

HB

98

<target><bill>HB 98</bill><subject>HB
98</subject><comm>HFIN26</comm></target>

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: February 4, 2009

FURTHER REFERRALS:

Date of Committee Action: 4/2/09

The FINANCE Committee considered:

HOUSE BILL NO. 98

"An Act relating to minor consuming and repeat minor consuming; and providing for an effective date."

HB 98 MINOR CONSUMING

Recommends it be replaced with HCS or CS for HB 98 (FIN)
 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
 DHS
 LWF
 LAW
 LEG
 MVA
 DNR
 DPS
 REV
 DOT
 UA

NEW FISCAL NOTES				
*Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
COR	1			✓
LAW	2			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
<i>[Signature]</i>	KELLY	X			
NR Foster	Foster	X			
Nancy Crawford	CRAWFORD			X	
<i>[Signature]</i>	Salmon			X	
<i>[Signature]</i>	Thomas				✓
<i>[Signature]</i>	Coyle				✓
Chair: <i>[Signature]</i>	Hawken	X			
Chair:					

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 98
(H) Publish Date: 2/4/09

Identifier (file name): _____ Dept. Affected: _____
Title Minor Consuming RDU Alaska Court System
Component Trial Courts
Sponsor Representative Ramras Component Number _____
Requester _____

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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							
-----------------------------	--	--	--	--	--	--	--

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 Interagency Receipts							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: _____

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 98.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Approved by: Doug Wooliver for Stephanie Cole, Administrative Attorney
Alaska Court System

Phone 463-4750
Date/Time 01-28-09 @ 2:30 pm
Date 1/28/2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 098
 () Publish Date: _____

Identifier (file name): HB098-DPS-DET-02-02-09 Public Safety
 Title "An Act relating to minor consuming." RDU Alaska State Troopers
 Component AST Detachments
 Sponsor Representative Ramras
 Requester House Judiciary Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information						
		FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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	0.0

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

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

FUND SOURCE (Thousands of Dollars)

	FY 2010	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
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 (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
 This bill amends AS 04.16.050(c) and (d) by clarifying when a person is guilty of repeat, or habitual minor consuming or in possession or control.

 Passage of this legislation will not increase the number of arrests made or cases referred for prosecution. This bill will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial Phone 907-247-4480
 Division: Alaska State Troopers Date/Time 2/3/09 9:27 AM
 Approved by: Joseph Masters, Commissioner Date _____
Department of Public Safety

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 98
(H) Publish Date: 2/4/09

Identifier (file name): HB098-LAW-CRIM-1-31-09 Dept. Affected: LAW
Title An Act relating to minor consuming and repeat minor consuming RDU CRIMINAL
Sponsor Representative Ramras Component Criminal Justice Litigation
Requester Judiciary Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

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

	Appropriation Required	Information					
		FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
OPERATING EXPENDITURES							
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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							
-----------------------------	--	--	--	--	--	--	--

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

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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 (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

The bill would clarify the existing minor consuming statute regarding when a minor would be designated as a habitual offender. The Department of Law does not anticipate any fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Deputy Director
Division: Administrative Services Division
Approved by: Talis Colberg, Attorney General
Department of Law

Phone 907-465-5427
Date/Time 1/31/09 4:00 PM
Date 1/31/2009

Adopted
4/2/09

AMENDMENT

2

OFFERED IN THE HOUSE
TO: HB 98

By Rep. Hawker
By Request

1 Page 1, line 1, following "consuming;":

2 Insert "relating to penalties for violations of limitations on possessing, sending,
3 shipping, transporting, or bringing alcoholic beverages to, soliciting or receiving orders
4 for delivery of alcoholic beverages to, and the manufacture, sale, offer for sale, barter,
5 traffic, or possession of alcoholic beverages in, a local option area;"

6

7 Page 2, following line 15:

8 Insert new bill sections to read:

9 "** Sec. 3. AS 04.16.200(h) is amended to read:

