

ALASKA LEGISLATURE

HOUSE and SENATE

FINANCE COMMITTEE FILES,

1993-1994

948

POTENTIAL SOUTHCENTRAL REGION PROJECTS IDENTIFIED BY DOT
DRAFT 1993 SIX-YEAR PLAN

<u>PROJECT</u>	<u>COST (IN THOUSANDS)</u>
GLENN HIGHWAY MILE 109-118	14,500
PARKS HIGHWAY MILE 35-44	42,000
PARKS HIGHWAY MILE 44-71	18,000
SEWARD HIGHWAY MILE 0-36	9,000
SEWARD HIGHWAY MILE 50-65.5	21,000
STERLING HIGHWAY MILE 36-47	24,000
STERLING HIGHWAY MILE 47-60	<u>38,000</u>
TOTAL	166,000

**CORDOVA DISTRICT FISHERMEN UNITED**

P.O. Box 939

Cordova, Alaska 99574

Phone (907) 424-3447 Fax (907) 424-3430

March 29, 1993

Honorable Albert Gore
Office of the Vice President
New Executive Office Building
Washington, D.C. 20500

Dear Vice President Gore:

We are writing you to express our concern that federal transportation funds will be used for the construction of the Copper River Highway, a project of dubious merit that will adversely impact our livelihoods and way of life.

Founded in 1935, Cordova District Fishermen United (CDFU) is the oldest commercial fishing organization in Alaska with 269 current members who engage in the commercial fisheries of the Copper River Delta and Prince William Sound. CDFU's main purpose is to preserve, promote, and perpetuate the fishing industry in Area E of the State of Alaska; to further promote safety at sea, legislation, conservation, management, and the general welfare for the mutual benefit of all members. During the 1992 salmon season 5 million pounds of the highest quality sockeye salmon in the world were harvested from the waters of the Copper River Flats.

Governor Walter Hickel and the Alaska Department of Transportation and Public Facilities (ADOT&PF) are requesting that the state legislature approve \$9.475 million in ISTEA federal funds for construction and engineering on the Copper River Highway in FY94.

The required EIS which also must consider alternative transportation modes such as improvements in our ferry service, has not even been completed in draft form. In effect, the governor and the ADOT&PF have predetermined the preferred alternative in the EIS.

In the summer of 1991, the ADOT&PF (at the governor's direction) constructed nearly 40 miles of road along the Copper River which forms the western boundary of the Wrangell-St. Elias National Park and Preserve. The ADOT&PF had not obtained any of the required permits from the U.S. Army Corps of Engineers or the Alaska Department of Fish and Game (ADF&G).

As a consequence of those construction activities, the state of Alaska has been sued by the Corps for serious violations of the Clean Water Act, in addition, the Corps

has refused to issue any permits for work on the highway until the suit is resolved. (See attached March 24, 1993 Anchorage Daily News article).

Our concerns about the highway focus on the potential negative impact to wetlands and fish habitat. The wetlands of the Copper River Delta are an ecosystem of world class significance for waterfowl and shorebirds and are important enough to be included in the Western Hemisphere Shorebird Reserve Network. These wetlands and adjacent riparian habitat are critical rearing habitat for salmon which sustain the health of the Copper River fishery.

The vitality of the Copper River Delta and Prince William Sound ecosystem is due in large measure to the limited road access to the area. The fragility of the area's resources in the face of unrestricted exploitation can be seen in the first closure ever to sport fishing of parts of the Delta last fall. In spite of only local pressures on the resource, the ADF&G was forced to take this action to protect the fisheries. A road connection to the state highway system would have increased the problem by an order of magnitude.

Our fishing community is still recovering from the devastation of the Exxon Valdez oil spill. The sustainability of the Copper River fishery has been one of the bright spots in our lives in recent years. We ask that you take whatever actions are necessary to protect the Copper River Delta and Prince William Sound from further environmental and socio-economic degradation.

Thank you for your attention in this matter.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED

James L. Mykland, Director
Board of Directors

Post-It™ brand fax transmit memo 7671 Pages 2

To	James L. Mykland	From	ADF&G
Cn.		Cn.	
Dept		Phone #	7347-7766
Fax #		Fax #	

HVB

61

HFIN

FILE

HOUSE COMMITTEE REPORT

(11)

Date Referred: March 31, 1993

FURTHER REFERRALS:

Date of Committee Action: 2/14/94

The FINANCE Committee considered:

HB 61

HOUSE BILL NO. 61

LOWER ALCOHOL LIMIT TO 0.08 FOR OMVI'S

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

RECOMMENDATIONS:

be replaced with CS HB 61 (FIN) [] the same title
[] a new title

[] have attached amendments(s)

[] do pass

[] do not pass

[] no recommendations

[] individual recommendations

[] additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

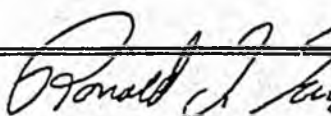
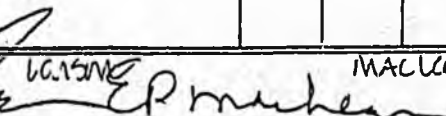
2 [] fiscal impact Admin; Corrections

[] fiscal note(s) _____

3 [] zero fiscal note Admin; DPS; Law

[] zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
		<i>EP Meehan</i> MacLean		✓	
<i>Terry Martin</i> Martin	Ⓢ	<i>Paul J. Larson</i> Larson		Ⓢ	
<i>Tom Thorsen</i> Thorsen	X	<i>Mark Hanley</i> Hanley		X	
<i>Mike Havens</i> NAVARRE	✓	<i>Sean Parnell</i> Parnell		X	
<i>Jay Brown</i> BROWN	✓	<i>Ben Grussendorf</i> grussendorf		X	
		<i>Rick Foster</i> FOSTER		X	
		<i>[Large Signature]</i>			



MACLEAN
 CO-CHAIRMAN'S SIGNATURE

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Jud)

Revision Date: _____	Dept. Affected: <u>Administration</u>
Title: <u>"An Act relating to the offenses of operating a motor vehicle"</u>	BFL: <u>Office of Public Advocacy</u>
Sponsor: <u>Rep. Nordlund</u>	Component: <u>Office of Public Advocacy</u>
Requestor: <u>(H) Fin</u>	COMPONENT SERIAL NO. <u>43</u>

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY95	FY96	FY97	FY98	FY99	FY00
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
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
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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
1006 GF/MHTIA	0.0	0.0	0.0	0.0	0.0	0.0
Other	0.0	0.0	0.0	0.0	0.0	0.0
Total	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of current year (FY94) cost: none

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)

Prepared by: <u>Brant McGee, Public Advocate</u>	Phone: <u>274-1684</u>
Division: <u>Office of Public Advocacy</u>	Date: _____
Approved by Commissioner: <u>Nancy Be .Isera</u>	Date: <u>2/7/94</u>
Agency: <u>Administration</u>	

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Iud)

Revision Date: _____
Title: "An Act relating to the offense of operating a motor vehicle, aircraft or watercraft while intoxicated..."
Sponsor: Representative Nordlund
Requestor: _____

Department Affected: Administration
BRU: Public Defender Agency
Component: Public Defender Agency
COMPONENT SERIAL NO. 3540

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL	87.9	105.5	108.7	112.0	115.4	118.9
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	0	0	0	0	0
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	90.9	106.5	109.7	113.0	116.4	119.9

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES						
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FUNDING SOURCE:

(Thousands of Dollars)

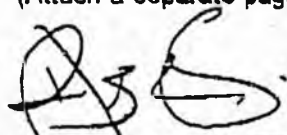
1002 Federal						
1003 GF Match						
1004 SF	90.9	106.5	109.7	113.0	116.4	119.9
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	90.9	106.5	109.7	113.0	116.4	119.9

Estimate of any current year (FY 94) cost: \$ -0-

POSITIONS:

FULL-TIME	2.0	2.0	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.) See attached.



