (for purposes of livelihood, etc.) w/o ignition interlock.

Tier 2: 1st offense (anytime) before last 60 days, Ct. may grant limited license if ignition interlock ^{require}

Tier 3: R.O. - must have ignition interlock

Amendment

- not offered

OFFERED IN THE HOUSE

TO: CSHB 342(), Draft Version "H"

- 1 Page 1, line 12, following "28.15.181(c).":
- 2 Insert "The court may not order or require the use of an ignition interlock device unless
- 3 a provider for the device is located within 100 miles of the defendant's residence or
- 4 domicile."

AMENDMENT

-not offered

OFFERED IN THE HOUSE

TO: CSHB 342(), Draft Version "H"

1 Page 2, following line 23:

2 Insert new bill sections to read:

3 **** Sec. 2.** AS 12.55.102(a) is amended to read:

4 (a) The court may order as a condition of probation [OR GENERALLY AS
5 PART OF A SENTENCE] that a defendant convicted of an offense involving the use,
6 consumption, or possession of an alcoholic beverage may not operate a motor vehicle
7 during the period of probation unless the vehicle is equipped with a properly
8 functioning, monitored, and maintained ignition interlock device. A condition of
9 probation [OR SENTENCE] imposed under this subsection takes effect after any
10 period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

11 *** Sec. 3.** AS 12.55.102(b) is amended to read:

12 (b) The court, in imposing probation [OR A CONDITION OF A
13 SENTENCE] under (a) of this section, may allow the defendant limited privileges to
14 drive a motor vehicle without an ignition interlock device if the court determines that
15 the defendant is required as a condition of employment to drive a motor vehicle owned
16 or leased by the defendant's employer and that the defendant's driving will not create
17 substantial danger. If the court imposes probation described by this subsection, the
18 court shall require the defendant to notify the defendant's employer of the probation,
19 and shall require that the defendant, while driving the employer's vehicle, carry a letter
20 from the employer authorizing the defendant to drive that vehicle.

21 *** Sec. 4.** AS 12.55.102(e) is amended to read:

22 (e) In this section,

23 [(1)] "ignition interlock device" means equipment designed to prevent

1 a motor vehicle from being operated by a person who has consumed an alcoholic
2 beverage, and that has been certified by the commissioner of corrections under
3 AS 33.05.020(c) [OR BY THE COMMISSIONER OF ADMINISTRATION;

4 (2) "MOTOR VEHICLE" HAS THE MEANING GIVEN IN
5 AS 28.40.100, BUT DOES NOT INCLUDE SNOW MACHINES AND ALL-
6 TERRAIN VEHICLES NOT DESIGNED FOR AND NOT OPERATED ON
7 HIGHWAYS OR ROADS]."

8
9 Renumber the following bill sections accordingly.

10
11 Page 5, following line 25:

12 Insert a new bill section to read:

13 **"* Sec. 8.** AS 28.35.030(s) is amended to read:

14 (s) If a person is convicted under (a) of this section and it is determined by the
15 trier of fact that, as determined by a chemical test taken within four hours after the
16 offense was committed,

17 (1) there was at least 0.16 percent by weight of alcohol in the person's
18 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
19 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
20 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
21 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
22 of the person's breath, the court shall double the fine imposed under (b)(1) or (n)(1) of
23 this section [AND, IF THE OFFENSE WAS COMMITTED ON A ROAD SYSTEM,
24 REQUIRE THE PERSON TO USE AN IGNITION INTERLOCK DEVICE AS
25 PROVIDED IN AS 12.55.102 FOR A MINIMUM OF SIX MONTHS AFTER THE
26 PERSON REGAINS THE PRIVILEGE, INCLUDING ANY LIMITED PRIVILEGE,
27 TO OPERATE A MOTOR VEHICLE];

28 (2) there was 0.24 percent or more by weight of alcohol in the person's
29 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there
30 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall
31 triple the fine imposed under (b)(1) or (n)(1) of this section [AND, IF THE OFFENSE

1 WAS COMMITTED ON A ROAD SYSTEM, REQUIRE THE PERSON TO USE
2 AN IGNITION INTERLOCK DEVICE AS PROVIDED IN AS 12.55.102 FOR A
3 MINIMUM OF ONE YEAR AFTER THE PERSON REGAINS THE PRIVILEGE,
4 INCLUDING ANY LIMITED PRIVILEGE, TO OPERATE A MOTOR VEHICLE]."
5

6 Renumber the following bill sections accordingly.
7

8 Page 5, lines 28 - 29:

9 Delete all material and insert:

10 "APPLICABILITY. (a) Sections 1 - 8 of the Act apply only to acts committed on or
11 after the effective date of each of those sections."
12

13 Page 5, line 30:

14 Delete "This Act takes"

15 Insert "Sections 1, 5 - 7, and 9 of this Act take"
16

17 Page 5, following line 30:

18 Insert a new bill section to read:

19 "* **Sec. 11.** Sections 2 - 4 and 8 of this Act take effect July 1, 2007."

*-withdrawn
recind*

conceptual
AMENDMENT # 2 (conform to version "H")

OFFERED IN THE HOUSE

BY REPRESENTATIVE ANDERSON

TO: CSHB 342(), Draft Version "D"

1 Page 1, line 1:

2 Delete all material and insert:

3 **"An Act relating to driving while under the influence**
4 **limited drivers' licenses; and providing for an effective date."**

*, to alcohol related offenses,
to ignition
interlock
devices,*

6 Page 1, following line 2:

7 Insert a new bill section to read:

8 **** Section 1.** AS 28.15.201(d) is amended to read:

9 (d) A court revoking a driver's license, privilege to drive, or privilege to obtain
10 a license under AS 28.15.181(c), or the department when revoking a driver's license,
11 privilege to drive, or privilege to obtain a license under AS 28.15.165(c), may grant
12 limited license privileges [FOR THE FINAL 60 DAYS DURING WHICH THE
13 LICENSE IS REVOKED] if

14 (1) the revocation was for a misdemeanor conviction under
15 AS 28.35.030(a) and not for a violation of AS 28.35.032;

16 *to the A:* (2) ~~the person has not been previously convicted or, if the person has~~
17 ~~been previously convicted, the court or the department requires the person to use~~
18 ~~an ignition interlock device as described in AS 12.55.102 during the period of the~~
19 ~~limited license; in this paragraph, "previously convicted" has the meaning given in~~
20 ~~AS 28.35.030 and also includes convictions based on laws presuming that the person~~
21 ~~was under the influence of intoxicating liquor if there was 0.08 percent or more by~~
22 ~~weight of alcohol in the person's blood;~~

23 (3) the court or the department determines that the person's ability to

amend to
not allow
people who don't
(2nd offenders) ~~get~~
RO's ~~get~~
interlocks (out of area)
to no have limited
license

* don't want
RO's to
get lim. +
licen. who
interlock

Conceptual A. to A#2 by Gruenberg PASSED

23-LS1292\D.1

health or safety reasons or that there are other compelling reasons that require the issuance of a limited license.

