

**HB**

**136**

# SENATE COMMITTEE REPORT

DATE: 4/13/05

FURTHER: Finance

DATE TURNED  
IN TO OFFICE: \_\_\_\_\_

Judiciary Committee considered

HOUSE BILL NO. 136

## HB 136 DRUNK DRIVING TREATMENT PROGRAM

"An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

<b>CS Senate Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
<b>SCS House Bill:</b>	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

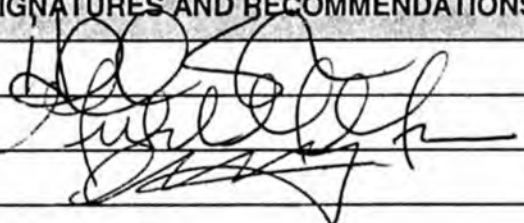
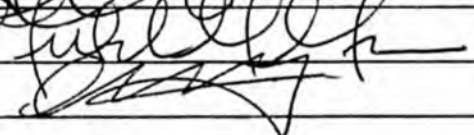
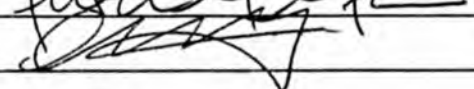
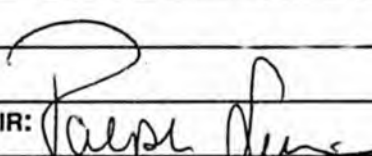
**NEW FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
	X			
	X			
	X			
CHAIR: 	✓			

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

RULES COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.aklegis.state.ak.us/rokeberg/index.php>



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ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE (907) 465-4068  
FAX: (907) 465-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SPONSOR STATEMENT FOR HB 136

By: Representative Norman Rokeberg

**Title:** An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

The Legislature believes in the effectiveness of therapeutic courts. Anchorage and Bethel have active therapeutic courts, and various other Alaska communities - Ketchikan, Juneau and Fairbanks - are currently working to establish these courts at the misdemeanor, and in some cases felony, level. I introduced HB 136 in order to provide additional statutory assistance to the operations of therapeutic courts around the state.

Specifically, HB 136 expands the court-ordered treatment programs, i.e. "Wellness Courts," to felony DUI defendants. The statutory authority for these courts can be found under AS 28.35.030 and AS 28.35.032. There are several reasons for doing this:

1. Opening therapeutic courts to felons would increase public protection from DUI crimes. The success of the 18-month "court-ordered treatment" system created by the Legislature is demonstrated by data that shows that over a three-year period, only 25% of graduates have had any repeat offenses. This is in stark contrast to the 75% of DUI offenders who repeat after serving their time in jail.
2. It creates economies of scale if the newly established DUI Wellness Courts are open to both felony and misdemeanor DUI cases.
3. This is an opportune time to extend the DUI/Wellness Court model. The National Highway Traffic Safety Administration (NHTSA) has made funding of this type of court a priority.

In addition to expanding the therapeutic court provisions to felony DUI offenders, HB 136 gives a judge the ability to reward a graduating DUI offender by suspending 75% of the mandatory fine. This amount is increased from the present 50%. Currently, Wellness Court participants pay for most of their own treatment. This is a very costly requirement over the course of the required 18-month program. Allowing the judge to reduce mandatory fines will increase the incentive for defendants to enter a Wellness Court.

Lastly, HB 136 requires that misdemeanant and felony DUI offenders, who are not participants in a court-ordered treatment program, must pay the minimum fines provided in statute. It has been brought to my attention that judges, under the authority of a 1992 Alaska Court of Appeals decision (*Curtis v. State*), are often suspending the fines that the Legislature has specifically set out in statute. HB 136 overrides this decision and makes it absolutely clear to the courts that these defendants must pay the minimum fines.

I urge your support of this legislation.

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB 136  
(H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Corrections  
Title "An act restricting the authority of a court to RDU Institutional Facilities  
suspend execution of a sentence or grant probation ..driving under Component Institution Director's Office  
Sponsor Representative Rokeberg  
Requester Judiciary, Finance Component No. 524

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	0.0	0.0	0.0	0.0	0.0	0.0
Supplies	0.0	0.0	0.0	0.0	0.0	0.0
Equipment	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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)

The Department of Corrections does not anticipate a significant fiscal impact with the passage of this legislation.

Prepared by: Sharleen Griffin, Acting Director  
Division: Administrative Services  
Approved by: Portia C.K. Parker, Deputy Commissioner  
Agency: Department of Corrections

Phone 465-4641  
Date/Time 3/21/05 7:01 AM  
Date 3/21/2005

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
 Bill Version: HB 136  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: \_\_\_\_\_  
 Title Drunk Driving Treatment Program BRU Alaska Court System  
 Component Trial Courts  
 Sponsor Representative Rokeberg  
 Requester \_\_\_\_\_ Component No. 768

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 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 136.

Prepared by: Douglas Wooliver, Administrative Attorney Phone 463-4750  
 Division Alaska Court System Date/Time 3/17/05 2:52 PM  
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director Date 3/17/2005  
 Agency Alaska Court System

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
 Bill Version: HB 136  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Public Safety  
 Title "An Act restricting the authority of a court to suspend RDU Alaska State Troopers  
execution of a sentence or grant probation in..." Component AST Detachments  
 Sponsor Representative Rokeberg  
 Requester House Judiciary Component No. 2325

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

Passage of this bill will have no fiscal impact on the Alaska State Troopers.

The bill does amends sections of Title 28 and suspends up to 75 percent of the minimum fines for driving while under the influence and refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

Prepared by: Lieutenant Todd Sharp Phone 907-269-4532  
 Division Alaska State Troopers Date/Time 3/18/05 3:39 PM  
 Approved by: Commissioner William Tandeske Date 3/18/2005  
 Agency Department of Public Safety

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 4  
 Bill Version: HB 136  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Administration  
 Title An Act restricting authority of court RDU Legal and Advocacy Services  
to suspend execution of sentence... Component Public Defender Agency  
 Sponsor Rep. Rokeburg  
 Requester House Judiciary Component No. 1631

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*	*	*	*	*	*
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*	*	*	*	*	*

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	*	*	*	*	*	*

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill restricts the court's ability to suspend a minimum fine imposed for DUI or Refusal convictions. It also opens therapeutic courts to felony DUI offenders. Opening therapeutic courts to felony DUI will increase the workload of the Agency. Currently the Agency closes a case after sentencing. The therapeutic court model and "court-ordered treatment" requires a lengthy time in treatment, intensive supervision and monitoring, and frequent court review hearings, often once a week, which significantly extends the life of a case. Requiring attorneys to attend additional hearings in cases, that currently would be closed, will increase the workload of the Agency. It is unknown how many felony DUI offenders would participate in court-ordered treatment programs like "Wellness Court" in Anchorage, if offered, or whether the special court would be a newly established one in superior court, the jurisdiction for felony cases. This bill, if enacted, will have a fiscal impact on the operations of the Agency, but it is not possible to predict with any certainty what that impact would be. Therefore an indeterminate fiscal note is submitted.