Prepared by: John B. Salemi, Public Defender
Division: Public Defender Agency

Phone: 264-4400
Date: 2/8/94

Approved by Commissioner: Nancy Bear Usera, Commissioner
Agency: Department of Administration

Date: _____

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Iud)

ANALYSIS: (continued)

CSHB 61 amends the State statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in his/her system in order to be found guilty of driving while intoxicated. Under present law, a suspected drunk driver who takes a chemical test and is found with 0.10% or more (by weight) of alcohol in his/her blood, is presumed by the court to be under the influence. If found guilty of said offense, mandatory minimum penalties must be imposed.

CSHB 61 lowers the amount of alcohol which must be found in the blood in order for a person to be presumed guilty of driving while intoxicated. This proposal also changes the evidentiary presumptions with respect to this issue. See Section 4, paragraph (a)(4) amending A.S. 28.35.033.

Significant mandatory penalties attach to a conviction for driving while intoxicated. These punishments will apply to the provisions of this bill.

The Public Defender supports all legislative enactments which reasonably deter driving while under the influence. Other states have lowered the blood alcohol level as is done through this proposal.

Fiscal Impact

There will be distinct fiscal impact on the Public Defender Agency if this bill becomes law. Under present law, individuals who fall into the .08%-.10% range typically are offered a reduced charge of Reckless Driving in exchange for a plea of no contest. Reckless Driving carries no significant mandatory minimum penalties, does not have the same stigma as a DWI conviction, and in other ways is a more acceptable resolution of a case, from a defendant's perspective, than is a conviction for drunk driving. If this bill passes, it is anticipated that there will be more DWI charges and as a result, more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, it is likely additional resources will be required so that effective legal representation can be provided for these additional DWI prosecutions. It is felt that the fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination, and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.

Budget Analysis

Anchorage:		
Paralegal II	16A	\$ 43.2
Fairbanks:		
Paralegal II	16A	44.7
100	Personal Services (10 months first year)	\$87.9
200	Travel	0.0
300	Contractual	0.0
400	Supplies	1.0
500	Equipment (one time)	2.0
		TOTAL \$87.9

Position Title Paralegal Assistant II		No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 24.0	Location EBA - JBA		Election District 7 - 20
TYPE OF EXPENDITURE		AMOUNT		
Salary	74,340	Justification CSHB 61 amends the State statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in their system in order to be found guilty of Driving While Intoxicated. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, additional resources will be required so that effective legal representation can be provided. The fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.		
Benefits	31,185			
Premium Pay				
Other				
Total Personal Services	105,525			
Travel	0			
Contractual	0			
Commodities	1,000			
Equipment	2,000			
Other				
Total Cost	108,525			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts	1002			
G.F. Match	1003			
General Fund	1004	108,525		
I-A Receipts	1007			
CIP Receipts	1061			
Other				

Request For New Position

AGENCY ADMINISTRATION
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 95

Page 3 of 3
 Revised Date _____

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61(JUD)

Revision Date: 2/11/94 Dept. Affected: Corrections
 Title: An Act relating to the offense of BRU: All
operating a motor vehicle... Component: All
 Sponsor: Rep. Nordlund
 Requestor: House Finance COMPONENT SERIAL NO. 694-1884

Expenditures/Revenues	(Thousands of Dollars)					
OPERATING EXPENDITURES	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	166.6	171.6	176.7	182.0	187.5	193.0
TOTAL OPERATING	166.6	171.6	176.7	182.0	187.5	193.0

CAPITAL EXPENDITURES	0	0	0	0	0	0
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CHANGE IN REVENUES ()						
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FUND SOURCE	(Thousands of Dollars)					
1002 Federal Receipts						
1003 GF Match						
1004-GF	33.3	34.3	35.3	36.4	37.5	38.6
1005 GF/Program Receipts	133.3	137.3	141.4	145.6	150.0	154.4
1006 GF/MHTIA						
Other						
TOTAL	166.6	171.6	176.7	182.0	187.5	193.0

Estimate of any current year (FY94) cost: \$ 0

POSITIONS						
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)
 Please see the attached fiscal analysis.

Prepared by: Diane Schenker, Special Assistant Phone: 465-4643/786-2147
 Division: Office of the Commissioner Date: 2/11/94
 Approved by Commissioner: J. Frank Prewitt, Jr. Date: 2/11/94
 Agency: Department of Corrections

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The bill lowers the blood alcohol limit for the crime of DWI, from .10 to .08 percent.

Assumptions

1. According to the National Highway Traffic Safety Administration, a study of five other states indicates an average increase in DWI cases of approximately 3.9% as a result of lowering the limit from .10 to .08. On 12/31/93 there were 130 inmates incarcerated for DWI, statewide. A 3.9 percent increase in this population would raise the DWI population by 5.07 inmates, or 1,851 inmate-days per year ($5.07 \times 365 = 1,851$).
2. The cost per day to incarcerate the average DWI case is \$90. The department calculated this cost by using the cost of Community Residential Center (CRC) beds and state correctional beds actually used to incarcerate DWIs last year. Generally, DWI cases are housed in state correctional centers only in unsentenced status or in locations where no CRC is available.
3. A recent change in law requires DWI offenders to pay for some of the costs of incarceration. The department has written regulations to collect these fees, which should go into effect within the next month or so. The regulation will require a first-time DWI offender to pay \$270, and a second-time offender to pay \$1,000. The Department of Law, which is expected to collect the fees, expects to collect approximately 80% of the fees, through voluntary compliance and by taking Permanent Fund Dividends. It is expected that the fees will offset costs only for first and second-time offenders.
4. There are currently about 650 DWI offenders on waiting lists to serve their sentences. If the courts were to remand offenders directly to jail to serve their mandatory sentences, instead of allowing many DWI offenders to report to the department for a distant date to serve the sentence, the impact of this legislation would be greater and more immediate. The reason there were only 130 DWI offenders incarcerated on 12/31/94 is that the department was able to control the rate of intake in many cases. Because the statewide waiting list grew to over 2500 offenders and a sentence delay of more than eight months last year, it is possible the courts may cease or lessen the use of this option.
5. The legislation only affects DWIs charged under state statute. DWIs charged under local city ordinances will remain at the .10 level unless the local laws are changed. It is estimated that over half of the DWIs incarcerated in the state correctional system are from Anchorage, charged under city law.
6. Increases in DWI cases may have a "ripple effect" on other crimes, such as Failure to Appear, Failure to Satisfy Judgment, and Driving With License Suspended/Revoked. The department notes that misdemeanants are the fastest-growing incarcerated population. It is

assumed that this factor could double the number of additional inmates referenced in Assumption 1. However, it is assumed that Assumption 5 will offset this, since half the DWI population comes from Anchorage on municipal, rather than state, charges.