1
2
3
4
5
6
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9

earn a livelihood would be severely impaired without a limited license
(4) the court or the department determines that a limitation under (a) of this section can be placed on the license that will enable the person to earn a livelihood without excessive danger to the public; and
(5) the court or the department determines that the person is enrolled in and is in compliance with, or has successfully completed the alcoholism screening, evaluation, referral, and program requirements of the Department of Health and Social Services under AS 28.35.030(h)."

apply to offense only

10 Page 1, line 3:

11 Delete "Section 1"

12 Insert "Sec. 2"

13

14 Renumber the following bill sections accordingly.

(4) arises out of the use of an ignition interlock device certified under AS 33.05.020(c).

* Sec. 2. AS 11.76 is amended by adding a new section to read:

Sec. 11.76.140. AVOIDANCE OF IGNITION INTERLOCK DEVICE. (a) A person may not knowingly

(1) circumvent or tamper with an ignition interlock device in a manner intended to allow a person on probation under AS 12.55.102 to avoid using the device; or

(2) rent, loan, or lease a motor vehicle to a person on probation under AS 12.55.102, unless the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

(b) Notwithstanding AS 11.81.250, a person convicted of violating this section is guilty of a misdemeanor. The maximum term of imprisonment that may be imposed is 30 days and the maximum fine that may be imposed is \$500.

* Sec. 3. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.102. ALCOHOL RELATED OFFENSES. (a) The court may order as a condition of probation that a defendant convicted of an offense involving the use, consumption, or possession of an alcoholic beverage may not operate a motor vehicle during the period of probation unless the vehicle is equipped with a properly functioning, monitored, and maintained ignition interlock device. A condition of probation imposed under this subsection takes effect after any period of license revocation imposed under AS 28.15.165(d) or 28.15.181(c).

(b) The court, in imposing probation under (a) of this section, may allow the defendant limited privileges to drive a motor vehicle without an ignition interlock device if the court determines that the defendant is required as a condition of employment to drive a motor vehicle owned or leased by the defendant's employer and that the

defendant's driving will not create substantial danger. If the court imposes probation described by this subsection, the court shall require the defendant to notify the defendant's employer of the probation, and shall require that the defendant, while driving the employer's vehicle, carry a letter from the employer authorizing the defendant to drive that vehicle.

(c) A court imposing a condition of probation under this section shall require the surrender of the driver's license and shall issue to the defendant a certificate valid for the duration of the probation or a copy of the defendant's judgment of conviction. The defendant shall pay all costs associated with fulfilling the condition of probation, including installation, repair, and monitoring of an ignition interlock device.

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

(e) In this section, "ignition interlock device" means equipment designed to prevent a motor vehicle from being operated by a person who has consumed an alcoholic beverage, and that has been certified by the commissioner of corrections under AS 33.05.020(c).

* Sec. 4. AS 28.35.030(c) is amended to read:

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than \$250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum

23-LS1292\D
Luckhaupt
2/14/04

CS FOR HOUSE BILL NO. 342()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE GATTO

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to driving while intoxicated; and providing for an effective date."

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

3 * Section 1. AS 28.35.030(b) is amended to read:

4 (b) Except as otherwise provided in [UNDER (n) OF] this section, driving
5 while under the influence of an alcoholic beverage, inhalant, or controlled substance is
6 a class A misdemeanor. A person convicted under this subsection is guilty of a
7 class A misdemeanor even though the person is required under (s) of this section
8 to pay a fine that exceeds the maximum fine for a class A misdemeanor. Except
9 as provided under (p) and (s) of this section, upon conviction,

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

11 (A) not less than 72 consecutive hours and a fine of not less
12 than \$1,500 if the person has not been previously convicted;

13 (B) not less than 20 days and a fine of not less than \$3,000 if
14 the person has been previously convicted once;

15 (C) not less than 60 days and a fine of not less than \$4,000 if

1 the person has been previously convicted twice and is not subject to
2 punishment under (n) of this section;

3 (D) not less than 120 days and a fine of not less than \$5,000 if
4 the person has been previously convicted three times and is not subject to
5 punishment under (n) of this section;

6 (E) not less than 240 days and a fine of not less than \$6,000 if
7 the person has been previously convicted four times and is not subject to
8 punishment under (n) of this section;

9 (F) not less than 360 days and a fine of not less than \$7,000 if
10 the person has been previously convicted more than four times and is not
11 subject to punishment under (n) of this section;

12 (2) the court may not

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

16 (B) suspend imposition of sentence;

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

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

26 * Sec. 2. AS 28.35.030(n) is amended to read:

27 (n) Except as otherwise provided in this section, a [A] person is guilty of a
28 class C felony if the person is convicted under (a) of this section and has been
29 previously convicted two or more times since January 1, 1996, and within the 10 years
30 preceding the date of the present offense. For purposes of determining minimum
31 sentences based on previous convictions, the provisions of (r)(4) of this section apply.

1 Subject to (s) of this section, upon [UPON] conviction, the court

2 (1) shall impose a fine of not less than \$10,000 and a minimum
3 sentence of imprisonment of not less than

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

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

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

9 (2) may not

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

13 (B) suspend imposition of sentence;

14 (3) shall permanently revoke the person's driver's license, privilege to
15 drive, or privilege to obtain a license subject to restoration of the license under (o) of
16 this section;

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

22 (5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft,
23 or aircraft used in the commission of the offense, subject to remission under
24 AS 28.35.037; and

25 (6) shall order the department to revoke the registration for any vehicle
26 registered by the department in the name of the person convicted under this
27 subsection; if a person convicted under this subsection is a registered co-owner of a
28 vehicle or is registered as a co-owner under a business name, the department shall
29 reissue the vehicle registration and omit the name of the person convicted under this
30 subsection.