Prepared by: Linda K. Wilson, Deputy Director Phone (907)334-4416  
 Division: Public Defender Agency Date/Time 3/21/05 8:44 AM  
 Approved by: Michael Tibbles, Deputy Commissioner Date 3/21/2005  
 Agency: Department of Administration

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 5  
 Bill Version: HB 136  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title "An Act restricting the authority of a court to RDU CIVIL  
suspend execution of a sentence or grant probation..." Component Collections and Support  
 Sponsor Representative Rokeberg  
 Requester House Judiciary Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	*****	*****	*****	*****	*****	*****
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. Passage of this legislation could result in additional revenues collected by the Collections Unit, but the amount is difficult to determine.

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division Administrative Services Division Date/Time 3/20/05 12:19 PM  
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005  
 Agency Department of Law

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 6  
 Bill Version: HB 136  
 (H) Publish Date: 3/22/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
 Title: "An Act restricting the authority of a court to RDU CRIMINAL  
suspend execution of a sentence or grant probation..." Component Criminal Justice Litigation  
 Sponsor: Representative Rokeberg  
 Requester: House Judiciary Component No. \_\_\_\_\_

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

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

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	*****	*****	*****	*****	*****	*****
Travel	*****	*****	*****	*****	*****	*****
Contractual	*****	*****	*****	*****	*****	*****
Supplies	*****	*****	*****	*****	*****	*****
Equipment	*****	*****	*****	*****	*****	*****
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	*****	*****	*****	*****	*****	*****

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill amends AS 28.35.030 (Driving under the influence) and 28.35.032 (Refusal to take a breath test) by making it a requirement that a convicted person pay the minimum fine required as a condition of a suspended sentence or probation. The bill also allows the court to forgive 75% of the minimum fine in cases of felony DUI or Refusal if the person has successfully completed an 18-month court-ordered treatment program. The Department of Law believed the provision requiring mandatory fines that could not be suspended was part of HB4 passed three years ago, but an overlooked court of appeals opinion made it possible to suspend the fines. A fiscal note to HB4 provided by this agency was reduced to half of the requested amount, thus we are underfunded for work arising from changes the legislature has made in passing stricter DUI laws in HB4. The change created by this bill will have a fiscal impact on the Department of Law because more trials will likely be required for those who can't afford the

Prepared by: Kathryn Daughhete, Director Phone 465-3673  
 Division: Administrative Services Division Date/Time 3/20/05 12:21 PM  
 Approved by: K. Daughhete for Scott Nordstrand, Acting Attorney General Date 3/20/2005  
 Agency: Department of Law

FISCAL NOTE #6

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB 136

**ANALYSIS CONTINUATION**

minimum fines, or more probation revocations or collection efforts will be required for those who do not pay the fines. However, the exact fiscal impact is difficult to determine.

# ALASKA STATE LEGISLATURE

## House of Representatives

### COMMITTEE ASSIGNMENTS:

PULPS COMMITTEE, CHAIRMAN  
LABOR & COMMERCE COMMITTEE, MEMBER  
LEGISLATIVE COUNCIL, MEMBER  
SPECIAL COMMITTEE ON OIL & GAS, MEMBER  
SPECIAL COMMITTEE ON WAYS & MEANS, MEMBER

website: <http://www.akrepublicans.org/rokeberg/index.php>



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ANCHORAGE, AK 99501  
PHONE: (907) 269-0117  
FAX: (907) 269-0119

SESSION:  
ALASKA STATE CAPITOL  
JUNEAU, AK 99801-1182  
PHONE: (907) 485-4988  
FAX: (907) 485-2040

## Representative Norman Rokeberg

e-mail: [Representative\\_Norman\\_Rokeberg@legis.state.ak.us](mailto:Representative_Norman_Rokeberg@legis.state.ak.us)

### SECTIONAL ANALYSIS FOR HB 136

By: Representative Norman Rokeberg

**Title:** An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test; and allowing a court to suspend up to 75 percent of the minimum fines required for driving while under the influence and for refusal to submit to a chemical test if the defendant successfully completes a court-ordered treatment program.

- Section 1:** Requires the courts to impose the minimum fines for a misdemeanor DUI offense.
- Section 2:** Requires the courts to impose the minimum fines for a felony DUI offense.
- Section 3:** Expands the provisions for "court-ordered treatment programs" to felony DUI offenses. Allows the court to suspend 75% (up from 50%) of the minimum fines for successful participants.
- Section 4:** Requires the courts to impose the minimum fines for a misdemeanor offense of refusal to submit to a chemical test.
- Section 5:** Requires the courts to impose the minimum fines for a felony offense of refusal to submit to a chemical test.
- Section 6:** Mirrors the provisions of Section 3 in the refusal to submit to a chemical test statutes.

# ALASKA STATE LEGISLATURE

Rep. Lesil McGuire, Chair  
Rep. Tom Anderson, Vice-Chair  
Rep. John Coghill  
Rep. Nancy Dahlstrom  
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 Letter of Intent HB 136

It is the intent of the Legislature that the Court System and Department of Law continue their practice with regard to the collection of unpaid fines for driving under the influence of alcohol. That practice is to pursue the payment of unpaid fines through a civil action by the Department of Law and not through revoking probation. It is also the intent of the Legislature to encourage the use of fines, wellness courts and interlock devices, when appropriate, as tools for addressing these crimes and those who commit them.

A handwritten signature in cursive script, appearing to read "Lesil McGuire".

Representative Lesil McGuire  
Chair

Adopted by the House  
April 12, 2005

**COMMITTEE COPY**



# MADD

Activism | Victim Services | Education

Mothers Against Drunk Driving  
JUNEAU CHAPTER  
211 4th St., Suite 314  
Juneau, AK 99801  
Phone (907)463-2562  
Fax (907)463-2540  
madd@alaska.net  
www.madd.org/ak/juneau

May 1, 2003

Representative Norman Rokeberg  
State Capitol  
Juneau, Alaska 99801

RE: Dismissal of DUI fines

Dear Representative Rokeberg:

I am providing the enclosed information for your interest. As you well know, your House Bill 4 raised the minimum and maximum level of fines for offenders sentenced with driving while under the influence (DUI).

Historically judges have not dismissed DUI fines because of the theory that this served as an encouragement for compliance of the law. The fine also provided sufficient reason to seek a job for those DUI offenders arrested while unemployed. This theory has proven effective for many DUI offenders and most Alaska judges continue to hand down sentences which include fines.

In the case of *Jack Curtis v. State of Alaska*, the Court of Appeals have ruled that "while courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given the power to the trial courts." This is possible when the minimum prison sentence has been served.

They point out in *Dunham v. Juneau* that while the law states no portion of the mandated minimum fine can be suspended; the Appellate court is "convinced that this conclusion was hasty. The parties in *Dunham* did not distinguish between the mandated imprisonment and the mandated fine..." Therefore a fine may be dismissed regardless of prison time.