7. National studies suggest that this type of legislation may reduce the number of traffic fatalities. This could result in some lessening of prisoner-days served for vehicular homicides. This may help offset the costs not reflected in the fiscal note, for possible increases in remands rather than court-reports, and for third-time or higher offenders who cannot pay the costs of incarceration through fees.

8. The costs of incarceration are reflected under "miscellaneous" because some expenses will be incurred in individual institutions, some in CRC contracts, and some in department overhead for administering contracts and providing support services for institutions.

9. A 3% inflation factor is assumed.

Operating Expenses

1,851 inmate-days per year X \$90 per day = \$ 166,590 total expense, FY95

80% (DWI fee collection rate) of \$ 166,590 = \$ 133,272 GF/Program Receipts, FY95

\$166,590 - \$133,272 = \$ 33,318 GF, FY95

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO: CSHB 61(JUD)

Revision Date: _____ Dept. Affected: Public Safety
 Title: An Act relating to the offense of operating BRU: Motor Vehicles
a motor vehicle...while intoxicated... Component: _____
 Sponsor: Rep Nordlund
 Requestor: H. FIN COMPONENT SERIAL NO. 500

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES	0					
TRAVEL	0					
CONTRACTUAL	0					
SUPPLIES	0					
EQUIPMENT	0					
LAND & STRUCTURES	0					
GRANTS, CLAIMS	0					
MISCELLANEOUS	0					
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE FUND SOURCE:	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

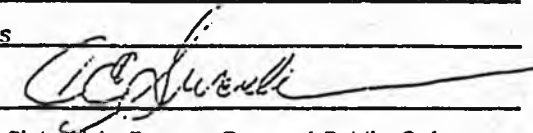
1002 Federal Receipts	0					
1003 GF Match	0					
1004 GF	0					
1005 GF/Program Receipts	0					
1006 GF/MHTIA	0					
Other	0					
TOTAL	0	0	0	0	0	0

Estimate of current year (FY 94) impact: \$ None

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.)
Fiscal impact is not anticipated.

Prepared By: Juanita Hensley Phone: 465-4361
 Division: Motor Vehicles Date: 2/4/94
 Approved by Commissioner:  Date: 2/4/94
 Agency: Richard L. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

Revision Date: December 10, 1993
 Title: "...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated..."
 Sponsor: Representative Nordlund
 Requestor: Governor's Office

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND &						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING:

1002 Federal						
1003 GF Match						
1004 GF						
1005 GF/Program						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)
Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division
 Approved by Commissioner: Richard I. Peques / FOR / Charles E. Cole, Attorney General
 Agency: Department of Law

Phone: 465-3672
 Date: December 10, 1993
 Date: December 10, 1993

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FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

ANALYSIS CONTINUATION:

The Judiciary Committee Substitute for HB 61 amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood/alcohol limit for the crime of driving while under the influence of intoxicating liquor from 0.10 percent or more by weight alcohol in a person's blood to 0.08 percent. This version of the bill drops language that would have made driving while intoxicated, with less than 0.10 percent blood/alcohol, a lesser included offense.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska.

Moreover, the Department of Public Safety has advised that they do not anticipate any significant increase in DWI arrests, because that department's traffic stops are based on observed impaired driving behavior where the operator appears intoxicated. Therefore, we are not requesting fiscal impact funds.

716 W. FOURTH AVE.
ANCHORAGE, ALASKA 99501-2133
258-8191

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SPONSOR STATEMENT

House Bill 61 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means it would be illegal for a person to be in control of a motor vehicle, aircraft, or watercraft with a blood alcohol level of .08% or greater.

Last year, as we continued to consider this bill, 5 more states passed .08 laws bringing the total to 10. All of Canada has a .08% blood alcohol threshold, and all European nations prohibit driving with a .08% or lower blood alcohol level.

Scientific evidence persuasively establishes that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases. Many studies have shown that measurable impairment to operate a motor vehicle begins in most drivers at or below .05% blood alcohol level, and that all drivers are impaired at a blood alcohol level of .08%.

Setting the allowable blood alcohol level at .08% will greatly increase the probability of obtaining convictions for drunk driving. Because the law will increase the certainty of conviction, it will also be more effective than current law in deterring drunk driving and in reducing the number of alcohol related crashes.

According to the Department of Public Safety, Alaska receives approximately \$200,000 in section 410 Grants of Alcohol Incentive Program from the federal government. Alaska will be eligible for a 5% increase if House Bill 61 passes. If we fail to reduce the level from .10 to .08 within the next two years, we will become ineligible to receive any of these funds.

Far more important than the fiscal impact of this law is its ability to save lives. A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws.

On December 30, 1993, the Supreme Court ruled in Haynes v. Dept. of Public Safety that due to the margin of error inherent to the Intoximeter 3000 of .01, the actual level at which an operator of a motor vehicle should be convicted of drunk driving is .11. This shows an even stronger need for .08 legislation.

In addition to the inherent benefits of the bill, the National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

Since it was introduced, House Bill 61 has received an overwhelming amount of public support. In addition to the support of many individual Alaskans, House Bill 61 is endorsed by:

American Automobile Association
General Federation of Women's Clubs
Association for the Advancement of Automotive Medicine
International Association of Chiefs of Police
National Association of Independent Insurers
National Institute for Alcohol Abuse and Alcoholism
National Transportation Safety Board
National Highway Traffic Safety Administration
Allstate Insurance Company
State Farm Insurance
American Medical Association
American Association of Neurological Surgeons
American Spinal Injury Association
National Safety Council
Mothers Against Drunk Driving (MADD)
Remove Intoxicated Drivers (RID)
Insurance Institute for Highway Safety
National Committee on Uniform Traffic Laws and Ordinances
National Commission Against Drunk Driving
Network of Employees for Traffic Safety
U.S. Surgeon General, Health & Human Services
Alaska Peace Officer's Association
Victims for Justice

716 W. FOURTH AVE.
ANCHORAGE, ALASKA 99501-2133
258-8191

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4968

Alaska State Legislature

House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

SECTIONAL ANALYSIS CSHB 61(JUD)

Section 1. Findings and purpose.

Section 2. Reduces the level of alcohol at which a person commits the crime of driving while intoxicated from 0.10% to 0.08%.

Section 3. Amends the presumptions of intoxication in a civil or criminal action relating to driving while intoxicated to conform with amendments in section 2.

Section 4. Effective date.

716 W. FOURTH AVE.
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258-8191

WHILE IN SESSION:
ALASKA STATE CAPITOL
JUNEAU, ALASKA 99801-1182
465-4966

Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

MEMORANDUM

TO: Representative Ron Larson, Co-Chair
Representative Eileen MacLean, Co-Chair
Finance Committee

FROM: Representative Jim Nordlund

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: January 18, 1994

I would greatly appreciate it if a Finance Committee hearing could be scheduled as soon as possible for House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. Ten states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at lower blood alcohol levels.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for at least a 30% increase if House Bill 61 passes. If we fail to reduce the level from .10 to .08 within the next two years, we will become ineligible to receive any Highway Safety Planning funds.

Far more important than the fiscal impact of this law is its ability to save lives. A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws.