10 (h) Upon conviction of a class C felony under (b) or (e)(2) or (3) of this
11 section, the court

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

14 (A) 120 days if the person has not been previously convicted
15 [ONCE];

16 (B) 240 days if the person has been previously convicted once
17 [TWO TIMES];

18 (C) 360 days if the person has been previously convicted two
19 [THREE] or more times;

20 (2) may not

21 (A) suspend execution of sentence or grant probation except on
22 the condition that the person

23 (i) serve the minimum imprisonment under (1) of this

1 subsection; and

2 (ii) pay the minimum fine required under (1) of this

3 subsection; or

4 (B) suspend imposition of sentence.

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

7 APPLICABILITY. AS 04.16.200(h), as amended by sec. 3 of this Act, applies to an
8 offense occurring on or after the effective date of this Act. References to previous convictions
9 in sec. 3 of this Act apply to convictions occurring before, on, or after the effective date of
10 this Act."

11

12 Renumber the following bill section accordingly.

Withdrew

AMENDMENT

OFFERED IN THE HOUSE
TO: HB 98

BY REPRESENTATIVE GARA

1 Page 1, line 1, following both occurrences of "consuming":

2 Insert "or in possession or control"

3

4 Page 1, following line 3:

5 Insert a new bill section to read:

6 **** Section 1.** AS 04.16.050(b) is amended to read:

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

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

20 (2) shall impose a fine of at least \$200 but not more than \$600, shall
21 require the person to attend alcohol information school if the school is available, and
22 shall place the person on probation for up to one year under (e) of this section; the
23 court may suspend a portion of the fine imposed under this paragraph that exceeds

1 \$200 if the person is required to pay for education or treatment required under (e) of
2 this section."

3

4 Page 1, line 4:

5 Delete "Section 1"

6 Insert "Sec. 2"

7

8 Renumber the following bill sections accordingly.

9

10 Page 1, line 9, following "section.":

11 Insert "Repeat minor consuming or in possession or control is a violation."

12

13 Page 2, following line 15:

14 Insert new bill sections to read:

15 "** Sec. 4. AS 04.16.050(l) is amended by adding a new paragraph to read:

16 (4) "violation" has the meaning given in AS 11.81.900 and the
17 penalties that are provided in this section.

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

20 LEGISLATIVE RECOGNITION OF EFFECT OF DEFINITION. The legislature
21 recognizes that

22 (1) the definition of "violation" in AS 11.81.900(b)(63) provides that persons
23 charged with a violation are not entitled to counsel or a trial by jury; and

24 (2) notwithstanding the definition of "violation" in AS 11.81.900(b)(63),
25 persons charged with a first offense minor consuming or in possession or control or with
26 repeat minor consuming or in possession or control under AS 04.16.050 are entitled to
27 counsel and a trial by jury under the decision of the Alaska Court of Appeals in State v.
28 Auliye, 57 P.3d 711 (Alaska App. 2002)."

29

30 Renumber the following bill section accordingly.

Chair, Judiciary
Chair, Economic Development,
Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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Alaska State Legislature House of Representatives



While in Session
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Juneau, Alaska 99801-1182
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Representative Jay Ramras
District 10

Sponsor Statement HB 98

“An Act relating to minor consuming and repeat minor consuming; and providing for an effective date.”

HB 98 fixes a problem that occurred with the enactment of HB 359, a bill that passed the House unanimously in the 25th Legislative Session. HB 359 originated due to the desire of Alaskan youths to join the military and not being able to due to probation restrictions from a minor consuming charge that may have occurred 5 years previously. Unfortunately, when the bill was drafted, it left a loop-hole in the repeat minor consuming law.

HB 98 fixes this loop-hole by amending the language of AS 04.16.050(c) to include in the list of predicate offenses for repeat minor consuming “previously granted suspended imposition of sentence”, and “a prior conviction under AS 04.16.050(b)(2).”

This new language will now cover all repeat offenders, no matter how their previous minor consuming charges were adjudicated.