Defending attorneys have become aggressive in searching for judges and magistrates who consider this option in DUI cases. Defending attorneys are pushing for a dismissal of fines by pointing out the DUI offender does not have job and therefore cannot afford to pay the fine. Unfortunately some judges and magistrates are beginning to listen to this appeal.

One such example is across the street from your Juneau office. On occasion, Magistrate Sivertsen will consider such an option, and in doing so creates a dangerous precedent for prosecuting attorneys.



# MADD

Activism | Victim Services | Education™

Mothers Against Drunk Driving  
JUNEAU CHAPTER  
211 4th St., Suite 314  
Juneau, AK 99801  
Phone (907)463-2562  
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One public defender is taking all his DUI cases assigned to Judge Froehlich and having them bumped to Magistrate Sivertsen or to Ketchikan Judge Miller.

This action has several negative effects:

- Creates a negative public impression the Legislature is allowing DUI offenders to not pay for their actions.
- Public Defending Agency costs the state and therefore the taxpayers of Alaska additional and unnecessary costs as DUI cases move from one town to another.
- Allows DUI offenders to walk away without paying a penny for the crime committed based on the fact they did not, while arrested for DUI, have a job.
- Has a negative impact on Judge Froehlich's grade as district court judge.

As the enclosed documents show, MADD encouraged the Public Defending Agency to reconsider this decision but was unsuccessful.

Please let me know if you have any questions on this matter. MADD hopes this situation may be worked out so all DUI offenders are obligated to fines for the dangerous crimes they choose to commit.

Sincerely,

Cindy Cashen  
Executive Director

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

P.O. BOX 110300  
JUNEAU, ALASKA 99811-0300  
PHONE: (907)463-3600  
FAX: (907)463-2075

December 9, 2003

The Honorable Norman Rokeberg  
Alaska State Legislature  
716 W 4th Suite 300  
Anchorage, AK 99501-2133

Dear Rep. Rokeberg:

This is in response to your letter of August 20, in which you expressed your concern that the statutory minimum fines in drunk driving cases are sometimes being suspended, despite your intent in introducing and supporting House Bill 4 in the 2001 and 2002 sessions. Based on case law from the court of appeals, and given the language of the statute, we believe that additional legislation will be needed if such fines are to be fully imposed.

As you know, your bill greatly increased the financial costs of being convicted of drunk driving. Minimum fines for first and second offenders increased six-fold, from \$250 to \$1500 and from \$500 to \$3000, respectively. Fines for subsequent misdemeanor convictions increased by \$3000. Fines for felony drunk driving doubled to \$10,000. In addition, HB 4 increased the maximum amount that offenders must pay to the state as reimbursement for the costs of incarceration from \$1000 to \$2000. Your bill also doubled the fees that convicted repeat offenders would have to pay to reinstate their driver licenses. Finally, your bill required vehicle forfeiture for offenders convicted of felony drunk driving.

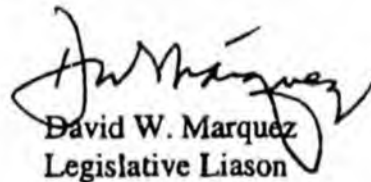
The opinion of the Alaska Court of Appeals in *Curtis v. State*, 831 P.2d 359 (Alaska App. 1992) was, up until recently, an obscure two-page decision more than a decade old. With fines for first and second offenders set at \$250 and \$500, judges rarely, if ever, invoked the *Curtis* decision to suspend a portion of the fines. In any event, with the large increase in fines enacted in HB 4, the *Curtis* opinion has, in essence, been rediscovered by lawyers and judges. In fact, it came as a surprise to state prosecutors, who had long forgotten about it. Ultimately, *Curtis* leaves the decision to impose or suspend a fine in a drunk driving case to the discretion of the sentencing judge. The

minimum period of incarceration, however, cannot be suspended, unless the person completes a "therapeutic court" program.

It certainly can be argued, as mentioned in your letter, that the legislature's intent was that the only way fines could be reduced is by completing a "therapeutic court" program described in AS 28.35.030(q) or in the special legislation setting up the Anchorage and Bethel therapeutic courts. However, the therapeutic court program allows both fines and imprisonment to be suspended. The decision in *Curtis*, which is based on the specific statutory language in AS 28.35.030(b)(2)(A), only applies to suspending fines. Because the language of the statute in issue in *Curtis* remains unchanged, in our opinion that holding is still valid and would not be successfully challenged on appeal. The relationship between *Curtis* and HB 4 was raised by state prosecutors during the Murkowski administration transition process as an item for possible legislative action. If the legislature's desire is to reverse the *Curtis* opinion, that would require a relatively simple amendment to AS 28.35.030(b)(2)(A) and the similar provision governing felony driving under the influence and refusal to take a breath test.

If you have further questions, please contact me.

Sincerely,

  
David W. Marquez  
Legislative Liason

LEXSEE 831 P2D 359

JACK CURTIS, Appellant, v. STATE OF ALASKA, Appellee.

No. 1222, Court of Appeals No. A-4035

COURT OF APPEALS OF ALASKA

831 P.2d 359; 1992 Alas. App. LEXIS 33

May 15, 1992, Decided

**PRIOR HISTORY: [\*\*1]**

Appeal from the District Court, Third Judicial District, Anchorage, Martha Beckwith, Judge. Trial Court No. 3AN-90-3132 Cr

**DISPOSITION:**

REMANDED

**CASE SUMMARY:**

**PROCEDURAL POSTURE:** Defendant sought review of an order of the District Court, Third Judicial District, Anchorage (Alaska), which modified a sentence imposed on him for driving while intoxicated (DWI). The trial court originally believed he was a first offender and his sentence included a \$ 250 fine. Upon the State's motion after it was discovered defendant had a prior offense, the court modified the fine to \$ 500, in accordance with *Alaska Stat. § 28.35.030(c)*.

**OVERVIEW:** Defendant contended that the trial court was authorized to modify his sentence only to the extent necessary to correct its illegality, and that although the minimum fine was \$ 500 for a second offense, the trial court was able to suspend all or part of this minimum fine, and was required to suspend it to the amount of the original fine. On appeal, the court held that (1) under *Alaska Stat. § 28.35.030(c)*, the only limitation on the trial court's authority to suspend a DWI offender's sentence was the condition that he serve the mandated 20 days' imprisonment; (2) although a prior case held that no portion of the mandated minimum fine was subject to suspension, the conclusion made in that case was hasty and the parties therein did not distinguish between the

mandated imprisonment and the mandated fine; (3) although courts did not have an inherent power to suspend execution of a sentence, § 28.35.030(c) limited a sentencing court's authority to suspend a term of imprisonment but did not limit the sentencing court's authority to suspend a fine; and (4) because defendant's original sentence included a \$ 250 fine, the trial court was required to suspend one-half of the \$ 500 fine.

**OUTCOME:** The court remanded the case to the trial court with directions to amend the judgement.

**LexisNexis(R) Headnotes**

*Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence  
Criminal Law & Procedure > Sentencing > Sentencing Ranges*

*Criminal Law & Procedure > Sentencing > Fines*  
[HN1] *Alaska Stat. § 28.35.030(c)* provides that, when a person is convicted of a second driving while intoxicated offense within 10 years, a sentencing court is required to impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500. The statute also provides that execution of sentence can not be suspended nor probation be granted except on condition that the minimum imprisonment provided in this section is served.