On December 30, 1993, the Supreme Court ruled in Haynes v. Dept. of Public Safety that due to the margin of error inherent to the Intoximeter 3000 of .01, the actual level at which an operator of a motor vehicle should be convicted of drunk driving is .11. This shows an even stronger need for .08 legislation.

Last year, as we continued to consider this bill, 5 more states passed .08 laws bringing the total to 10. I believe that it is important for the legislature to act quickly in passing House Bill 61 to continue protecting the public from intoxicated drivers, and hope that you will honor this request soon.

Thank you for your consideration of this matter.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO: CSHB 61(JUD)

Revision Date: 4/01/93 Dept. Affected: Public Safety
 Title: "An Act relating to offense of operating a motor vehicle while intoxicated." BRU: Alaska State Troopers
 Sponsor: Representative Nordlund Component: Detachments
 Requestor: Representative Nordlund COMPONENT SERIAL NO. 799

EXPENDITURES/REVENUES: (Thousands of Dollars) (inflation not included)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

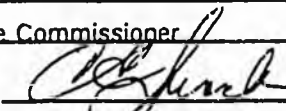
1002 Federal Receipts						
1003 GF Match						
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: \$ _____

ANALYSIS: (Attach a separate page if necessary.)
 The Department will apply for federal grant funds to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

Prepared By: C.E. Swackhammer Phone: 465-4322
 Division: Office of the Commissioner Date: 4/01/93
 Approved by Commissioner:  Date: 4/01/93
 Agency: Richard T. Burton, Dept. of Public Safety

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61

Revision Date: 3-30-93 Dept. Affected: Corrections
 Title: "An Act relating to the offense BRU: Statewide Programs: Institutions
of operating a motor vehicle.... Component: _____
 Sponsor: Rep. Nordlund
 Requestor: House Judiciary COMPONENT SERIAL NO. 1860; 1858

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY94	FY95	FY96	FY97	FY98	FY99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE						
----------------------------	--	--	--	--	--	--

FUNDING:

(Thousands of Dollars)

FUNDING	FY94	FY95	FY96	FY97	FY98	FY99
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

POSITIONS	FY94	FY95	FY96	FY97	FY98	FY99
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary)

The committee substitute does not change the department's earlier zero fiscal note.

Prepared by: Dana LaTour
 Division: Special Assistant
 Approved by Commissioner: Lloyd G. Rupp
 Agency: Commissioner

Phone: 465-3376
 Date: 3-30-93
 Date: 3-30-93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offenses of operating a motor vehicle ..." BRU: Office of Public Advocacy
 Component: Office of Public Advocacy
 Sponsor: Representative Nordlund and Ulmer
 Requestor: House Judiciary COMPONENT SERIAL NO. 43

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
Other	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: \$ None

ANALYSIS: (attach a separate page if necessary.)

Prepared By: Brant McGee, Public Advocate Phone: 274-1684
 Division: Office of Public Advocacy Date: _____

Approved by Commissioner: Nancy Bear Usura *NBE* Date: 3/31/93
 Agency: Department of Administration

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FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

BILL NO. CSHB 61 (Jud)

Revision Date: _____ Dept. Affected: Administration
 Title: "An Act relating to the offense of operating a motor vehicle, aircraft or watercraft while intoxicated . . ." BRU: Public Defender
 Component: Public Defender
 Sponsor: Representative Nordlund
 Requestor: _____ COMPONENT SERIAL NO. 1631

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	88.5	108.0	111.2	114.5	117.9	121.4
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	91.5	109.0	112.2	115.5	118.9	122.4

CAPITAL						
----------------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
-----------------------------	--	--	--	--	--	--

FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF	91.5	109.0	112.2	115.5	118.9	122.4
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	91.5	109.0	112.2	115.5	118.9	122.4

POSITIONS

FULL-TIME	20	20	20	20	20	20
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: \$ _____

ANALYSIS: (attach a separate page if necessary.)

See attached.

Prepared By: John Salemi, Public Defender Phone: 274-1684
 Division: Public Defender Agency Date: _____

Approved by Commissioner: Nancy Bear Usery *UBCUE* Date: 3/31/93
 Agency: Department of Administration

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CONTINUATION OF FISCAL NOTE ANALYSIS
For CSHB 61 (Jud)

CSHB 61 amends the State statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in his/her system in order to be found guilty of driving while intoxicated. Under present law, a suspected drunk driver who takes a chemical test and is found with 0.10% or more (by weight) of alcohol in his/her blood, is presumed by the court to be under the influence. If found guilty of said offense, mandatory minimum penalties must be imposed.

CSHB 61 lowers the amount of alcohol which must be found in the blood in order for a person to be presumed guilty of driving while intoxicated. This proposal also changes the evidentiary presumptions with respect to this issue. See Section 4, paragraph (a)(4) amending AS 28.35.033.

Significant mandatory penalties attach to a conviction for driving while intoxicated. These punishments will apply to the provisions of this bill.

The Public Defender supports all legislative enactments which reasonably deter driving while under the influence. Other states have lowered the blood alcohol level as is done through this proposal.

Fiscal Impact

There will be distinct fiscal impact on the Public Defender Agency if this bill becomes law. Under present law, individuals who fall into the .08%-.10% range typically are offered a reduced charge of Reckless Driving in exchange for a plea of no contest. Reckless Driving carries no significant mandatory minimum penalties, does not have the same stigma as a DWI conviction, and in other ways is a more acceptable resolution of a case, from a defendant's perspective, than is a conviction for drunk driving. If this bill passes, it is anticipated that there will be more DWI charges and as a result, more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, it is likely additional resources will be required so that effective legal representation can be provided for these additional DWI prosecutions. It is felt that the fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination, and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.

Budget Analysis

Anchorage:

Paralegal II	16A				\$ 51.6
--------------	-----	--	--	--	---------

Fairbanks:

Paralegal II	16A				53.4
--------------	-----	--	--	--	------

100	Personal Services (10 months first year)		\$ 88.5
200	Travel		0.0
300	Contractual		0.0
400	Supplies		1.0
500	Equipment (one time)		<u>2.0</u>
	TOTAL		\$ 91.5

Position Title Paralegal Assistant II		No. of Positions 2	Range / Step 16/A	Barg. Unit GGU
Time Status PFT	Staff Months 20.0	Location EBA - JBA		Election District 7 - 20
TYPE OF EXPENDITURE		Amount		
Salary	62.2	Justification HB 61 amends the state statutes regarding the crime of driving while under the influence of alcohol. The most significant change in the law proposed through this bill involves the amount of alcohol which a driver can have in their system in order to be found guilty of driving while intoxicated. If this bill passes it is anticipated that there will be more DWI charges and as a result more DWI clients wishing to exercise their right to trial. With the attorneys who handle misdemeanors in Anchorage and Fairbanks already carrying caseloads of over 100 cases, additional resources will be required so that effective legal representation can be provided. The fiscal impact can be absorbed through the use of paralegals to assist attorneys in file organization, witness coordination and other related support work. As such, two paralegal positions are requested; one each for Anchorage and Fairbanks.		
Benefits	26.3			
Premium Pay				
Other				
Total Personal Services	88.5			
Travel	-0-			
Contractual	-0-			
Commodities	1.0			
Equipment	2.0			
Other				
Total Cost	91.5			
FUNDING SOURCE FOR TOTAL COST				
Federal Receipts 1002				
G.F. Match 1003				
General Fund 1004	91.5			
I-A Receipts 1007				
CIP Receipts 1061				
Other				