Representative_Jay_Ramras@legis.state.ak.us

Westlaw.

AS § 04.16.050

Page 1

C

West's Alaska Statutes Annotated Currentness

Title 4. Alcoholic Beverages

▣ Chapter 16. Regulation of Sales and Distribution

▣ Article 1. Prohibited Acts

→ § 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 up to one year 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 for up to one year under (e) 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)(1) of this section or has been previously convicted once, 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 for up to one year under (e) of this section.

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(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 for one year, or until the person is 21 years of age, whichever is later, 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)(2), (c), or (d) of this section on probation for the appropriate period. 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) Notwithstanding (b), (c), and (e) of this section, a person sentenced under (b) or (c) of this section may make a motion to the court to terminate probation of that person before the end of the probationary period required under those subsections. The court may grant the motion if the court finds, by clear and convincing evidence, that

(1) the person completed any community work ordered under (f) of this section;

(2) the person has successfully completed any education or treatment program ordered by the court and, if required by the court, has either

(A) paid for the programs; or

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

(3) the person has either

(A) paid the fine; or

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

(4) the person has substantially complied with the other conditions of probation.

(I) 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.

CREDIT(S)

SLA 1980, ch. 131, § 3; SLA 1983, ch. 109, § 8; SLA 1995, ch. 81, § 1; SLA 2001, ch. 65, §§ 1, 2. Amended by SLA 2008, ch. 75, §§ 1 to 5, eff. July 1, 2008.

HISTORICAL AND STATUTORY NOTES

SLA 2008, ch. 75, inserted "up to" after "on probation for" and deleted "or until the person is 21 years of age, whichever is later" after "one year" in subsec. (b)(1); inserted "for up to one year" after "person on probation" in subsec. (b)(2); substituted "(b)(1)" for "(b)" and inserted "once" after "previously convicted" in subsec. (c), and inserted "for up to one year" in subsec. (c)(4); inserted "for one year, or until the person is 21 years of age, whichever is later" in subsec. (d); substituted "(b)(2)" for "(b)" and "the appropriate period" for "one year, or until the person is 21 years of age, whichever is later" in subsec. (e); and added subsec. (I) (now subsec. k).

SLA 2008, ch. 75, § 43 provides:

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“APPLICABILITY. (a) Sections 6--9, 14--16, 22--24, 29--31, and 40 of this Act apply to an offense occurring on or after July 1, 2008. References to previous convictions in secs. 8 and 9 of this Act apply to convictions occurring before, on, or after July 1, 2008.

“(b) Sections 5 and 13 of this Act apply to an offense occurring before, on, or after July 1, 2008.

“(c) Sections 17, 18, 39, and 41 of this Act apply to search warrants applied for on or after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

“(d) Sections 19--21, 36, and 37 of this Act apply to procedures occurring after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

“(e) Section 25 of this Act applies to applications for criminal extraditions submitted on or after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

“(f) Section 12 of this Act applies to offenses occurring and actions arising on or after July 1, 2008.

“(g) Sections 26--28 and 42 of this Act apply to applications submitted on or after July 1, 2008.”

SLA 2008, ch. 75, § 44 provides:

“SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances are not affected.”

In 2008, new subsec. (l) was redesignated as (k) and existing subsec. (k) as (l) by the revisor.

CROSS REFERENCES

Administrative revocation of license to drive, see § 28.15.183.

Attempt, classification of offenses, see § 11.31.100.

Civil liability of persons providing alcoholic beverages, see § 04.21.020.

Classification of offenses, see § 11.81.250.

Court reports to Department of Transportation, conviction records, see § 28.15.191.

Court revocation of a minor's license to drive, see § 28.15.185.

Court suspensions, revocations, and limitations, see § 28.15.181.

Criminal jurisdiction, see § 22.15.060.

Fines, see § 12.55.035.

Gangs, additional penalties for activities punishable as misdemeanors, see § 12.55.137.

Grounds for arrest by private person or peace officer without warrant, see § 12.25.030.

