

HB

359



HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
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Rep. Mike Doogan
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Rep. Lindsey Holmes
Room 405
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MEMORANDUM

Date: February 21, 2008

To: Representative Kevin Meyer
Co-Chair House Finance Committee

From: Representative Jay Ramras
Chair House Judiciary Committee

Re: Referral File for HB 359

Attached are the following documents, which represent the referral file for HB359:

- Sponsor Statement
- CSHB 359(JUD) 25-LS1377\K
- HJUD Amendments #1 and #2
- HB 359 (25-LS1377\C)
- Explanation of Changes
- 0 Fiscal Note - HJUD
- Relevant Statutes
- Support
- HJUD Report

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman

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Representative_Jay_Ramras@legis.state.ak.us

1202 Sadler Way, Suite 324
Fairbanks, AK 99701



Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

Sponsor Statement HB 359

"An Act relating to probation and the offense of a minor consuming or in possession or control of alcohol."

Joining the military is one of the best ways for young Alaskans to gain self-confidence, and learn respect and discipline; skills that will serve them well throughout their adult lives. Unfortunately, making the mistake of underage drinking can prevent a person from enlisting in the armed services, due to probation restrictions.

Under current Alaska statute the court is required to place a person convicted of minor consuming on probation for one year from the date of conviction, or until the person is 21 years of age, whichever is later. There is no authority under the minor consuming statute for termination or modification of probation. This is contrary to authority granted to the court under Title 12. Under AS 12.55.090(b), "the court may revoke or modify any condition of probation, or may change the period of probation".

HB 359 would grant the courts similar authority to change the period of probation given under Title 12. By doing so, the courts would have the discretion to remove a person who has been convicted of minor consuming from probation, if the person has met the conditions of probation set forth by the court and the continuance of their probation would interfere with their rehabilitation or growth.

There are often good, young Alaskans who make mistakes. HB359 would offer those youth the opportunities to learn from their mistakes and work toward becoming stronger, more disciplined, law-abiding individuals through military service.

AMENDMENT #1

Passed

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 359(JUD), Draft Version "M"

1 Page 1, lines 12 - 13:

2 Delete "has either paid for the programs or has made a good faith effort to pay for the
3 programs"

4 Insert "has either

5 (A) paid for the programs; or

6 (B) made a good faith effort to pay for the programs, agreed to
7 have the debt reduced to a civil judgment, entered into a repayment plan with
8 the provider or the state, and agreed that the civil judgment may be enforced in
9 the manner provided for restitution and fines in AS 12.55.051"

10

11 Page 1, line 14, through page 2, line 1:

12 Delete "has paid the fine for the offense or has made a good faith effort to pay the
13 fine"

14 Insert "has either

15 (A) paid the fine; or

16 (B) made a good faith effort to pay the fine, agreed to have the
17 remaining fine amount reduced to a civil judgment, entered into a plan with the
18 state, and agreed that the civil judgment may be enforced in the manner
19 provided for restitution and fines in AS 12.55.051"

Pitssed

25-LS1377\M.2
Luckhaupt
2/20/08

AMENDMENT # 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE GRUENBERG

TO: CSHB 359(JUD), Draft Version "M"

1 Page 1, lines 1 - 2:

2 Delete "probation and the offense of minor consuming or in possession or control
3 of alcohol"

4 Insert "termination of probation for certain persons convicted of minor
5 consuming or in possession or control of alcohol or repeat minor consuming or in
6 possession or control of alcohol"

ALASKA STATE LEGISLATURE HOUSE JUDICIARY COMMITTEE

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State Capitol, Room 120
Juneau, Alaska 99801-1182

Changes in Judiciary CS for HB 359 Version "M"

Section 1: AS 04.16.050

Page 1, lines 5 - 6: clarifies language on process for termination of probation.

Page 1, line 7: section (b) was added to include probation under (b) (1) which does not fall under probation requirements set forth in (c).

Page 1, line 8 - Page 2, line 4: provides requirements to be met before termination of probation may be granted by the court.