31 * Sec. 3. AS 28.35.030 is amended by adding a new subsection to read:

1 (s) If a person is convicted under (a) of this section and it is determined by the
2 trier of fact that, as determined by a chemical test taken within four hours after the
3 offense was committed,

4 (1) there was at least 0.16 percent by weight of alcohol in the person's
5 blood but less than 0.24 percent by weight of alcohol in the person's blood or at least
6 160 milligrams of alcohol per 100 milliliters of blood, but less than 240 milligrams of
7 alcohol per 100 milliliters of blood, or when there was at least 0.16 grams of alcohol
8 per 210 liters of the person's breath, but less than 0.24 grams of alcohol per 210 liters
9 of the person's breath, the court shall double the fine imposed under (b)(1) or (n)(1) of
10 this section and require the person to use an ignition interlock device as provided in
11 AS 12.55.102 for a minimum of six months;

12 (2) there was 0.24 percent or more by weight of alcohol in the person's
13 blood or 240 milligrams or more of alcohol per 100 milliliters of blood, or when there
14 was 0.24 grams or more of alcohol per 210 liters of the person's breath, the court shall
15 triple the fine imposed under (b)(1) or (n)(1) of this section and require the person to
16 use an ignition interlock device as provided in AS 12.55.102 for a minimum of one
17 year.

18 * Sec. 4. The uncodified law of the State of Alaska is amended by adding a new section to
19 read:

20 APPLICABILITY. This Act applies only to acts committed on or after the effective
21 date of this Act.

22 * Sec. 5. This Act takes effect July 1, 2004.

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381



INTERIM ADDRESS:
600 E Railroad Avenue
Wasilla, AK 99654
Phone : 907-376-2679
Fax: (907) 373-4715

Representative Carl Gatto

January 28, 2004

To: Representative McGuire – Chair (H) Judiciary Committee

RE: HB 342 – Increase DWI Penalties

Dear Representative McGuire,

May I officially request that you schedule HB 342 for hearing before your committee at your earliest convenience?

Enclosed are:

- 1) Sponsor Statement
- 2) Text of HB 342
- 3) Fiscal Note
- 4) Supporting documentation

Thank you for your time and consideration.

Alaska State Capitol, Room 411 • Juneau, Alaska 99801
Chairman – House Special Committee on Education
Vice-Chair – Labor and Commerce Committee
Vice-Chair – Health Education and Social Services Committee
(907) 465-3743 phone • (907) 465-2381 fax

Representative Carl Gatto@legis.state.ak.us

Alaska State Legislature

SESSION ADDRESS:

Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

**INTERIM ADDRESS:**

600 E Railroad Avenue
Wasilla, AK 99654
Phone : 907-376-2679
Fax: (907) 373-4745

Representative Carl Gatto

SPONSOR STATEMENT

HOUSE BILL 342

"AN ACT RELATING TO DRIVING WHILE INTOXICATED; AND PROVIDING FOR AN EFFECTIVE DATE."

Driving while intoxicated is a serious crime; there is no doubt about this. As such, it is important that we treat the commission of DWIs appropriately. This bill ensures that those individuals who are the most egregious offenders will receive punishment commensurate with the severity of their offense. Rather than fining all offenders the same amount regardless of their BAC (Blood Alcohol Content) this bill proposes to increase fines based on the level of BAC. This action is supported by evidence from numerous sources that show the direct relationship between level of intoxication and increased risk of crashes and death:

- Every thirty minutes someone in America dies in an alcohol-related crash. Impaired driving is the most frequently committed violent crime in America accounting for approximately 17,000 deaths per year.¹
- Alaskans see the effects of alcohol-induced crashes firsthand with thirty-five deaths due to impaired driving in 2002.²
- Substantial evidence suggests that the most dangerous drivers in terms of crash risk are those individuals who choose to drive with BAC levels in excess of 0.15. In fact, according to a study cited by the Century Council, drivers with BACs in excess of 0.15 represent an estimated 1 percent of drivers on weekend nights, yet they are involved in close to 50 percent of all fatal crashes at that time.
- According to a separate study cited by the Century Council, drivers with a BAC of 0.15 or above are 385 times more likely to be involved in a single vehicle crash than the average non-drinking driver.

I urge your prompt and favorable action on this legislation.

¹ President's National Commission against Drunk Driving: <http://www.ncadd.com/>

² Century Council. <http://www.centurycouncil.org/web/main/drunkdriiving.html>

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB342-LAW-CDCO-1-29
 Bill Version: HB 342
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to driving while intoxicated..." RDU Criminal
 Component Criminal Justice Litigation
 Sponsor Representative Gatto
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)
 This bill amends AS 28.35.030 by adding a minor change to clarify that a person convicted of driving under the influence of an alcoholic beverage, inhalant, or controlled substance is guilty of a class A misdemeanor even though the fine exceeds the maximum fine for a class a misdemeanor.

 Passage of this legislation will have no foreseeable fiscal impact on the Department of Law.

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
 Division Administrative Services Date/Time 1/29/04 8:58 AM
 Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 1/29/2004
 Agency Department of Law

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB342-ACS-TC-1-29-04
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title DUI Fines BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Gatto
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 342.

Prepared by: Doug Wooliver Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 1/29/04 4:27 PM
 Approved by: Stephanie Cole Administrative Director by Doug Wooliver Date 1/29/2004
 Agency Alaska Court System

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB342
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to DWI... BRU Legal and Advocacy Services
 Component Public Defender Agency
 Sponsor Representative Gatto
 Requester (H) Judiciary Component No. 1631

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*	*	*	*	*	*

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

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill will likely have a fiscal impact on the operations of the Agency, but it is impossible to determine with any accuracy what that impact will be. Doubling and quadrupling the fines for convictions for DUI, depending on the results of a blood or breath/alcohol test, will likely result in more cases handled by the Agency going to trial because of the exposure to increased penalties. Trials are more costly for the Agency than cases resolved short of trial. It is also very likely that the Agency will bear the additional collective cost of challenging this bill on constitutional grounds for violations of equal protection. Because of the inability to predict with any certainty the extent of the fiscal impact this bill will generate, an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)-334-4416
 Division Public Defender Agency Date/Time January 16, 2004
 Approved by: Mike Miller, Commissioner Date _____
 Agency Administration

HARDCORE DRUNK DRIVERS AND THEIR IMPACT

All drunk drivers are dangerous, and action must be taken at every level to ensure progress in reducing drunk driving. This publication's focus is on hardcore drunk drivers because this group continues to be over-represented in drunk driving crashes.

A Deadly Minority

In 2001, 17,448 people were killed in alcohol-related traffic crashes and 275,000 were injured in the United States (NHTSA 2002). That represents an average of one alcohol-related fatality every 30 minutes and one person injured approximately every two minutes. In addition to injuries and the loss of lives, drunk driving carries a huge economic price tag (Blincoe et al. 2002).