*Criminal Law & Procedure > Criminal Offenses > Vehicular Crimes > Driving Under the Influence  
Criminal Law & Procedure > Sentencing > Suspension of Sentence*

*Criminal Law & Procedure > Sentencing > Fines*  
[HN2] Under *Alaska Stat. § 28.35.030(c)*, the only limitation on a district court's authority to suspend a

driving while intoxicated offender's sentence is the condition that the offender serve the mandated 20 days' imprisonment. The statute imposes no condition on the court's authority to suspend the mandated \$ 500 fine.

*Governments > Legislation > Interpretation  
Criminal Law & Procedure > Sentencing > Suspension  
of Sentence*

[HN3] While courts do not have the inherent power to suspend execution of a sentence, the Alaska legislature has given this power to trial courts. *Alaska Stat. § 12.55.080; Alaska Stat. § 12.55.015(a)(7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise.

**COUNSEL:**

Appearances: David R. Weber, Assistant Public Defender, and John B. Salemi, Public Defender, Anchorage, for Appellant.

Susan Wibker, Assistant District Attorney, Edward E. McNally, District Attorney, Anchorage, and Charles E. Cole, Attorney General, Juneau, for Appellee.

**JUDGES:** Before: Bryner, Chief Judge, and Coats and Mannheimer, Judges.

**OPINIONBY: MANNHEIMER**

**OPINION:**

[\*360] OPINION

MANNHEIMER, Judge.

On August 9, 1990, Jack Curtis was sentenced for driving while intoxicated (DWI), *AS 28.35.030(a)*. Believing that Curtis was a first DWI offender, the district court sentenced him to 60 days' imprisonment with 57 days suspended, plus a \$ 250 fine. The 3 days to serve and the \$ 250 fine were the specified minimum penalties for a first offender. *AS 28.35.030(c)*.

Two months later, the State moved to modify Curtis's sentence after discovering that Curtis had a prior DWI conviction from 1987. The district court granted the motion and modified Curtis's sentence to 60 days' imprisonment with 40 days suspended, plus a \$ 500 fine.

Curtis does not challenge the district court's authority to [\*\*2] modify his sentence after learning that it was less than the statutory minimum. Curtis points out, however, that under *Love v. State*, 799 P.2d 1343, 1346 (*Alaska App.* 1990), and *Dunham v. Juneau*, 790 P.2d 239, 241 (*Alaska App.* 1990), the district court was

authorized to modify the sentence only to the extent necessary to correct the illegality. Curtis contends that, although the minimum fine is \$ 500 for a second offense, the district court is empowered to suspend all or part of this minimum fine. Therefore, Curtis argues, to correct the portion of the original judgement that sentenced him to pay a fine of \$ 250, the district court should have sentenced Curtis to a \$ 500 fine with \$ 250 suspended. We agree.

The 1990 version of *AS 28.35.030(c)* (the version that governs the sentencing in Curtis's case) [HN1] provided that, when a person was convicted of a second DWI offense within 10 years, the sentencing court was required to "impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than \$ 500". The statute also provided that "execution of sentence [could] not be suspended nor . . . probation be granted except [\*\*3] on condition that the minimum imprisonment provided in this section [was] served." (emphasis added)

Curtis points out that, [HN2] under *AS 28.35.030(c)*, the only limitation on the district court's authority to suspend a DWI offender's sentence was the condition that the offender serve the mandated 20 days' imprisonment. The statute imposed no condition on the court's authority to suspend the mandated \$ 500 fine. Thus, Curtis argues, the district court retained the authority to suspend all or part of the minimum fine, and therefore the least amount of judicial intervention necessary to correct the illegality of his original fine - \$ 250 to pay - was to change it to a fine of \$ 500 with \$ 250 suspended.

The State counters that this Court has already held, in *Dunham v. Juneau*, that no portion of the mandated minimum fine can be suspended. 790 P.2d at 240-41. The *Dunham* decision does in fact say this, but we are convinced that this conclusion was hasty. The parties in *Dunham* did not [\*361] distinguish between the mandated imprisonment and the mandated fine; the defendant simply argued that his sentence could not be altered.

[HN3] While courts do not have the inherent power [\*\*4] to suspend execution of a sentence. *Pete v. State*, 379 P.2d 625, 626 (*Alaska* 1963), the Alaska legislature has given this power to the trial courts. *AS 12.55.080; AS 12.55.015(a) (7)*. When a statute of general application grants sentencing courts the power to suspend all or part of a sentence, that statute will govern unless the legislature specifically provides otherwise. *Speas v. State*, 511 P.2d 130 (*Alaska* 1973). Curtis is correct that *AS 28.35.030(c)* limits a sentencing court's authority to suspend the term of imprisonment but does not limit the court's authority to suspend the fine. Thus,

because AS 28.35.030(c) does not restrict a sentencing court from suspending all or part of the mandatory minimum fine, the court retains this power.

The district court originally ordered Curtis to pay a \$ 250 fine. The mandatory minimum fine for a second DWI offender was \$ 500. To correct the illegality, the

district court needed to increase Curtis's fine to \$ 500 with \$ 250 suspended.

This case is therefore REMANDED to the district court with [\*\*5] directions to amend the judgement in this manner.

## Misdemeanor and Felony DUI Sentences and Fines

<b>Misdemeanor DUI</b>	<b>Prison</b>	<b>Fine</b>	<b>License Revocation</b>	<b>Look Back</b>
class A misdemeanor				
1 <sup>st</sup> offense	72 hours	\$1500	90 day suspension	
2 <sup>nd</sup> offense	20 days	\$3000	1 year suspension	within 15 years
3 <sup>rd</sup> offense	60 days	\$4000	3 year suspension	within 15 years
4 <sup>th</sup> offense	120 days	\$5000	5 year suspension	within 15 years
5 <sup>th</sup> offense	240 days	\$6000	5 year suspension	within 15 years
6 <sup>th</sup> offense	360 days	\$7000	5 year suspension	within 15 years
<b>Felony DUI</b>				
class C felony				
3 <sup>rd</sup> offense	120 days	\$10,000	3 year suspension	2+ times since 1996 and within 10 years
4 <sup>th</sup> offense	240 days	\$10,000	5 year suspension	
5 <sup>th</sup> offense	360 days	\$10,000	5 year suspension	