FISCAL NOTE

STATE OF ALASKA
2008 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB359
 () Publish Date: _____

Identifier (file name): HB359 Dept. Affected: None
 Title: Probation & Minor Consuming RDU: _____
 Component: _____
 Sponsor: House Judiciary Committee
 Requester: House Judiciary Committee Component Number: _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2009	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
OPERATING EXPENDITURES								
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	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 Interagency Receipts								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2008) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Jane Pierson, Committee Aide
 Division: House Judiciary Committee
 Approved by: Representative Ramras
Chairman

Phone: 907-465-4990
 Date/Time: 2/21/2008 at 8:50 AM
 Date: 2/21/2008

Sec. 04.16.050. Possession, control, or consumption by persons under the age of 21.

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051 (b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for one year or until the person is 21 years of age, whichever is later, if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least \$200 but not more than \$600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation under (c) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds \$200 if the person is required to pay for education or treatment required under (e) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b) of this section or has been previously convicted, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of \$1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to \$500 of the fine and place the person on probation under (e) of this section.

(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b), (c), or (d) of this section on probation for one year, or until the person is 21 years of age, whichever is later. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

(1) the person shall pay for and successfully complete any education or treatment recommended;

(2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16.051(b);

(3) the person shall timely complete any community work ordered, as provided in (f) of this section; and

(4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060 .

(k) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990 ;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030 , 28.35.032, 28.35.280 - 28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

Sec. 12.55.090. Granting of probation.

(a) Probation may be granted whether the crime is punishable by fine or imprisonment or both. If a crime is punishable by both fine and imprisonment, the court may impose a fine and place the defendant on probation as to imprisonment. Probation may be limited to one or more counts or indictments, but, in the absence of express limitation, shall extend to the entire sentence and judgment.

(b) The court may revoke or modify any condition of probation, or may change the period of probation.

(c) The period of probation, together with any extension, may not exceed

(1) 25 years for a felony sex offense; or

(2) 10 years for any other offense.



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
ALASKA ARMY NATIONAL GUARD ELEMENT, JOINT FORCES HEADQUARTERS
PO BOX 5800
FORT RICHARDSON AK 99505-0800

February 6, 2008

Office of the Commanding General

Rep. Jay Ramras
State Capitol, Room 118
Juneau, AK 99801-1182

Dear Rep. Ramras:

The Alaska Army National Guard is in support of allowing youth, who have made a mistake by drinking alcohol underage, to receive the leniency from the court system to join the Army, or any United States military service branch.

If a teenager receives a minor-consuming-alcohol conviction they are not eligible for enlistment in the armed services, due to their probation restriction until the age of 21. I would like to see the court system remove this probation term, if and only if, the teen presents a letter from a United States military recruiter stating that this is the only factor keeping the teen from joining the military.

We have good kids in Alaska who sometimes make mistakes. Joining the military gives young people a sense of confidence and discipline that will demand a respect for the law as adults.

Sincerely,

Thomas H. Katkus
Brigadier General, AKARNG
Commanding

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 8, 2008

FURTHER REFERRALS: Finance

Date of Committee Action: 2/20/08

The JUDICIARY Committee considered:

HB 359

HOUSE BILL NO. 359

PROBATION AND MINOR CONSUMING

"An Act relating to probation and the offense of minor consuming or in possession or control of alcohol."

Recommends it be replaced with HCS or CS for HB 359 (JED)
 For Senate Bills with new title: / Technical Title / New Title: HCR _____ | Same Title New Title

- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of Abbrev for Depts:
 ADM
 CED
 COR
 CRT
 EED
 DEC
 DFG
 GOV
 HSS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

<u>NEW FISCAL NOTES</u>				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
HJUS				✓

<u>PREVIOUS FISCAL NOTES</u>				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

<u>Signing with recommendations</u>	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	<i>[Signature]</i>	-			
<i>[Signature]</i>	COGHILL			✓	
<i>[Signature]</i>	<i>[Signature]</i>			X	
<i>[Signature]</i>	SAMUELS			X	
Chair: <i>[Signature]</i>	LAMRAS	X			
Chair: <i>[Signature]</i>					