While comprising a relatively small proportion of drivers, the impact of hardcore drunk drivers in human and monetary costs far exceeds their actual numbers. For example:

- It is estimated that while drivers with BACs in excess of .15 are only 1 percent of all drivers on weekend nights, they are involved in nearly 50 percent of all fatal crashes at that time (Simpson et al. 1996).
- About one-third of all drivers arrested for DWI are repeat offenders and over half have a BAC over .15 (Kilgund and McCart June 2002).
- In the United States in 2001, 22 percent of all drivers killed in motor vehicle crashes and 57 percent of all drinking drivers in an alcohol-related fatal crash had BAC levels of .15 or greater (FARS 2002).
- Drivers with a BAC of .15 or above are 385 times more likely to be involved in a single vehicle fatal crash than the average non-drinking driver (Zador 1991).

A strong relationship exists between a high BAC and the likelihood of having a previous DWI conviction. The 2001 Fatality Analysis Reporting System (FARS) data show that previous DWI convictions increase in direct correlation with increases in BAC in subsequent arrests.

For example, only 1.4 percent of non-drinking drivers involved in a fatal crash had a prior DWI conviction compared to 18.5 percent of those with BACs of .15 to .19. This percentage increases to 30.5 percent for those with a BAC of .20 or above. FARS estimates also indicate 77 percent of fatally injured drinking drivers with a BAC above .10 had a prior DWI conviction, while 58 percent of fatally injured drinking drivers with previous DWIs had BACs of .15 and over.

At any BAC level, the risk of apprehension for drunk driving is extremely low, depending on the level of enforcement and the method of calculation. Estimates range from about one arrest in 50 trips to one arrest in 100 trips. Consequently, many hardcore



drunk drivers go undetected and aren't reflected in any statistics. Compounding the problem is that hardcore drunk drivers are highly resistant to changing their behavior. That resistance is often characterized by repeat DWI convictions despite previous sanctions, education or treatment. Approximately 30 percent of all drinking drivers arrested for DWI have been caught in the past by the police and sanctioned by judicial and administrative agencies (Wiliszowski et al. 1996).

The 1996 Wiliszowski study also examined reasons given for drunk driving by repeat offenders. Most subjects presented numerous reasons for their behavior with the most common being that the person thought he or she was OK to drive (32.2 percent). Other answers included: just did not think about it (21 percent); lacks control over him/herself after drinking (18.6 percent); no one is available to drive him/her (14.4 percent); and thought he/she would be OK if careful to avoid accident/arrest (13.8 percent).

Common Characteristics

Compared to all drivers, hardcore offenders often are more aggressive, hostile and thrill seeking. They are more likely to have a criminal record, to use drugs and to have poor driving records (Simpson 1996). But perhaps most telling is their pattern of alcohol-related problems. Compared with first-time driving-under-the-influence arrests, repeat offenders tend to have higher rates of alcoholism and alcohol-related problems, more frequent non-traffic criminal offenses and more severe mental health problems (NHTSA 1996).

A 2000 study done by Jones and Lacey included the following attributes of repeat offenders:

Mean Age	35
Education	High school or less
Occupation	Non-white collar
Income	Low
Other Offenses	Traffic and Criminal
Gender	Male (over 90 percent)
Race	White
Marital Status	Unmarried
BAC	>0.18 percent at arrest; higher in fatal crashes
Prior DWIs	2-3
Alcohol Problems	Alcohol dependency common

A study of 126 hardcore DWI offenders incarcerated in Ohio prisons (Siegal et al. 2000) found 98 percent had histories of alcohol abuse and 75 percent were alcohol dependent. They all had been previously arrested for DWI. The mean number of DWI arrests was 7.6; the mean number of convictions was 7.1.

Those numbers take a huge jump when looking at all previous involvement with the criminal justice system. Of the hardcore drunk

drivers studied, Siegal found the mean number of arrests for any offense was 29.0, while the mean number of convictions was 25.2. In addition to alcohol-related driving violations and technical violations, such as contempt of court, the most commonly reported arrests were for disorderly conduct/public intoxication, drug related charges and assault charges.

Making the same point, a 2002 study of recidivism looked at 4,403 people convicted of DWI in Vermont and found many DWI offenders are incorrectly identified as "first time" offenders.

"These findings suggest that the image of the typical DWI offender as someone who is new to the criminal justice system is not accurate. The offender with no prior record is the exception and represents only about one-quarter of offenders who may be considered archetypical first offenders" (Clements 2002).

Complex but Not Impossible

The problems presented by hardcore drunk drivers are complex. As a result, there are numerous entry points and effective methods for attacking the problem. All efforts to combat hardcore drunk driving have the most traction when operating as a coordinated system that emphasizes swift identification, certain punishment and effective treatment.

Sanctions

As noted in the sentencing section, the objectives of sanctions include punishment and deterring future offenses. This section divides sanctions into two broad categories:

- Driver-based sanctions, such as licensing suspensions, incarceration, supervisory programs and victim impact panels; and
- Vehicle-based sanctions, including ignition interlock devices, license plate seizure, vehicle impoundment, vehicle immobilization and vehicle forfeiture.

Included here are sanctions identified as critical tactics in the web to combat hardcore drunk driving. They are most effective when used in combination with each other and in conjunction with effective treatment.

Sanctioning Hardcore Drunk Drivers: A Graduated System

Graduated Sanctions Based on Number of Offenses. The most common means of identifying and punishing hardcore offenders is by determining repeat offenses. Multiple convictions with increasing sanctions and rehabilitation requirements are strong indicators of hardcore behavior — repeatedly driving drunk and being highly resistant to change. The vast majority of states treat repeat drunk driving more severely and have statutory provisions for graduated penalties based on number of offenses. States differ, however, as to how long they maintain records on repeat offenses and the timeframe applicable to be considered a repeat offender.

BAC-based Graduated Penalties. Almost all states have graduated penalties based upon prior convictions, and 31 states, plus Washington, D.C., and American Samoa, have graduated penalty systems based on blood alcohol concentration (BAC) at the time of arrest. The severity of the penalty increases with BAC, and sanctions are the most severe for multiple offenders. The system recognizes that drivers with high BACs — most often defined as .15 and above — warrant stiffer sanctions because they are more dangerous on the highway and may also be more likely to repeat the behavior. Plus, many treatment professionals associate a high BAC at arrest with a higher likelihood of alcohol abuse. The primary objective of strong sanctions for high BAC offenders is to reduce recidivism by increasing the certainty and severity of punishment and by reducing loopholes in the system. (McCartt and Shabanova 2002).

States' high BAC sanctioning systems vary greatly, with enhanced sanctions including:

- longer or more intensive alcohol education or treatment;
- limitations on plea reductions or deferred judgments;
- driver-based punitive sanctions such as license suspensions;

- vehicle-based punitive sanctions such as ignition interlocks; and
- courts' consideration of a high BAC in sentencing as an aggravating or special factor (McCart 2001).