By: Representative Norman Rokeberg

## DRIVING WHILE INTOXICATED SENTENCES - JUNEAU

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/2/04	Whiting	Felony (third, seventh drunk driving)	Weeks	5 years	2 years suspended		\$10,000	Permanently Revoked	
10/08/04	Patterson	.134	Froehlich	75 days	35 days suspended	\$1,500		90 days	2 years
10/15/04	Schmidt	Misdemeanor	Froehlich	63 days	30 suspended	\$1,500		90 days revocation	2 years
10/22/04	Bugbee		Sivertsen	63 days	30 suspended	\$3,000	\$1,500	90 days	18 months
10/29/04	Johnson	2 <sup>nd</sup> degree assault & misdemeanor DWI	Weeks	6 months on DWI	All but 3 days suspended on DWI	\$1,500	\$1,500	90 days	10 years
10/29/04	Thomas		Weeks	32 months	14 months suspended	\$10,000	\$10,000	Permanently suspended	3 years
10/29/04	Smith		Weeks	84 months	28 months	\$10,000	\$5,000	Permanently Revoked	3 years
11/121/04	Andrews		Froehlich	63 days	30 suspended	\$1,500		90 days	2 years
11/19/04	Morris	.210	Froehlich	45 days	40 days suspended	\$1,500	\$1,500	90 days	2 years

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
11/26/04	Roche-Carlton	Felony	Weeks	18 months	14 suspended	\$10,000	\$7,500	Permanently Revoked	2 years
12/03/04	Quick	.147	Sivertsen	90 days	65 days suspended	\$3,000	\$2,500	1 year	2 years
12/17/04	Willis	Felony	Weeks	3 years	1 year 225 days suspended	\$10,000	\$10,000	Permanently Revoked	3 years
1/7/05	Claffin	Felony	Collins	240 days	120 suspended	\$10,000	\$7,500		5 years
1/7/05	Moy	Misdemeanor	Sivertsen	240 days	80 suspended	\$4,000	\$3,250	Three years revocation	4 years
1/7/05	Wiseman	Misdemeanor	Sivertsen	70 days	45 suspended	\$3,000	\$2,500	One year revocation	2 years
1/7/05	Crowley	Misdemeanor	Sivertsen	34 days	30 suspended	\$1,500	\$750	90 days revocation	18 months
1/14/05	Rose	Felony	Weeks	18 months	14 suspended	\$10,000	\$10,000	Lifetime revocation	2 years
1/14/05	Williams, Jr.	Felony	Collins	16 months	12 suspended	\$10,000	\$9,000	Permanently revoked	2 years
1/14/05	Lott	Felony	Collins	20 months	16 months	\$10,000	\$9,000	Permanently revoked	4 years
1/28/05	Lofaso	.191	Sivertsen	40 days	34 suspended	\$3,000	\$1,500	90 days revocation	2 years

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/28/05	Lemke	.181	Sivertsen	46 days	40 suspended	\$3,000	\$1,500	90 days revocation	18 months
1/28/05	Knott	.205	Sivertsen	60 days	54 suspended	\$1,500		90 days revocation	2 years
1/28/05	Helart	.185	Sivertsen	150 days	130 suspended	\$3,000		One year revocation	3 years
1/28/05	Gomez- Olvera	.192	Sivertsen	90 days	70 suspended	\$3,000	\$3,000	One year revocation	3 years
1/28/05	Hcpe	.218	Sivertsen	46 days	40 suspended	\$3,000	\$1,500 suspended	90 days revocation	2 years plus guilty of probation violation, 30 days with 3 suspended and additional 2 years probation
1/28/05	Robinson		Sivertsen	90 days	70 suspended	\$3,000		One year revocation	2 years
1/28/05	Dusenberry		Miller	90 days	84 suspended	\$1,500		90 days revocation	3 years
1/28/05	Ortiz		Miller	70 days	50 suspended	\$3,000		One year revocation	5 years

From: Rep. Norman Rokeberg

DATE FYI Juneau Empire	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
1/28/05	Haltiner		Miller	40 days	30 suspended	\$1,500		90 days	2 years
2/04/05	Milton		Sivertsen	240 days	200 days		\$3,000	One year revocation	3 years probation + for probation violations
2/4/05	Wendling	Misdemeanor	Collins	12 months	10 months	\$4,000	\$4,000	4 years	30 months probation
2/4/05	Cooper		Sivertsen	46 days	40 suspended	\$1,500	\$750	90 days	2 years
2/4/05	Benson of Maui		Sivertsen	35 days	30 suspended	\$3,000	\$1,500	90 days	1 year probation
2/4/05	Casey		Sivertsen	180 days	120 suspended	\$4,000		3 years	3 years
2/4/05	Manager		Sivertsen	33 days	30 suspended	\$3,000	\$1,500	90 days	18 months
2/4/05	Lane	.186	Sivertsen	36 days	30 suspended	\$3,000	\$1,500	90 days	1 year

## DRIVING WHILE INTOXICATED SENTENCES - PER NOME NUGGET

DATE Nome Nugget	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
10/7/04	Aketachunak			90 days	80 days	\$1500	\$1,200	90 days revocation	Until 9/1/2006
10/14/04	Cantrell			60days	40 days	\$3,000	\$1,000	1 year	Until 10/24/06
10/21/04	Tocktoo			30 days	27 days	\$1,500	\$1,200	90 days revocation	Until 10/12/05
10/21/04	Pete			140 days	120 days	\$,1500	\$1,200	90 days revocation	Until 10/08/05
11/04/2004	Nashoanak, Sr.			30 days	27 days	\$1,500	\$1,200	90 days revocation	Until 10/22/05
11/11/04	Otten, Jr.			30 days	27 days	\$1,500	\$1,300	90 days revocation	Until 10/26/05
11/11/04	Smith			60 days	40 days	\$3,000	\$2,000	1 year revocation	Until 10/28/05
11/25/04	Fagerstrom			1 year	120 days	\$10,000	\$5,000	Lifetime revocation	2 years
11/25/04	Angi			1 years	120 suspended	\$10,000	\$7,000	Lifetime revocation	2 years
11/25/04	Kavairlook, Sr.			30 days	27 days	\$1,500	0	90 days revocation	Until 11/8/05
11/25/04	Jackson			120 days	90 days	\$3,000	\$1,000	1 year	Until 11/9/08

DATE	NAME	CHARGE	JUDGE	JAIL	SUSPENDED	FINE	SUSPENDED	LICENSE	PROBATION
12/2/04	McGuffey			30 days	27 days	\$1,500	\$1,200	90 days	Until 11/15/05
12/9/04	Malewotkuk, Jr.			150 days	0	\$1,500	\$1,200	90 days	Until 11/22/05
12/9/04	Iyakitan			30 days	27 days	\$1,500	\$1,300	90 days	Until 11/30/05
12/9/04	Wilson			60 days	40 days	\$3,000	\$2,000	1 year	Until 11/30/05
12/9/04	Hoogendorn			35 days	32 days	\$1,500	\$1,200	90 days	Until 12/1/05
12/9/04	Hamilton			30 days	27 days	\$1,500	\$1 200	90 days	Until 11/29/05
12/16/04	Kasper			40 days	20 days	\$3,000	\$2,000	1 year	Until 12/6/04
12/16/04	Hunt, Jr.			40 days	20 days	\$3,000	\$2,000	1 year	Until 12/2/05
1/6/05	Olanna			180 days	120 days	\$3,000	\$2,000	1 year	Until 12/21/07
1/27/05	Wheeler			30 days	27 days	\$1,500	\$1,200	90 days	Until 1/20/06
2/3/05	Tocktoo			120 days	90 days	\$1,500	\$1,200	90 days	Until 1/24/06



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Juneau Affiliate  
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National Intervention Network (800) 654-HOPE

March 3, 2005

Representative Norman Rokeberg  
Chairman House Rules Committee  
Alaska State Legislature  
Juneau, Alaska

Dear Representative Rokeberg:

The National Council on Alcoholism and Drug Dependence (NCADD)– Juneau Affiliate, strongly supports the passage of **HB 136**.