**Request For
New Position**

AGENCY Department of Administration
 BRU Public Defender Agency
 COMPONENT Public Defender Agency

FY 94

Page 3 of 3
 Revised Date: _____

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

Revision Date: March 31, 1993
 Title: "...relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated..."
 Sponsor: Representative Nordlund
 Requestor: House Judiciary Committee

Department Affected: Department of Law
 BRU: Prosecution
 Component: All
 COMPONENT SERIAL NO. 0085 through 0090

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING:

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

Estimate of current year (FY93) impact: -0-

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared by: Richard I. Peques, Director
 Division: Administrative Services Division

Phone: 465-3672
 Date: March 31, 1993

Approved by Commissioner: Charles E. Cole, Attorney General
 Agency: Department of Law

Date: March 31, 1993

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSHB 61 (JUD)

ANALYSIS (Continued):

The Judiciary Committee Substitute for HB 61 amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood/alcohol limit for the crime of driving while under the influence of intoxicating liquor from 0.10 percent or more by weight alcohol in a person's blood to 0.08 percent. This version of the bill drops language that would have made driving while intoxicated, with less than 0.10 percent blood/alcohol, a lesser included offense.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska.

Moreover, the Department of Public Safety has advised that they do not anticipate any significant increase in DWI arrests, because that department's traffic stops are based on observed impaired driving behavior where the operator appears intoxicated. Therefore, we are not requesting fiscal impact funds.

FISCAL NOTE

**STATE OF ALASKA
1993 LEGISLATIVE SESSION**

Bill No. CSHB 61 (JUD)

Revision Date: _____ Department Affected: Alaska Court System
 Title: An Act relating to the offense of operating a motor vehicle, ..., while intoxicated BRU: Trial Courts
 Components: _____
 Sponsor: _____
 Requestor: _____ COMPONENT SERIAL NO. 768

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL						
REVENUE						
FUND SOURCE:						

FUNDING: (Thousands of Dollars)

1002 FEDERAL RECEIPTS						
1003 GF MATCH						
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/PROGRAM RECEIPTS						
1006 GF/MHTIA						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY 93) impact: None

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact. However, the court system is concerned that this legislation may increase municipal prosecutions. The court system will monitor its workload and request funding if the impact cannot be absorbed.

Prepared by: C. S. Christensen III, Staff Counsel *CS* Phone: 264-8228
 Division: Alaska Court System Date: 03/30/93
 Approved by: Arthur H. Snowden, II, Administrative Director *AHS*
 Agency: Alaska Court System Date: 03/30/93

Back up

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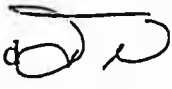
Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund
MEMORANDUM

TO: Representative Ron Larson, Co-Chair
Representative Eileen MacLean, Co-Chair
Finance Committee

FROM: Representative Jim Nordlund 

RE: HB 61 - Lowering Blood Alcohol Level for DWI

DATE: March 25, 1993

I would greatly appreciate it if a Finance Committee hearing could be scheduled, pending referral from Transportation Committee, on House Bill 61, which reduces the legal definition of intoxication for DWI from .10% to .08% blood alcohol content. A number of states, Canada, and all European nations have lowered their legal definition of intoxication from .10% based on medical evidence that shows driving ability is significantly impaired at the lower blood alcohol level.

The National Highway Traffic Safety Administration has notified us that Alaska currently receives \$688,000 in federal funds annually for Highway Safety Planning and may be eligible for a 30% or more increase if House Bill 61 passes. If similar legislation had passed last year, Alaska would have already received the benefits of the increase.

A study by the state of California showed that traffic fatalities were reduced by 12% after the implementation of .08 DWI laws. Alaska averages approximately 100 traffic related fatalities per year. If we were to achieve the same results this bill could save approximately 12 lives per year. In order to begin saving lives, I believe that it is important for the legislature to act quickly in passing House Bill 61.

Dennis Poshard of my staff will forward the necessary back up as soon as necessary.

Thank you for your consideration of this matter.

add: info
submitted



*Alaska Cabaret, Hotel,
Restaurant & Retailers Association*

*P.O. Box 104839 • Anchorage, Alaska 99510
401 K Street • (907) 272-8133 • Fax: (907) 277-8641*

February 23, 1993

Representative Richard Foster
House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Representative Foster,

House Bill 61, shortly to be considered by the Transportation Committee, would lower the legal definition of intoxication from a Blood Alcohol Content (BAC) of 0.10 to 0.08%. This bill does not address the real cause of the drunk driving problem, the alcohol abuser, and may in fact, impede efforts to reduce the number of accidents and fatalities caused by intoxicated drivers. The State of Maine adopted the lower BAC standard in 1988, one of only 5 states to do so. Between 1988 and 1990, the arrest rate increased by 16% as more people were considered technically intoxicated. At the same time, the alcohol-related fatality rate increased, by more than 7%.

These deaths were the unintended result of diluting the law enforcement and judicial resources available to combat the real culprit, the alcohol abuser. The average BAC of someone involved in an alcohol-related accident is over 0.15%. To direct scarce resources against the responsible consumer is counterproductive. We are continually reminded by the media of our overloaded court and jail facilities, to the point of serious recommendations that jail time for first time DWI offenders under the current definition be abolished.

Addressing the problem by restricting responsible consumption is clearly misdirected. Instead, our efforts should be directed to pursue realistic solutions to this terrible social problem by providing our law enforcement, judiciary, and corrections systems the assets they require to implement current laws and to provide stiffer penalties against repeat offenders.

Candy Lightner, the founder of Mothers Against Drunk Drivers (MADD), has doubts about lowering the BAC to 0.08% which she has expressed publicly on several occasions. I am enclosing a copy of a newspaper column that she wrote issue in 1992. Also enclosed is a reprint of a report originally published by the Beverage Retailers

Representative Richard Foster
Chairman, Transportation Committee
State Capitol
Juneau, Alaska

February 25, 1993

Dear Representative Foster,

I support HB 61, lowering the BAC to .08 as the legal limit to drive as a short-term control over a much more fundamental problem- the public attitudes toward alcohol use and abuse. It is one piece of a larger plan which looks at reducing injuries and deaths from motor vehicle crashes. Alcohol increases the odds that a crash will occur and increases the severity of injury when it does occur. In Alaska, the most severe injuries occur among young drivers between 16-24 years old who have been drinking. The demand for state services to pick up the pieces from these injuries is astounding. If this deters even one person from taking that fifth drink, it saves the state thousands of dollars.

The most evidence supporting the lowered BAC limit, rests with the effect on adolescent involvement in alcohol-related fatal crashes. Though this legislation targets all drivers, the effect on youth may be most effective. In a 1991 study done in Anchorage Emergency Rooms, the leading cause of injury and death for adolescents from 14-19 years old was motor vehicle crashes. Though impaired driving occurs with any alcohol content in the body, this legislation lowers the limit of how much alcohol the community will accept. It recognizes the magnitude of the problem and sends a message that Alaskans need to sober up for the privilege of driving a motor vehicle.