Juvenile delinquency, certain provisions inapplicable, see § 47.12.030.

Juvenile delinquents, criminal consequences, see § 47.12.060.

Juvenile delinquents, judgment and orders, see § 47.12.120.

Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.

Misdemeanors, sentences of imprisonment, see § 12.55.135.

Motor vehicle insurance following driver's license revocation, see § 21.89.027.
 Offenses defined by statute, see § 11.81.220.
 Periods of limitation, suspension or revocation, see § 28.15.211.
 Prior convictions, effect on sentencing, see § 12.55.145.
 Private manufacture of alcoholic beverages, see § 04.21.015.
 Restitution and compensation, see § 12.55.045.
 Restrictions on driver's license issued to a person under 18, see § 28.15.057.
 Victims of crimes, rights, see § 12.61.010 et seq.

LIBRARY REFERENCES

Intoxicating Liquors ↪ 131, 139.
 Westlaw Key Number Searches: 223k131; 223k139.
 C.J.S. Intoxicating Liquors §§ 311, 323 to 324, 361 to 364, 366 to 368.

NOTES OF DECISIONS

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1. Validity

Provision in statute prohibiting possessing, controlling, or consuming alcoholic beverages by a person under the age of 21, which provision requires younger offenders to stay on probation longer than older offenders by mandating that person convicted of violating statute be placed on probation for one year, or until the person reached 21 years of age, whichever is later, does not violate state equal protection clause; state has compelling interest in preserving health and welfare of minors and, given that younger offenders are more at risk than older offenders, challenged provision bears substantial relationship to legislature's goal of preserving minors' health and welfare by preventing unlawful underage drinking. Const. Art. 1, § 1; AS 04.16.050. State v. Morgan (2005) Alaska App., 111 P.3d 360. Constitutional Law ↪ 3819; Intoxicating Liquors ↪ 19

Portions of statute imposing automatic "probation," which made statute unconstitutional in denying underage drinkers right to jury trial and appointed counsel on showing of indigency, could not be stricken, leaving rest of statute intact, where offensive potential punishments of custodial in-patient treatment and community service were clearly important to achievement of legislative goals, and even if offensive portions were removed, fact that underage drinker

did not receive jury trial for first offense would prohibit imposition of increased penalties for subsequent offense, thus defeating legislative scheme of enhanced punishment for repeat offenders. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11; AS 04.16.050. *State v. Auliye* (2002) Alaska App., 57 P.3d 711. Statutes ↪ 64(6)

2. Nature of offense

Underage drinking violations are a class of quasi-criminal offenses which, while they are not serious, are to be disposed of within the criminal justice system. *State v. Euteneier* (2001) Alaska App., 31 P.3d 111. Intoxicating Liquors ↪ 131

3. Search warrants

Underage drinking violations can be enforced by traditional criminal procedures, including the use of search warrants. *State v. Euteneier* (2001) Alaska App., 31 P.3d 111. Intoxicating Liquors ↪ 249

4. Persons liable

Possibility that minor who purchases alcohol may drive automobile, and that alcohol-related accident may result, is well within scope of foreseeable risk, for purpose of determining liquor licensee's liability in negligence. AS 04.16.051, 04.21.020, 04.21.050. *Loeb v. Rasmussen*, 1991, 822 P.2d 914. Intoxicating Liquors ↪ 288

4.5. Detention and custody

Police officers did not breach their duty to act reasonably in releasing intoxicated sixteen-year old to her parents, and thus city was not liable in wrongful death action brought by parents after sixteen-year old killed herself shortly after being released; officers initially and properly took sixteen-year old into custody based on their reasonable belief that she had violated law prohibiting minors from consuming alcohol, once officers detained sixteen-year old, they were then governed by statute that provided that the police must release a minor who has consumed alcohol to her parents unless there is a lawful reason not to do so, and parents did not show that there was a lawful reason to keep sixteen-year old in custody. *Estate of Logusak ex rel. Logusak v. City of Togiak* (2008) Alaska, 185 P.3d 103. Municipal Corporations ↪ 747(3)