In a few states, there are no graduated penalties based on BAC, but first offenders with a high BAC must have an alcohol assessment or they can be precluded from programs oriented to less dangerous offenders. Research suggests an effective policy is to treat first-time offenders with extremely high BACs (.20 or higher) as hardcore offenders relative to sanctions, fines, treatment and rehabilitation. Two reasons are cited for this: first, the risk of a crash is much greater at high BACs; and second, driving with an extremely high BAC may indicate the driver has developed a high alcohol tolerance, which also may be an indication of an alcohol problem (Transportation Research Board 1995). Additionally, in a number of states, a high BAC decreases the likelihood of a favorable plea bargain or is taken into account by the judge at sentencing.

Where Are Graduated BAC Systems Used?

According to the National Hardcore Drunk Driver Project Survey, 31 states and Washington, D.C., and American Samoa had graduated BAC systems and enhanced sanctions for high BAC offenders. According to McCart's 2001 study, most states with graduated systems report few problems with implementing high BAC sanctions and believe the sanctions have had a positive impact on the state's DUI system.

In Colorado, high BAC offenders at .15 and above are subject to a fine of \$500–\$1,500 and a mandatory incarceration of 90 days for first and subsequent offenses. The mandatory incarceration time can be reduced to 10 days if the offender participates in an alcohol education/treatment program.

In Connecticut, convicted offenders with BAC levels of .16 or above are subject to increased administrative licensing actions. On a first offense, the license is suspended for 120 days. On a second offense, it is suspended for 10 months and on a third offense, the license is suspended for two years and six months.

In Minnesota, first-time offenders with a high BAC level of .20 and above at the time of arrest or within two hours of the time of the offense are charged with third-degree drunk driving (a gross misdemeanor), and the driver's license and license plates are impounded administratively upon arrest. For second offenders at .20 BAC and above, the charge is second-degree drunk driving (a gross misdemeanor), the driver's license and license plates are impounded administratively, and the vehicle is forfeited upon arrest. Additionally, license suspension/revocation periods are doubled for those offenders charged with driving at .20 BAC and above.

In American Samoa, the offenders' BAC is multiplied by a certain constant figure to determine the monetary fines. Offenders with higher BACs are required to pay increased fines.


27 STATES, WASHINGTON, DC AND AMERICAN SAMOA HAVE TIERED BAC SYSTEMS

State	1st Tier BAC	2nd Tier BAC	3rd Tier BAC	4th Tier BAC	Resulting Action
Arkansas	.08	≥ .15			Increased licensing actions, may order ignition interlock installed
Arizona	.08	≥ .15			Increased incarceration and mandatory ignition interlock
California	.08	≥ .20			Ignition interlock installation may be ordered, mandatory alcohol assessment
Colorado	0.1	≥ .20			Subject to same sanctions as repeat offenders and mandatory treatment
Connecticut	.08	≥ .16			Increased licensing actions
Idaho	.08	≥ .20			Increased licensing actions, fines, incarceration, and mandatory alcohol assessment
Illinois	.08	≥ .16			Increased fine and incarceration, and mandatory treatment
Indiana	.08	≥ .15			Increased fine and incarceration
Iowa	.10	≥ .15			Increased fine, mandatory alcohol evaluation. Diversion programs and probation not allowed
Kentucky	.08	.18 or above			Increased incarceration and mandatory alcohol assessment
Louisiana	.08	≥ .15			Increased incarceration and mandatory alcohol assessment
Maine	.08	≥ .15			Increased incarceration and mandatory alcohol assessment
Minnesota	.10	≥ .20			Increased fine, licensing actions doubled. Drivers license and license plate impoundment, and possible vehicle forfeiture
Nevada	.10	≥ .18			Mandatory alcohol treatment
New Hampshire	.08	≥ .16			Increased fine, mandatory vehicle registration revocation, and ignition interlock may be ordered
New Mexico	.08	≥ .16			
North Carolina	.08	≥ .16			Increased penalties and mandatory ignition interlock
Ohio	.10	≥ .17			Increased incarceration
Oklahoma	.08	≥ .15			Mandatory treatment and aftercare, ignition interlock and community service
Pennsylvania	.10	.16-.19	≥ .20		Increased licensing actions
Rhode Island	.08	≥ .15			Increased fine, incarceration, and community service
South Carolina	.10	≥ .15			Subject to pre-conviction licensing actions
South Dakota	.08	≥ .17			Mandatory alcohol evaluation
Tennessee	.10	≥ .20			Increased incarceration
Virginia	.08	≥ .20	≥ .25		Increased incarceration and mandatory treatment
Washington	.08	≥ .15			Increased licensing actions, fine, incarceration, and mandatory treatment
Washington, D.C.	.08	.20-.24	≥ .25		Increased incarceration
Wisconsin	.10	.17-.19	.20-.24	≥ .25	Increased fines
American Samoa	.08	No specific level			Increased fines that are correlated to the BAC level

This table lists those states using a graduated, or tiered, system to assign sanctions and treatment based on BAC levels of .08 and above. Greater sanctions and/or increased treatment are required when an offender's BAC level reaches the second tier level, and the increased penalty or treatment is noted under *Resulting Action*.

How Effective Are BAC Graduated Systems?

According to recent study of Minnesota's high BAC law, "high BAC sanctioning systems are viewed as one of the few promising approaches for reducing recidivism among 'hardcore' impaired drivers" (McCart and Shabanova 2002). Minnesota's high-BAC law appears to have successfully increased the severity of case dispositions for high-BAC offenders, and evidence suggests an initial reduction in recidivism.



Though a specific reduction in recidivism cannot be attributed directly to a tiered BAC system, experts in the field say the graduated penalty system results in increased efficiency and effectiveness in identifying and processing drunk drivers. In 1999, the National Hardcore Drunk Driver Project called for graduated penalties of aggravated DWI and hardcore DWI for high BAC offenders and high BAC repeat offenders, respectively. In its proposal for a model program to reduce hardcore drunk driving, the National Transportation Safety Board (NTSB) recommends all states adopt legislation defining a high blood alcohol concentration (.15 percent or greater) as an "aggravated" DWI offense requiring strong intervention similar to that ordinarily prescribed for repeat DWI offenders (NTSB 2000).

Where to Go for More Information on Graduated Systems

McCartt, A. Spring 2002. Enhanced sanctions for higher BACs: Addressing the high-risk offender. *Impaired Driving Update*. Kingston, NJ: Civic Research Institute, Inc.