This bill enhances the current structure of therapeutic courts in Alaska by extending the same rights of a successful misdemeanor court graduate to a felony refusal or felony DUI court graduate. This would increase the amount of people able to benefit from therapeutic courts by increasing the pool of applicants and providing larger incentives to participate in these effective and cost efficient courts. It would also decrease the number of drunk drivers returning to Alaska's highways after release from a correctional institution.

Decreasing drunk driving and other alcohol related crimes is a priority for NCADD, especially in a state where the rate at which alcohol kills Alaskans is twice the U.S. average. Drug courts, DUI courts, family care courts, and mental health courts are just a few of the 1600 therapeutic courts currently operating in the U.S. These alternative "problem-solving" courts have proven themselves effective in reducing recidivism for the chronic alcohol or drug dependent offender. They have been so successful that John Walters, the drug czar for the Bush administration, recently came out in favor of them as the most effective way of dealing with this population of offender thus reducing drug crimes. The Bush administration's proposed budget for 2006 includes 70 million for drug/DUI courts, double the current budget. This financial commitment supports the value of these courts to our nation. **House Bill 136** fits very well with the federal commitment.

Thank you for your past efforts and continued support this year.

Sincerely,

Matt Felix, Executive Director



# **The Alaska Center for Therapeutic Courts**

406 G Street, Suite 302  
Anchorage, Alaska 99501  
Fax: 907-272-1194  
wellnessjudge@yahoo.com

*A division of Partners for Progress, Inc.*

**James N. Wanamaker**  
**Director**

Phone: 907-272-1193  
Mobile: 907-227-4084

March 2, 2005

Representative Norman Rokeberg  
Chairman House Rules Committee  
Alaska Legislature  
Juneau, Alaska

*Fax 1-907-465-2040*

**Re: House Bill No. 136**

Dear Representative Rokeberg:

The Alaska Center for Therapeutic Courts strongly supports the passage of HB 136.

Sections 3 and 6 of the bill will extend the methodology of the Anchorage Wellness Court to include felony DUI and felony refusal cases. The Anchorage Wellness Court has certainly proved itself as a system that should be made available in other parts of the state. Any defendant who completes the 18 months of monitored sobriety and all the strict requirements of the Wellness Court can gain a suspension of 75% of minimum jail sentence and, with this bill, 75% of the minimum fine.

The Alaska public is protected by this system because that defendant who completes Wellness Court has embarked on a life of sobriety and has a wealth of tools to maintain sobriety. This is in stark contrast to the usual DUI defendant who gets drunk and rearrested for DUI within days of release from jail.

Currently, misdemeanor DUI courts are being developed in Ketchikan, Juneau, and Fairbanks. Extending the Wellness Court method to felony DUI and refusal cases will help to increase the volume of defendants who choose to enter these Wellness Court programs, and make more efficient use of public resources.

March 2, 2005

Page 2

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This is an extremely opportune time to expand the DUI Wellness Courts since federal funding is available through National Highway Traffic Safety Administration (NHTSA).

Of a housekeeping nature, are Sections 1, 2, 4, and 5 of the bill which make it clear that the DUI defendant must actually pay the minimum fines set by the Legislature. This would end the minority practice of suspending all or a portion of the minimum fine or offsetting the cost of treatment as a credit against the fine.

The practice of reducing the minimum fine will then be limited to persons who graduate from Wellness Court. The bill increases the permitted offset (for Wellness Court graduates only) to 75%. This is a much smaller number than the whole DUI offender population and will not adversely affect state finances.

Thank you for your constant and effective support of the therapeutic court program. I return from Hawaii to Anchorage on March 9. In the meantime, I am available on my mobile phone (907) 227-4084 (yes, it will ring right through to Hawaii and I would be pleased to receive your call if there are any questions.)

Sincerely,



James N. Wanamaker  
Director



# MADD

Activism | Victim Services | Education

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February 25, 2005

Representative Norman Rokeberg  
State Capitol, room 214  
Juneau, AK 99801-1182

RE: House Bill 136 -An Act restricting the authority of a court to suspend execution of a sentence or grant probation in prosecutions for driving while under the influence and prosecutions for refusal to submit to a chemical test;

Dear Representative Rokeberg:

The MADD Alaska Chapters are grateful for your sponsorship of HB 136. MADD is a strong proponent of restorative justice. The Justice System, the offender and the victim/community all play a necessary role in community safety, competency development and accountability.

There is a reason a DUI offender is held responsible for his/her actions. Society demands this of the offender. Accountability is connected to community safety and competency development; without one, the other two are most likely to be ineffective.

There is sensible reason behind the need for comprehensive sentencing. One DUI offender may find the fines deter any future drunk driving while another might discover treatment is the answer. Some discover losing their license an effective consequence and others discover jail is something they never want to go through again. It's important that each part of a DUI sentence be passed down to all offenders because there is no way of knowing which part of the sentence will be the effective tool in preventing future drunk driving.

Unfortunately Alaska has Judges who dismiss all or more than the mandatory minimum fines for many DUI offenders. Financial disclosures do not seem to play a part in the dismissals as MADD volunteers have witnessed dismissals with repeat offenders who own property and have lucrative jobs.

MADD is grateful Rep. Rokeberg is willing to take a stand for restorative justice.

Sincerely,

Cindy Cashen  
Executive Director



## Sentence Structure

*DRIVEN magazine, Spring 2002*



The case has gone to trial. The evidence has been presented. Both the prosecution and the defense have rested their cases. The jury has reached a verdict: guilty. Now the critical phase of punishing the defendant begins – the sentencing.

In cases where there's a guilty verdict, the judge is usually responsible for sentencing the offender. While some jurisdictions have mandatory minimum sentences for certain offenses that judges must adhere to or enhance, the judge has considerable discretion over sanctions including confinement, fines, probation, treatment and creative sentencing options.

Judges consider the defendant's background, past offenses, the seriousness of the crime, post-arrest behavior, circumstances of the offense, remorsefulness of the defendant and any victim impact statements. Ultimately, the fundamental question facing a judge is what sanction or combination of sanctions will most effectively reduce or eliminate future criminal activity by the offender.

In the case of driving under the influence (DUI) offenses, rendering punishment that reduces recidivism of drunk drivers is paramount. Currently, almost one-third of all offenders arrested for DUI are repeat offenders, indicating that traditional sentences such as jail time, fines and community service simply are not working. In fact, through its research-based Higher Risk Driver program, MADD advocates sanctions that encompass driving restrictions, community restitution and offender recovery.