Joan Diamond
Department of Health and Human Services
Community Health Education/Injury Prevention
Anchorage, Alaska

Post-It [®] brand fax transmittal memo 7871		# of pages >
To <i>Jim Nordmark</i>	From <i>Joan Diamond</i>	
Co. <i>Alta Derrin</i>	Co. <i>MOA</i>	
Dept.	Phone # <i>943-4603</i>	
FAX # <i>465-2108</i>	FAX # <i>258-6329</i>	

**DRUNK AND IMPAIRED DRIVERS
KILL OR INJURE AN AMERICAN
EVERY MINUTE!**



(65 DEATHS AND INJURIES EACH HOUR)

COMMON SYMPTOMS OF ALCOHOL INFLUENCE



Blood Alcohol Concentration

0.03%



SLOWED

RESPONSES

0.05%



**RISK
TAKING**

0.08%



**IMPAIRED
VISION**

0.10%



**POOR
COORDINATION**

THE DWI PROBLEM

- * ABOUT HALF OF ALL FATAL CRASHES INVOLVE DRINKING DRIVERS
- * MOST DEAD DRINKING DRIVERS WERE DWI AT THE TIME OF THE CRASH
- * ALCOHOL-RELATED CRASHES ARE NINE TIMES MORE LIKELY TO RESULT IN DEATH



Office of the Chairman

National Transportation Safety Board

Washington, D.C. 20594

December 28, 1993

Honorable Jim Nordlund
Alaska House of Representatives
716 W. Fourth Avenue, #240
Anchorage, Alaska 99501-2133

Dear Representative Nordlund:

This is in response to your recent letter to former Safety Board Chairman James Kolstad, regarding your legislation to reduce the blood alcohol concentration (BAC) from 0.10 percent to 0.08 percent that is now pending before the Finance Committee. I would like to share with you the conclusions of the National Transportation Safety Board based on its research and accident investigation experience.

There is considerable research that demonstrates measurable adverse effects of alcohol on performance, even at low BACs. An October, 1992 report to Congress by the National Highway Traffic Safety Administration concluded:

The scientific literature clearly documents the detrimental effects of alcohol on driver performance. There is no threshold for alcohol impairment, i.e., there is no lower level at which impairment starts, or below which no impairment is found Safety considerations and scientific evidence will support lowering the acceptable level to whatever the legislature chooses, down to any measurable BAC.

This finding has been supported by studies completed as early as 1950 which documented that the impairment threshold of a drivers' ability to drive occurs at concentrations of 0.035 to 0.040 percent. Many other, more recent, studies have confirmed this finding, and have documented impairing effects at lower concentrations.

The 1977 study by H. Laurell, "Effects of Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," found effects on driver performance at BACs below 0.05 percent, studied in two contexts: (1) in a critical car-driving situation involving emergency braking and evasive maneuvers, and (2) in a "surprise" situation that followed the first situation and involved the sudden appearance of a human-shaped obstacle blocking the roadway. Overall, detrimental effects of alcohol at an average BAC as low as 0.042 percent were found.

Other studies substantiate performance impairment at very low BACs. For example, in an article published in 1970, "Alcohol Disturbance of Visual Acuity for Moving Objects," H. Honneger stated that the ability to distinguish close, but separated, moving objects seems to be consistently impaired at BACs sometimes as low as 0.03 percent. C. E. Billings and R. L.

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Wicks, in a report prepared for the FAA ("Effects of Alcohol on Pilot Performance during Instrument Flight," FAA-AM-72-4), stated that the ability to divide attention between tasks can be impaired at very low BACs (0.02 percent). Earlier (1964) findings by O. Gruener et. al., also concluded that very low BACs impair the ability to divide attention between tasks. Further studies (H. Franks et.al., "The Relationship Between Alcohol Dosage and Performance Decrement in Humans," Journal of Studies on Alcohol, 1976) indicate that the ability to stand upright without swaying begins to decrease significantly at a BAC as low as 0.04 percent.

The American Medical Association and the National Safety Council's Committee on Tests for Intoxication, have developed a table that places the effects of a BAC of 0.03 percent in the "euphoria" range. The behavioral symptoms of this level of intoxication include increased self-confidence, decreased inhibitions, loss of efficiency in finer performance tests, and diminution of attention, judgment, and control. These symptoms were expressly characterized as not compatible with the safe operation of motor vehicles.

Further, a 1985 study by Dr. Herbert Moskowitz shows evidence of impairment on divided attention and information processing tasks beginning at a BAC as low as 0.015 percent. At a 1987 international conference, Dr. Moskowitz reported on an exhaustive review of research on low BAC effects he conducted for the National Highway Traffic Safety Administration. Based on this review, Dr. Moskowitz states that "there is no lower threshold level below which impairment does not exist for alcohol."

A 1964 Indiana University study entitled, "The Role of the Drinking Driver in Traffic Accidents" by R. F. Borkenstein, determined that the relative probability of being involved in an accident is about 4 times greater than normal at 0.08 BAC, and about 25 times greater than normal at 0.15 BAC.

Additional research completed in late 1987 by the National Academy of Sciences provided further information on the effects of low levels of alcohol. In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress asked the Academy to study the effect of various alcohol level on the performance of truck drivers. The Academy's Transportation Research Board brought together a group of nationally recognized experts on the effects of alcohol, who concluded that "performance of driving related tasks decreases at any BAC above zero and crash risk increases sharply as BAC rises." The National Academy of Sciences recommended, and Federal Highway Administration regulations established, 0.04 BAC as the level at which commercial drivers would have an illegal alcohol level. Any alcohol ingestion can result in the commercial driver being put out of service for 24 hours.

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In 1989 the Safety Board recommended that the U.S. Department of Transportation:

Issue rules specifying zero (no alcohol) as the blood alcohol concentration for private sector employees in safety sensitive positions for all transportation modes and for Federal employees in safety sensitive positions.

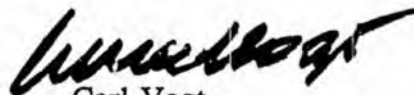
The Board also has recommended State legislation specifying BAC's below 0.04 percent for both commercial vehicle operators and for pilots of general aviation aircraft.

Similarly, Federal regulations prohibit aircraft crews from ingesting alcohol in the eight hours prior to flight operations and they may not have an alcohol level of 0.04 percent or above. The Safety Board has recommended that the alcohol level for air crews be the lowest level that can be reliably measured.

When combined with the impairing effects of other potential stressors found in highway operations such as complex traffic response demands, fatigue, vibration and noise, the presence of alcohol even at very low blood alcohol concentrations must be considered a clear and definite risk to safe highway operations. Therefore, legislation to lower the BAC definition of intoxication to 0.08 percent would certainly be a most modest positive step.

I hope that this information is useful to you and your colleagues. Please let us know if there is any way the Safety Board can be of additional assistance.

Sincerely,



Carl Vogt
Chairman

cc: Representative Ron Larson
Co-Chair, House Finance Committee



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

March 30, 1993

Representative Jim Nordland
House of Representatives
State Capitol
Interdepartmental Mall Stop: 3100
Juneau, AK 99801-1182

Dear Representative Nordland:

Thank you for sponsoring House Bill 61. This bill would lower the legal limit of alcohol to 0.08 per cent for operating motor vehicles. This bill has strong support in the medical community, and we will assist you in any way we can to help with its passage. If the medical association can be of any assistance on this bill, do not hesitate to contact us.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.
Chairman, Legislative Affairs Committee
Alaska State Medical Association

DRL:bj



Public Safety Employees Association, Inc.