McCartt, A., and Shabanova, V. 2002. *Effects of Enhanced Sanctions for High BAC DWI Offenders on Case Dispositions and Rates of Recidivism*. Trumbull, CT: Preusser Research Group, Inc.

McCartt, A.T. et al. 2001. *Evaluation of Enhanced Sanctions for Higher BACs: Summary of States' Laws*. Washington, DC: National Highway Traffic Safety Administration.

Simpson, H.M., Mayhew, D.R., and Beirness, D.J. 1996. *Dealing With the Hard Core Drinking Driver*. Ottawa, Canada: Traffic Injury Research Foundation.

Driver-Based Sanctions

Licensing Actions/Administrative License Revocation (ALR)

Most states administratively revoke the offender's driving privileges without waiting for a conviction on a DWI charge. Because this allows a driver's license to be confiscated immediately, punishment is swift and sure.

The primary purpose of license suspension is not to serve as a punitive measure or as a deterrent threat, but as a way of protecting the general public from a potentially dangerous driver. Licenses can be suspended or revoked. Although the terms often are used interchangeably, suspended licenses are automatically reinstated at the termination of the suspension, whereas revoked licenses must be replaced through renewed applications after the revocation period has expired. Retesting may be required for restoring revoked licenses.

DEFINITIONS: Hardcore drunk drivers can be defined as those who drive with a high blood alcohol concentration of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment or education.



Terms used in Alaska that could identify hardcore drunk drivers are:

- Repeat offender — *2nd or subsequent offenses within 10 years.*
- Felony DUI — *3rd or subsequent offenses within 6 years.*
- Chronic offenders.

DWI RECORDKEEPING & REPORTING: Driving records are a primary means of tracking the problem of hardcore drunk drivers.

The following are key aspects of Alaska's records:

- New licensees are reviewed for prior DUI offenses in their previous states prior to license issuance.
- DUI convictions from other states are not considered prior offenses in Alaska.
- Alaska utilizes a statewide DUI reporting system.
- Offenders are tracked through conviction.
- There are approximately 480,824 licensed drivers in Alaska.
- The average BAC level of arrested or convicted offenders is not available.
- There were 5,660 drivers arrested for DUI in 2001. Of those, 1,132 were arrested for driving at BAC levels above .15 and 1,994 were arrested as repeat drunk drivers. There were 54 drivers who refused to take a BAC test. Of those refusals, 90% resulted in license revocation.
- There were 4,965 drivers convicted of DUI in 2001. Of those, 2,641 were convicted of drunk driving at a high BAC level of .15. The number of people convicted as repeat offenders is not available.
- The number of people arrested for driving with a suspended license in 2001 is not available.

SWIFT IDENTIFICATION: The quick detection, identification, and assessment of those who repeatedly drive drunk are essential to keeping the hardcore drunk driver off the road.

In Alaska:

- Enforcement techniques used to detect and apprehend drunk drivers include: blanket patrols (during holiday periods), publicized enforcement campaigns, standardized field sobriety testing, preliminary breath tests and mobile videotaping (on a limited basis).
- BAC test refusal carries mandatory criminal, administrative, and civil penalties:
 - Criminal penalties — Incarceration periods of 72 hours for a 1st offense, 20 days for a 2nd offense, 60 days for a 3rd offense, 120 days for a 4th offense, 240 days for a 5th offense and 360 days for a 6th and subsequent offense.
 - Administrative penalties — License suspension periods of 90 days for a 1st offense, 1 year for a 2nd offense within 10 years,

3 years for a 3rd offense within 10 years, and 5 years for a 4th and subsequent offense within 10 years.

- Civil penalties — Fines of \$250 for a 1st offense, \$500 for a 2nd offense, \$1,000 for a 3rd offense, \$2,000 for a 4th offense, \$3,000 for a 5th offense, and \$4,000 for a 6th and subsequent offense.

- The penalties for BAC test refusal are greater than the penalty for a drunk driving conviction on the 1st offense and equal on all subsequent offenses.

- Refusal to submit to a preliminary breath test is admissible as evidence at a criminal or civil proceeding.
- Hardcore drunk drivers are identified at the time of arrest or at pre-trial.
- Diversion programs are not used.
- When drunk driving offenses are plea-bargained to non-alcohol related offenses, it makes it difficult to identify hardcore drunk driving offenders. There is no anti-plea bargaining statute.
- Alcohol assessment is conducted post-trial, but pre-sentencing. *See Effective Treatment section.*

CERTAIN PUNISHMENT: The application of swift and certain penalties that restrict the offender from driving, punish the offense and rehabilitate the offender must be imposed consistently to change hardcore behavior.

The following sanctions may be ordered by the court or by the licensing authority:

- Licensing actions:
 - Suspension/revocation — Alaska has both pre-conviction administrative and post-conviction court-ordered licensing actions. Pre-conviction license suspension penalties are 90 days for a 1st offense, 1 year for a 2nd offense within 10 years, 3 years for a 3rd offense within 10 years, and 5 years for a 4th and subsequent offense within 10 years. All penalties are mandatory. Post-conviction license suspension penalties are identical to pre-conviction license suspension penalties. The license reinstatement fee is \$200 for a 1st offense and \$500 for repeat offenses.
 - Conditional licensing — At the court's discretion, 1st offenders may be allowed a limited occupational license following a 30 day minimum license suspension provided that they are participating in an education or treatment program.

In the state of Alaska, the following sanctions may only be ordered by the court:

- Fines — Mandatory minimums:
 - 1st offense = \$250.
 - 2nd offense = \$500.
 - 3rd offense = \$1,000.
 - 4th offense = \$2,000.
 - 5th offense = \$3,000.
 - 6th and subsequent offense = \$4,000.
- Incarceration — Mandatory minimums:
 - 1st offense = 72 consecutive hours.
 - 2nd offense = 20 days.
 - 3rd offense = 60 days.
 - 4th offense = 120 days.
 - 5th offense = 240 days.
 - 6th and subsequent offense = 360 days.

- Felony offenses = 120 days on a 3rd offense, 240 days on a 4th offense, and 360 days on a 5th and subsequent offense.
- Community service — At least 24 hours on the 1st offense and 160 hours on the 2nd offense; however, 3rd and subsequent offenses are at the discretion of the judge. It cannot be used in lieu of the mandatory minimum terms of imprisonment.
- Electronic monitoring — A person, who is ordered to serve a definite term of imprisonment, may be allowed to serve all or part of this term by electronic monitoring.
- Vehicle actions:
 - Vehicle forfeiture — People may be subject to the forfeiture of the motor vehicle used in subsequent drunk driving offenses.
 - Ignition interlock — If probation is granted, the court may order a defendant to only operate motor vehicles with ignition interlock devices. However, mandatory licensing sanctions may still apply.
- Treatment — For any DUI or refusal conviction, a defendant may be required to complete either an alcohol education or treatment program prior to license reinstatement.
- Other special assessments/surcharges — Reimbursement of incarceration costs, in which offenders may be required to pay the cost of their incarceration up to a maximum of \$1,000.
- Driving while suspended — The penalties for driving on a suspended license as a result of a DUI conviction include mandatory minimums of 10 days imprisonment, 80 hours of community service and a \$500 fine.