One of the most difficult challenges now before the courts is to find the perfect combination of sanctions to reduce the alarming recidivism rate in this country. Fortunately, judges nationwide are rising to the challenge by establishing innovative sanctions and programs designed to reduce the crime of drunk driving. Here are just three examples of the hundreds of passionate judges across the country who are taking the first step.

### Each Sentence Is a Work of Art

"DUI cases are the most important cases that judges handle," says Judge William Todd of Rockdale, Georgia. "And those sentences cannot be mechanical; they must be individualized to the offender."

During his 10 years as chief assistant district attorney, Todd saw his share of drunk driving cases. When he took the bench in 1993, he quickly developed a database for himself designed to track his cases and offender data such as the number of DUIs in the defendant's lifetime, number of DUIs in the past five years, crashes, sentence (s) received, location where the defendant was drinking, marital status, type of car the defendant was driving and demographic information. Using this database, Todd looks at trends, tracks progress and identifies problematic patterns. Most importantly, though, the database allows Todd to review the profile of the defendant before him, which helps him create an individualized sentence using a combination of sanctions designed to reduce the recidivism rate for that specific offender.

Todd uses a vast combination of sanctions. Traditional measures such as jail, electronic monitoring, Alcoholics Anonymous meetings, random drug and breath tests, fines, DUI school, treatment, victim impact panels, ignition interlock devices and other vehicle sanctions are used in conjunction with non-traditional sanctions. People who have sold cigarettes to minors have found that they and their families were required to pick up cigarette butts at a park. Those who littered have spent time on the side of the road picking up trash.

However, Todd believes sanctions alone are not the answer. "Both treatment and rehabilitation as well as prompt sanctions are the key," Todd says. "Follow-up is also important. You must enforce the sanctions and hold the offender accountable."

Todd has offenders check in with his court and keeps "steady pressure" on them by having defendants write

essays about their experience and charging offenders for all costs associated with their sanctions. He also works to establish a trust relationship with the offender. "I will try everything I can to turn people around," Todd explains. "This often means changing terms of probation, revoking terms where appropriate, or modifying sentences based on a change in behavior or a change in circumstances."

The numbers show that his program is working. Recidivism rates in Judge Todd's court dropped to half, and last year his court saw a considerable decline in the number of DUIs compared to years past. And since 1997, there have been only two DUI-related deaths in Rockdale County, even with increases in population and in the number of bars in the county. A 1998 study of the Todd program by the National Highway Traffic Safety Administration (NHTSA) found that it was more effective, by a wide margin, than a sentencing program that imposed the minimum sanctions.

Todd encourages other judges to try innovative sanctions and find the right combination for each individual offender. "Each sentence is a work of art," he says. "First you paint the picture, and then oftentimes it needs to be touched up."

### **Creativity and Consequences**

Sentencing takes on new meaning in the courtroom of Judge Ted Poe of the Criminal District Court in Harris County, Texas, in Houston, as one woman convicted of a DUI found out. Poe sentenced her to carrying a placard reading, "I am a drunk driver" outside the Neiman Marcus store where she regularly shopped.



"It was far worse for her to have to carry that sign and face her friends than pay the \$5,000 fine," Poe says. "That woman will never be back in the system because it was far too embarrassing for her."

A judge for nearly 20 years, Poe uses what he calls "hybrid sentencing" – a combination of jail and creative sanctions. "I keep all the options open, from prison to community service," Poe explains. "My philosophy is that the offenders need to do something for the victim, do something for the community and do something for themselves."

Poe is known for his creative sentences. Whether it is sanctioning the offender to make restitution, personalizing the crime or inflicting public punishment, Poe does whatever is necessary to serve justice. "Restitution to the victim can include money for damages or funeral expenses," Poe says. "Offenders can be required to sell their cars, take out loans or get a job to pay the restitution owed." In one case, the offender had destroyed the victim's car in a drunk driving crash, leaving her with no vehicle. Poe required the defendant to turn over his vehicle to the victim in a courtroom ceremony for use until the victim's car was repaired. Poe maintains, "This type of punishment causes shock, thus changes the defendant's behavior."

Another victim-based sanction Poe uses is ordering defendants to erect and maintain markers at the crash site to honor victims. Poe says, "This personalizes the crime for the offender."

Along the same line, Poe requires that a picture of the victim be prominently displayed in the offender's prison cell – a standard part of Poe's sentences in all homicide cases, including those caused by drunk drivers. "This is also designed to change the offender's attitude," Poe explains. "I know it works because defendants are always trying to have [the pictures] removed."

The only time Poe doesn't use this sanction is when he believes the defendant will use the picture as a "badge of brag" – this is especially true with younger defendants.

Poe has found that younger offenders can be harder to reach. But that doesn't stop him from trying and succeeding. Poe recalls one case where a popular 17-year-old high-school senior drove drunk, and crashed into a van, killing two people and injuring another. Poe sentenced the minor to jail and ordered the victims' photos posted in his cell.

Poe also ordered him to attend a work camp for those younger than 27; to erect and maintain a marker at the crash site; to visit and maintain the victims' grave sites, including bringing flowers; to send a check to the victims'

high school as well as his own; to view an autopsy; and to carry a placard at the crash site and at the convenience store where he purchased the beer. The placard read, "I killed two people while driving drunk." Also, as part of the defendant's 10 years of probation, he was ordered to do 20 hours of public speaking a year at area schools about the dangers of underage drinking and drunk driving. Poe mandated that he start at his former high school, where he was once so popular.

That was five years ago. Today, the defendant not only does his annual 20 hours of speaking, he voluntarily dedicates nine months out of the year to speak at schools. In addition, on his own accord, he carries around his placard, which he now views as a public warning rather than a punishment.

Poe doesn't issue his creative sanctions to be cruel. On the contrary, he says, "People must learn that drunk driving is a crime of violence, much like shooting a gun into a crowd of people. Sometimes you hit and kill someone, and sometimes you are lucky. Drunk driving is not socially acceptable and people must learn that."

Poe is a tough judge, and his approach seems to be working. His court has a 20 percent recidivism rate, while the national average for offenders failing to maintain the terms of their probation is about 50 percent. Poe says, "The system must offer consequences. Where judges often fail is in giving lofty probation terms, and when the defendant fails to complete them, nothing happens. The system loses credibility and the probation office is unsuccessful in working with [offenders] because they have lost respect for the system."

Poe believes that through tough and appropriate sanctions, defendants can turn around and become productive citizens.

#### **Empowering Offenders to Change**

Similar to Poe's philosophy, Judge Dorothy Baker of the 4th Judicial District in Oregon also focuses on serving justice while enabling offenders to change their behavior. "In order to increase community safety, we as a society need to increase the quality of life for those who threaten our safety, because if you increase quality of life, it is less likely the person will re-offend," Baker says.

**MADD Fact:**  
In 2000, it's estimated that more than 1 million people were arrested in the United States for driving under the influence.