5. Defenses

Minor's willful misconduct in unlawfully purchasing and consuming alcohol, and in subsequently driving while intoxicated, did not bar recovery in negligence from owner of liquor store. AS 04.16.051, 04.21.020, 04.21.050. *Loeb v. Rasmussen*, 1991, 822 P.2d 914. Intoxicating Liquors ↪ 295

6. Double jeopardy

Administrative revocation of a minor's driver's license for alcohol-related violation is not "punishment" for double jeopardy purposes; valid regulatory purpose exists in restricting or

revoking driver's licenses of underage drinkers. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 9; AS 04.16.050, 28.15.183. *Rexford v. State* (1997) Alaska App., 941 P.2d 906. Double Jeopardy ↪ 24

7. Counsel for accused

Statute requiring revocation of driver's license of minor convicted of underage drinking or possession of alcohol was a punitive measure, entitling minors, under State Constitution, to jury trial and court-appointed counsel if indigent. Const. Art. 1, § 11; AS 04.16.050(a), 28.15.185. *State v. District Court*, 1996, 927 P.2d 1295. Criminal Law ↪ 1715; Jury ↪ 19.5

8. Presumptions and burden of proof

Exceptions in statute making it offense for person under age of 21 years to consume, possess, or control alcoholic beverages in those cases where beverages are furnished by parents, guardians, spouses, or licensed physicians or nurses were "defenses" to criminal liability, and thus, if defendant wished to invoke one of these exceptions, defendant had to affirmatively raise exception and point to some evidence from which reasonable jury could decide on issue in his or her favor; state was not required to disprove possibility that exception applied. AS 04.16.050, 04.16.051(b). *Trout v. State*, 1994, 866 P.2d 1323. Intoxicating Liquors ↪ 224

9. Weight and sufficiency of evidence

Defendant charged with consuming alcohol while under 21 years of age failed to properly raise any of the statutory exceptions to criminal liability by failing to present some evidence from which reasonable jury could decide that issue in his favor, and thus, defendant was not entitled to judgment of acquittal or to jury instruction that would have required state to disprove exceptions to criminal liability. AS 04.16.050, 04.16.051(b). *Trout v. State*, 1994, 866 P.2d 1323. Intoxicating Liquors ↪ 236(1); Intoxicating Liquors ↪ 239(2)

10. Probation

Trial court did not violate doctrine of separation of powers by requiring minor who was convicted of consuming alcoholic beverages to return to court every other week to report on her progress on probation; responsibilities for probation function were shared by executive and judicial branches, and legislative history of statute indicated that legislature wanted to assure that courts were part of the monitoring process for minors who were convicted of possessing or consuming alcoholic beverages. AS 04.16.050. *Jackson v. State* (2006) Alaska App., 127 P.3d 835, as amended. Constitutional Law ↪ 2545(1); Infants ↪ 225

Trial court's requirement that minor who was convicted of minor consuming alcoholic beverages return to court every other week to report on her progress on probation did not impermissibly relieve State's burden to prove a violation of probation, where trial court specifically stated that any petition to revoke minor's probation would have to be initiated by State, not by court. AS 04.16.050. *Jackson v. State* (2006) Alaska App., 127 P.3d 835, as amended. Infants ↪ 225

AS § 04.16.050

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Penalty of automatic "probation" for underage drinking, which permitted sentencing judge to order custodial in-patient treatment, community work service, and revocation of driver's license, were sufficiently severe that underage defendant was entitled to trial by jury and, if defendant was indigent, to counsel at public expense, where each of sentencing judge's permitted orders, if imposed as direct punishment, would have entitled defendant to trial by jury and right to appointed counsel upon finding of indigency. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11; AS 04.16.050(e). State v. Auliye (2002) Alaska App., 57 P.3d 711. Infants ↪ 68.4; Jury ↪ 22(2)

AS § 04.16.050, AK ST § 04.16.050

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