"Representing Alaska's Finest"

1569 S. Bragaw #201, Anchorage, AK 99508

(907) 337-1979

Fax (907) 337-1753



**International Union of
Police Associations
Local 92 AFL-CIO**

February 17, 1993

Representative Jim Nordlund
State Capital
Juneau, AK 99801-1182

Dear Representative Nordlund,

I would like to commend you on your sponsorship on HB61. This legislation is long overdue and I wish you success in your endeavor to further the safety and welfare of the citizens of Alaska.

As President of the Public Safety Employee's Association, I represent law enforcement officers working throughout the State of Alaska. We fully endorse this proposed legislation. It would not only assist law enforcement officers with their responsibilities, but would take another step towards getting Alaska's most dangerous and lethal drivers off the roads.

It is readily apparent that the current regulations do not go far enough. At a .08 alcohol level drivers are extremely dangerous. Their vision is impaired, their reactions are slowed and they are more inclined to take risks. A .10 limit is just too high. We as citizens of the State of Alaska need this legislation. Our lives may depend on it. If there is any assistance our Association can provide in seeing HB61 prevail, don't hesitate to call. Good luck and thank you for your hard work.

Sincerely,

Keith Perrin
President

RECEIVED

FEB 22 1993

Ans'd.....

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX 111200
JUNEAU, ALASKA 99811-1200
PHONE: (907) 465-4322
FAX: (907) 465-4362

January 7, 1994

The Honorable Jim Nordlund
Alaska State Legislature
Court Building, Room 608
Juneau, AK 99801-1182

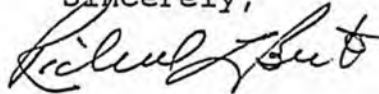
Dear Representative Nordlund:

I am writing in response to your correspondence requesting support from the Department of Public Safety for House Bill 61. HB 61 is one of the pieces of legislation the Department of Public Safety has placed as a priority. One of the recommendations the department made when testifying at the Alcohol Task Force hearings was to enact legislation setting the under-the-influence driving per se levels at .08 percent or lower. Juanita Hensley from my staff has been following this piece of legislation and will continue to work with you and your staff, as well as the members of the various committees, as it makes its way through the Legislature.

Laws that will enhance the safety of driving on our roadways and especially those laws which will help reduce the number of alcohol-related accidents and fatalities are always a priority for this department.

You can be assured the department will continue to support HB 61. My staff and I look forward to working with you in the upcoming legislative session.

Sincerely,



Richard L. Burton
Commissioner

cc: Lee Ann Lucas
Special Asst., DPS

Nita Hensley
Chief of Driver Svcs, DMV

WALTER J. HICKEL, GOVERNOR

PLEASE REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE
P.O. BOX 110300 - STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3428
FAX: (907) 465-1043

OFFICE OF SPECIAL PROSECUTIONS
AND APPEALS
310 K STREET, SUITE 308
ANCHORAGE, ALASKA 99501-2064
PHONE: (907) 269-6250
FAX: (907) 272-1249

DEPARTMENT OF LAW

CRIMINAL DIVISION

February 3, 1994

The Honorable Jim Nordlund
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: CS HB 61 (Jud)

Dear Representative Nordlund:

As you know, the Department of Law supports CS HB 61 (Jud), relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated. We particularly appreciate the amendments you made to the bill last year at our request.

During the interim, the Alaska Supreme Court issued a decision in *Haynes v. State*, ___ P.2d ___ (Op. No. 4040) (Alaska Dec. 30, 1993), which presents a impediment to the state's efforts to combat the problem presented by drunk drivers. It is a problem, however, that can be solved through a minor amendment to HB 61. We hope that you will consider proposing this amendment to the bill while it is still before the House.

In *Haynes*, the court held that, even though AS 28.15.165(c) ostensibly requires the Department of Public Safety to revoke a person's driver's license when a breath analysis reveals that the person's breath sample contains .10 grams or more of alcohol per 210 liters of breath, the Department cannot revoke the license unless the test results actually show that the breath sample contains .11 grams or more of alcohol per 210 liters of breath. This is because the test used, the Intoximeter 3000, is known to have a .01 margin of error. The court indicated that this problem could be solved by the legislature, stating as follows:

The legislature has the power to require the revocation of a driver's license on the basis of a particular test result or reading, despite its inherent margin of error, when the legislature expressly considers that margin and deems it sufficiently negligible such that it may be disregarded. In such circumstances, the test result is considered *tolerably* inaccurate, and, therefore, the Department may revoke a license on the basis of the test result without regard to the test's margin of error.

Op. No. 4040 at 4.

On a different matter, as long as AS 28.35.030(a)(2) is being amended by HB 61, we would like to take advantage of the moment to propose one further technical amendment that will clarify the intent of the subsection. AS 28.35.030(a)(2) specifies that a person commits the crime of driving while intoxicated if the person operates a motor vehicle, etc.:

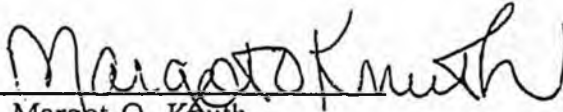
(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.08 [0.10] percent or more by weight of alcohol in the person's blood or 80 [100] milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.08 [0.10] grams or more of alcohol per 210 liters of the person's breath; or

It seems apparent from the language of the section that what was meant to be relevant is the amount of alcohol in the person's blood or breath *at the time that the test is administered*. This is the way in which the statute is interpreted in Southeast Alaska. In other parts of the state, however, some courts have interpreted the statute as relating back to the time of the offense, allowing the defendant to argue that he was drunk at the time of the test, but not at the time of driving. This problem can be solved by adding the words "at the time the test is taken" to the subsection. If this is done for AS 28.35.0030(a)(2), it should be done for AS 28.33.030(a)(2), as well (relating to commercial motor vehicle offenses).

We have drafted language that could be used to make these amendments. We appreciate the opportunity to bring these problems and solutions to your attention. We will be glad to answer any questions you may have and would be pleased to explain the need for these amendments to the House Finance Committee.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Margot O. Knuth
Assistant Attorney General

MOK:jf

Department of Law

Proposed Amendments to CS HB 61 (Jud)

January 28, 1994

Page 1, line 4: Add a new Section 1 to read:

* Section 1. AS 28.33.030(a)(2) is amended to read:

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is at the time the test is taken 0.04 percent or more by weight of alcohol in the person's blood or 40 milligrams or more of alcohol per 100 milliliters of blood, or when there is 0.04 grams or more of alcohol per 210 liters of the person's breath; or

Page 1, line 4: Change heading for Section 1 to "FINDINGS, PURPOSE, AND INTENT."

Page 1, line 11: Add a new subsection (c) to Section 1 to read:

(c) Having found that the recognized margin of error of .01 grams per 210 liters of breath inherent in the Intoximeter 3000 chemical test is sufficiently negligible such that it may be disregarded, it is the intent of the Legislature that the offenses of driving while intoxicated under AS 28.33.030(a)(2) and AS 28.35.030(a)(2) are committed when a chemical test produces a

result described in those sections despite the test's inherent margin of error. It is similarly the intent of the Legislature that, when revoking drivers' licenses under AS 28.15.165(c) for a chemical test under AS 28.35.031(a) that produces a result described in AS 28.35.030(a)(2), revocation shall be required on the basis of the test result despite its inherent margin of error.