On the bench for more than 20 years, Baker has chosen to work only with drunk driving offenders. And, like Todd, she feels that dealing with offenders needs to be individualized. "Each offender must be individually assessed and monitored closely while they work on their recovery," Baker explains. "By paying attention to each detail in an offender's life and investing time and energy to empower that offender, most can change their quality of life, become vested in themselves and make our communities a better place."

Baker's DUI Intensive Supervision Program (DISP) is one of a kind. The first phase of the program consists of obtaining and maintaining sobriety. The second phase concentrates on quality of life. "My program includes complete behavior modification and is designed to impact all areas of a defendant's life," Baker says.

Defendants voluntarily enter into Baker's three-year program through a plea agreement. Once in her courtroom, defendants discuss their plea, the legal consequences of their actions, their past crimes and the threat they pose to society. Baker then interviews them on a personal level, asking them questions such as: what they think about before they drink; if drinking makes them feel better; if they think drinking alcohol is working for their life; if alcohol is solving problems; and if they feel that there is an underlying problem and what that problem may be. Baker says her philosophy is clear: "Lead the defendant down the path to discover the destructive behavior and then attack the problem causing the drinking."

The conditions of Baker's program are standard. Participants must work a minimum of 35 hours per week, lead an organized, structured life, and have some type of social activity that does not involve alcohol.

Additionally, offenders are required to take polygraph tests, report to their probation officer and have a follow-up meeting with Baker 45 to 90 days after sentencing.

Offenders and their family members also must sign a document stating that there will be only one vehicle per licensed driver in the household, that the keys will be kept from the offender, and that there will be no alcohol or drugs brought into the house.

However, Baker says that absolute honesty is the most important point in the program because it helps offenders regain accountability for their actions. "If an offender violates their probation, they must tell on themselves," Baker explains. "Based on the violation, I modify the terms of the program."

In one case, an offender called Baker to confess he was drinking and that he should be put in jail. The next day, in court when he was sober, he protested when Baker modified his probation to include jail. Baker matter-of-factly states, "I was doing what he had asked and sent him to jail."

The numbers testify to Baker's success. In more than three years, slightly more than 1 percent of the participants have re-offended. But it is the gratitude from those who have gone through the program and their families that speaks volumes. Wives call crying to thank her. Parents beg her to take their other children into the program even though no crime has been committed. And, she receives an abundance of appreciation from those who have turned their lives around and graduated from the program.

When asked about the success of DISP, Baker says, "Be dedicated to consistency and work based on that. Any community can create a program like this. All it takes is communication and dedication among the criminal justice community."

Where the justice system has failed to make an impact on drunk driving by rendering standard sentencing, judges nationwide are successfully using personalized programs and creative sanctions. This individualized approach aims to not only punish offenders for their crimes, but to rehabilitate them as well, thus helping to reduce drunk driving recidivism and make the streets safer for everyone. Through the efforts of Judges Todd, Poe, Baker and thousands like them, the criminal justice system is helping to solve the nation's drunk driving problem one case at a time.

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This information is brought to you courtesy of Mothers Against Drunk Driving – find us online at <http://www.madd.org/>.

The mission of MADD is to stop drunk driving, support the victims of this violent crime, and prevent underage drinking.



## Higher Risk Driver Fact Sheet

### Higher-Risk Drivers: The Problem & Proven Solutions

**Higher-Risk Driver:** MADD defines the "higher-risk driver" as 1) Repeat offenders convicted (conviction is defined as receiving a court-imposed sanction) of a second driving-under-the-influence offense within a 5- year period; 2) High BAC offenders convicted of a driving-under-the-influence offense with a BAC of .15% or higher, and/or 3) Driving-while-suspended (DWS) where the suspension was the result of a conviction for driving under the influence.

### THE PROBLEM

#### Repeat Offenders:

- About one-third of all drivers arrested or convicted of driving under the influence are repeat offenders. These drivers are 40% more likely to be involved in a fatal crash than those without prior DUIs.<sup>1</sup>

#### High-BAC Offenders:

- 58% of alcohol-related traffic fatalities in 2001 involved drivers with a BAC of .15% and above.<sup>2</sup> These drivers are at least 382 times more likely to be involved in a fatal crash than a non-drinking driver.<sup>17</sup>
- During a typical weekend night, 1% of drivers will have a blood alcohol concentration (BAC) of .15 or higher.<sup>13</sup>

#### Offenders Who Drive on a Suspending License:

- 50-75% of drunk drivers whose licenses are suspended continue to drive.<sup>14</sup>
- 32% of suspended second-time offenders and 61% of suspended third-time offenders received violations or were involved in crashes during their suspensions.<sup>3</sup>
- Generally, unlicensed drivers are 4.9 times more likely to be involved in a fatal crash than properly licensed drivers.<sup>16</sup>

#### Drivers Who Refuse a BAC Test:

- Depending on the state, 3% to 59% of those under suspicion for DUI/DWI refused to take a BAC test.<sup>15</sup>
- Not surprisingly, those states that did not sanction those who refuse the test more than those who take the test had higher refusal rates. Also, offenders who refuse the test tend to have higher recidivism rates and more previous offenses.

### MADD SOLUTIONS: THE THREE R'S

#### Restrictions on Driving:

- Restrict vehicle operation by suspending licenses, impounding or immobilizing vehicles, and requiring alcohol ignition interlock devices on offenders' vehicles.
  - Studies show that license revocation laws can decrease fatal late-night crashes by 9%.<sup>6</sup>
  - Interlock systems have reduced repeat DWI offenses among convicted drinking drivers in Maryland<sup>7</sup>, California<sup>8</sup> and other states<sup>9,10</sup> by 65% to 90%.

- o License suspension was effective in reducing DWI offenses among convicted drinking drivers in Ohio<sup>4</sup>. After two years, there were lower rates of moving violations and crashes compared with DUI offenders convicted before the law went into effect and this reduction significantly reduced alcohol-related fatalities.
- o Vehicle impoundment has reduced DWI offenses among convicted drinking drivers. First-time offenders who had their vehicles impounded had 25% fewer crashes and repeat offenders had 38% fewer crashes than similar offenders who had access to their vehicles in California.<sup>5</sup>

#### ***Restitution Sanctions:***

- Require compensation to the community through fines, mandatory incarceration and financial restitution to crash victims.
  - o Community service has little or no impact on reducing recidivism. However, some judges use creative sentencing and restitution sanctions to create more meaning from sanctions.
  - o Fines and court fees can be used to offset the costs of law enforcement efforts to crack down on drunk drivers and to pay the cost of treatment programs. They can also fund special minimum-security facilities for DUI offenders.

#### ***Recovery Provisions:***

- Promote recovery programs through mandatory alcohol assessment and treatment, intensive probation and attendance at victim impact panels.
  - o Over 70% of DUI offenders have alcohol abuse problems and between 10% and 50% were alcohol dependent.<sup>11</sup> Repeat offenders are the most likely to be alcohol dependent.
  - o A 1995 study found that DUI offenders who participated in treatment programs had a 7-9% reduction in recidivism over those who had no treatment.<sup>12</sup>

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