In Alaska, previous arrest and conviction records are available at the time of sentencing.

EFFECTIVE TREATMENT: Treatment and rehabilitation programs that change hardcore drunk driver behavior and lifestyles play an important role in reducing recidivism.

In Alaska:

- Following conviction, all offenders, whenever possible, receive a mandatory alcohol assessment/evaluation to determine the nature and extent of their alcohol problems. The offender pays the cost of the assessment (typically \$100).
- The assessment is conducted post-trial but pre-sentencing. The court takes the results of the assessment into consideration in final sentencing. However, in some jurisdictions the assessment may be conducted post-sentencing.
- Assessments are conducted by a state-certified, non-profit organization or by the state Division of Alcohol and Drug Abuse Screening Office.
- All offenders are required to attend education or treatment as recommended by the assessment. In most cases, repeat offenders are required to attend treatment as a condition of probation.
- Offenders failing to comply with the terms of their program are not eligible for license reinstatement and shall be subject to revocation of probation and incarceration.
- Alaska does not have dedicated detention and treatment facilities that target the hardcore drunk driver.

INNOVATIVE TACTICS:

Local vehicle impoundment/forfeiture: State law allows municipalities to enact ordinances to impound/forfeit motor vehicles for violations of local DUI/chemical test refusal laws.

NATIONAL Hardcore DRUNK DRIVER PROJECTNext State: Arizona **Alaska****DEFINITIONS**

Hardcore drunk drivers can be defined as individuals who drive with a high blood alcohol concentration (BAC) of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment, or education efforts.

Listed below are the terms most closely matching the definition above which could be used in Alaska to identify these offenders:

- "Repeat offender," "Chronic offender."
- Repeat offenders are defined in statute by 2nd, 3rd, 4th, 5th, 6th or subsequent offense within 10 years at the misdemeanor level, and by 3rd, 4th, 5th or subsequent offense within 5 years at the felony level.
- DUI becomes a felony on the 3rd offense within 5 years.
- Repeat and chronic offenders are also defined in regulations and by judicial action.

DWI REPORTING

Records on repeat offenses are one of the primary means of tracking the problem of hardcore drunk drivers.

The following are key aspects of Alaska records:

- New licensees are reviewed for outstanding suspensions/revocations in other states before a license is granted, but DUI convictions from other states are not considered prior offenses in Alaska within the limits of the law.
- The approximate number of licensed drivers is 450,000.
- The average BAC level of offenders arrested falls between .15 and .20; in 1996, 68% of offenders had a BAC of .15 or greater.
- Statistics kept on repeat offenders are based on convictions. According to the most recent information available, in 1996 there were 3,350 convictions for 2nd and subsequent DUIs.

IDENTIFICATION AND ASSESSMENT

Identifying those drivers who are likely to repeatedly drive drunk and assessing the nature of their underlying problems is essential in order to keep hardcore offenders off the road.

In Alaska:

- Identification of repeat offenders occurs most frequently at the time of arrest or pre-trial.
- Offenders with a high BAC at the time of arrest are treated as follows:
 - All offenders are treated the same regardless of BAC.
- Following conviction, offenders, as shown, receive a mandatory assessment/evaluation to determine the nature and extent of their alcohol problem:
 - All offenders, whenever possible (may not be available in remote areas of state).
- The assessment is conducted post-trial, but pre-sentencing and the individual returns to court for final sentencing based on the assessment. However, in some jurisdictions the assessment may be conducted post-sentencing.
- Assessments are conducted by state-certified, non-profit organizations or by the state Division of Alcohol and Drug Abuse Screening Office. The cost is \$100 and is usually borne by the offender.

TREATMENT

Treatment and rehabilitation programs play an important role in reducing hardcore drunk driving.

In Alaska:

- Results of the assessment are provided to the offender's attorney, the judge/administrator presiding over the case, the treatment agency, and the prosecutor. The offender is referred to education and/or treatment on the basis of the assessment by order of the court.
- Treatment is mandated for repeat offenders under the following circumstances: All offenders are required to attend education or treatment as recommended by the assessment. Repeat offenders are in most cases required to attend treatment as a condition of probation.
- Offenders failing to comply with the terms of their program are not eligible for license reinstatement and shall be subject to revocation of probation and incarceration.
- The following treatment facility or program specifically targets the hardcore drunk driver: None.

ENFORCEMENT

While law enforcement works against drunk driving across the board, it is central in the battle against hardcore drunk drivers.

The following enforcement techniques are used in Alaska to detect and apprehend drunk drivers:

- Blanket Patrols (during holiday periods), Media Blitzes with Enforcement Campaigns, Standardized Field Sobriety Testing, Mobile Video-taping (limited basis). Sobriety Checkpoints were used in the past, but have been discontinued due to limited manpower over a large geographic area.

PROSECUTION AND SENTENCING PRACTICES

A number of factors influence the sentence a drunk driver receives.

In Alaska:

- There is no Anti-Plea Bargaining Statute for DUI.
- The period of time in which a judge or administrator can review an offender's record (the "look-back" period) is 10 years. However, for purposes of determining a felony offense, the review period is 5 years.
- At the time of sentencing, an individual's arrest and conviction records are available for consideration by the court. This information will include his or her entire criminal record.
- There are graduated penalties for DUI based on number of offenses.

SANCTIONS

Sanctions against the offender may be derived from criminal action, i.e. court-ordered, or administrative action by the licensing authority as a condition of license reinstatement. Many are aimed at preventing or limiting the opportunity of the hardcore offender to drink and drive. The purpose of others is rehabilitation.

In the State of Alaska, the following sanctions may only be ordered by the court:

- Fines: For misdemeanors - \$250 to \$5000; for felonies - \$5000 to \$50,000. Alaska's mandatory minimum fines are as follows: For misdemeanors, 1st - \$250, 2nd - \$500, 3rd - \$1000, 4th - \$2000, 5th - \$3000, 6th and subsequent - \$4000. For felonies, 3rd and subsequent - \$5000.
- Incarceration - Mandatory minimums: For misdemeanors, 1st - 72 consecutive hours, 2nd offense - 20 days, 3rd offense - 60 days, 4th offense - 120 days, 5th offense - 240 days, 6th and subsequent - 360 days. For felonies, the following terms are mandatory and non-suspendable, 3rd offense - 120 days, 4th offense - 240 days, 5th and subsequent - 360 days.
- Community Service: Mandatory for 1st offenders (24 hours) and 2nd offenders (160 hours), and at the court's discretion for 3rd and subsequent offenders. Community service may not serve in lieu of mandatory imprisonment.
- Intensive Supervision Probation: As part of treatment.
- Action Against Offender's Vehicle: Forfeiture when the vehicle is used in a subsequent offense.
 - Vehicle Immobilization, Vehicle Impoundment, Registration Cancellation/Plate Seizure: None.
- Home Confinement with Electronic Monitoring, Victim Impact Panel: None.
- Other Special Assessments/Surcharges: Reimbursement of Incarceration Costs - an offender may be required to pay the cost of their incarceration up to a maximum of \$1000.

The following sanctions may be ordered by the court or by the licensing authority:

- Licensing Action:
 - Suspension/Revocation: Alaska has both pre-conviction administrative

and post-conviction court-ordered with mandatory minimums beginning with the 1st offense. Reinstatement Fee: \$100 for 1st offenders, \$250 for repeat offenders.

— Conditional Licensing: At the court's discretion, 1st offenders may be allowed a limited occupational license following a 30-day minimum revocation provided that they are participating in an education or treatment program.

— Alcohol Ignition Interlock, Autotimer, Fuel Lock, Special Plate Markings: None.

- Rehabilitation:

- Education: 8 to 15 hours of classroom instruction \$20 to \$150.

- Treatment (based on DSM4 and ASAM Patient Placement Criteria): According to assessment determination more serious offenders may also be required to undergo outpatient treatment, intensive outpatient treatment, or residential treatment. Cost varies and offender must pay.

- Intensive Weekend Intervention: None.

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About the Project

Who Are Hardcore Drunk Drivers?

While there is a growing recognition of the magnitude of the problem that these individuals present, there is, as yet, no single accepted definition of hardcore drunk drivers. At one level, there is considerable agreement on the general characteristics and behavior of this group, but researchers have struggled with developing an explicit, operational definition. At the state and local levels, this type of offender may be variously described as repeat, chronic, habitual, aggravated, or persistent, among other terms.

To foster a common perspective and to minimize misunderstanding, it is necessary to go beyond general characteristics and provide a more precise, functional definition. In this context, we define "hardcore drunk drivers" as individuals who drive with a high blood alcohol concentration (BAC) of .15 or above, who do so repeatedly, as demonstrated by having more than one drunk driving arrest, and who are highly resistant to changing their behavior despite previous sanctions, treatment, or education efforts.

We recognize that this definition excludes first offenders with a high BAC and those who repeatedly drive at high BAC levels who have yet to be arrested. Both may legitimately be considered hardcore by other definitions. However, every definition may be to some extent arbitrary, and in choosing this one, we identify a group about whom there will be no confusion.

High BACs

While hardcore offenders constitute a relatively small number of drivers, they account for a disproportionately large share of drunk driving problems. For example, it is estimated that while drivers with BACs in excess of .15 are only 1% of all drivers on weekend nights, they are involved in nearly 50% of all fatal crashes at that time. In the United States in 1995, almost one-third (27%) of all fatally injured drivers had BACs in excess of .15, and they represent almost two-thirds (65%) of all fatally injured drivers who had been drinking.¹

Hardcore drunk drivers are not those who consume alcohol in moderation and who respect the limits of the law. Hardcore drunk drivers are irresponsible, reckless, and abnormal in their drinking patterns and subsequent behavior on the road. To reach a BAC of .15, a man weighing 176 pounds would have to consume



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seven drinks in one hour. Drivers with a BAC of .15 or above are over 200 times more likely to be involved in a fatal crash than the average non-drinking driver.¹

Repeat Behavior

Research has demonstrated a strong relationship between a high BAC and the likelihood of having a previous driving-while-intoxicated (DWI) conviction. The 1995 Fatal Accident Reporting System (FARS) data show that previous DWI convictions increase in direct correlation with increases in BAC. For example, only 1.7% of non-drinking drivers had a prior DWI conviction compared to 12% of those with BACs of .15 to .19. This percentage increases to 16% for those with a BAC of .20 or above.¹

Estimates indicate that at least 35 to 40% of fatally injured drinking drivers had a prior DWI conviction.¹ Looking more specifically at those fatally injured drinking drivers with previous DWIs, 80% had BACs of .15 and over and almost 60% had BACs of .20 and over. These estimates are conservative based on limited reporting data.

Because the risk of apprehension for drinking and driving is relatively low (estimates range from 1 in 200 trips in high enforcement areas to 1 in 2,000 in others), some — probably many — hardcore drunk drivers go undetected and aren't reflected in any statistics.

Resistant to Change Hardcore drunk drivers are highly resistant to changing their behavior. That resistance often is characterized by repeat DWI convictions despite the public's disdain, previous sanctions, education, or treatment. Approximately 30% of all drinking drivers arrested for DWI have already been caught in the past by the police and sanctioned by judicial and administrative agencies.² While the number of drivers involved in alcohol-related traffic fatalities has declined 32% in the past ten years (from 20,702 in 1986 to 14,158 in 1996), there has been considerably less improvement in the record of the hardcore drunk driver.^{3, 4}

To illustrate, in 1986, 41% of fatally injured drivers in the age group of 25 to 45 had BACs in excess of .15. In 1996, this had declined by only 10%.

Recurrent Characteristics

Hardcore drunk drivers are not a homogeneous group. A variety of problems, issues, and situations leads to their drinking and driving behavior. Although they are demographically diverse, the majority are men (some studies show an increasing proportion of women) between the ages of 25 and 45.

Research also has found that, compared to all drivers, hardcore

offenders often are more aggressive, hostile, and thrill-seeking. They are more likely to have a criminal record, to use drugs, and to have poor driving records.¹ But perhaps most telling is their pattern of alcohol-related problems. Compared with first-time, driving-under-the-influence (DUI) arrests, 83% of whom never have a second conviction,² repeat offenders tend to have higher rates of alcoholism and alcohol-related problems, more frequent non-traffic criminal offenses, and more severe mental health problems.³ In addition, some studies suggest that there may be two types of hardcore recidivists: (1) individuals who are basically inclined to conform to the legal system, but have a severe alcohol abuse problem; and (2) individuals who are basically not inclined to conform to the legal system, for whom alcohol abuse is just one of an array of antisocial behaviors.⁴

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