Page 2, line 3: Add before "0.08": "at the time the test is taken"

grams of alcohol per 210 liters of breath. The Intoximeter 3000 has a recognized margin of error of .01 grams per 210 liters of breath. Therefore, Haynes' actual breath alcohol content, as measured by the Intoximeter 3000, may have been as high as .116 or as low as .096.

An alcohol level of .10 grams or more per 210 liters of the person's breath is required for the Department of Public Safety (the Department) to revoke a driver's license. AS 28.15.165(c); AS 28.35.030(a)(2). Applied in Haynes' favor, the .01 margin of error would equate to an actual result of .096 grams, a reading below the statutory minimum of .10 required for revocation. The hearing officer considered the margin of error inherent in Haynes' .106 test result, but declined to apply it in Haynes' favor. Instead, the hearing officer relied on the arresting officers' testimony that Haynes' personal appearance and behavior indicated that he was intoxicated, to find it more probable than not that Haynes' breath alcohol content was .10 or higher at the time of the test. Consequently, the Department revoked Haynes' license. The superior court affirmed the Department's revocation order, and this appeal followed.

II. DISCUSSION

A. Standard of Review

We review the hearing officer's decision to revoke Haynes' driver's license independent of the superior court's decision, as the superior court was acting as an intermediate court

of appeal. Jager v. State, 537 P.2d 1100, 1106 (Alaska 1975); State v. Marathon Oil Co., 528 P.2d 293, 298 (Alaska 1974). Because the issues presented in this appeal are purely questions of law, we are not bound by the lower court's decision. Rather, we will "adopt the rule of law that is most persuasive in light of precedent, reason, and policy. Guin v. Ha, 591 P.2d 1281, 1284 n. 6 (Alaska 1979).

B. Consideration of Other Factors

Alaska Statute 28.15.165(c) provides that the Department of Public Safety may revoke a person's license if "a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.030(a)(2)." AS 28.15.165(c) (emphasis added). Alaska Statute 28.35.030(a)(2) provides that a person commits the crime of driving while intoxicated (DWI) if a breath analysis reveals that the person's breath sample contains .10 grams or more of alcohol per 210 liters of the person's breath. AS 28.35.030(a)(2). Alaska Statute 28.15.165(c) does not provide for consideration of other factors or circumstances, such as the appearance and behavior of the individual, in determining whether the person's breath did, in fact, contain the requisite level of alcohol.¹ AS 28.15.165(c).

¹ AS 28.15.165(c) refers to the circumstances surrounding the arrest, but not for the purpose of determining the accuracy of a particular chemical test. The statute provides:

Upon receipt of a sworn report of a law enforcement officer that a chemical test under AS 28.35.031(a) produced a result described in AS 28.35.30(a)(2) or that a person refused to submit to a chemical test under AS 28.35.031(a), that notice under (a) of this section was provided to the person, and that
(continued...)

Therefore, the hearing officer should not have considered evidence regarding Haynes' appearance and behavior in determining whether his actual breath alcohol level was over .10 grams. The officers' testimony regarding Haynes' appearance and behavior does not provide support for license revocation pursuant to AS 28.15.165(c).²

C. Margin of Error

The legislature has the power to require the revocation of a driver's license on the basis of a particular test result or reading, despite its inherent margin of error, when the legislature expressly considers that margin and deems it sufficiently negligible such that it may be disregarded.³ In such circumstances, the test result is considered tolerably inaccurate,

¹(...continued)
contains a statement of the circumstances surrounding the arrest and the grounds upon which the officer's belief that the person was driving while intoxicated a motor vehicle for which a driver's license is required was based, the department shall revoke the person's license. . . .

AS 28.15.165(c) (emphasis added).

² Were we to allow extrinsic evidence to overcome the margin of error inherent in the test result, the department could revoke the license of a driver testing well below .10, if the extrinsic evidence was sufficiently persuasive to convince the Department that the driver's "true" breath alcohol content was .10 or higher when the test was performed. Although it is doubtful that the legislature intended AS 25.55.165(c) to operate in this fashion, such a result is possible employing the reasoning of the hearing officer in this case.

³ An "acceptable" margin of error is one having reasonable limits. A greater margin of error could not be conveniently ignored, without inviting a constitutional challenge.

and, therefore, the Department may revoke a license on the basis of the test result without regard to the test's margin of error.

In Barcott v. Department of Public Safety, 741 P.2d 226 (Alaska 1987), we addressed the issue of whether the hearing officer must consider the inherent margin of error in a chemical analysis designed to test the presence of alcohol in a person's breath.⁴ In the course of our analysis, we examined how courts in other jurisdictions interpreted their own DWI statutes with regard to the issue of inherent margin of error in a chemical blood/breath alcohol test. Id. at 229. Essentially, the courts' analyses hinged on whether the particular court interpreted its jurisdictional DWI statute to create an offense upon a test reading in excess of their statutory limit or upon an actual level of alcohol in excess of the limit. Courts that interpret their DWI statutes to create an offense upon a test reading in excess of the statutory limit presume that the legislature considered the inherent risk of error in the chemical analysis and found it to be tolerably inaccurate; thus, the courts did not require the fact finder to consider the inherent margin of error of a particular testing device.⁵ See State v. Rucker, 297 A.2d 400, 402-03 (Del. Super. Ct. 1972); Nugent v. Iowa Dep't of Transp., 390 N.W.2d 125, 128 (Iowa 1986); Schildgen v. Comm'r of Pub. Safety, 363 N.W.2d

⁴ The Intoximeter 3000 was the instrument utilized to perform the breath test in Barcott, as well. 741 P.2d at 227.

⁵ These courts do, however, consider deficiencies in the administration of the test and/or operation of the device which may tend to support a defendant's argument that the machine did not, in fact, produce a test result above the legal limit.

800, 801 (Minn. App. 1985); State v. Lentini, 573 A.2d 464, 466-67 (N.J. Super. Ct. App. Div. 1990); Slagle v. State, 570 S.W.2d 916, 919 (Tex. Crim. App. 1978). In contrast, courts that interpret their DWI statute to create an offense upon an actual level of alcohol do not presume that their legislature considered the inherent margin of error of a chemical test; thus, those courts require the fact finder to consider the inherent margin of error before rendering a decision. See State v. Boehmer, 613 P.2d 916, 918-19 (Haw. Ct. App. 1980); State v. Bjornsen, 271 N.W.2d 839, 840 (Neb. 1978); State v. Prestier, 455 N.E.2d 24, 27 (Ohio Mun. Ct. 1982); State v. Keller, 672 P.2d 412, 414 (Wash. Ct. App. 1983).

In Barcott, we adopted the latter reasoning and held that there was no evidence or indication that the Alaska Legislature considered the margin of error inherent to the Intoximeter 3000. Id. at 230. The legislature did not specifically approve the Department's use of the Intoximeter 3000 test, but rather authorized the Department to approve satisfactory techniques, methods, and standards of performing the analysis. AS 28.35.033(d); Barcott, 741 P.2d at 230.⁶ There is no indication that the legislature considered the .01 margin of error inherent to the Intoximeter 3000 in setting the legal limit at .10 grams per 210 liters of the person's breath. Therefore, we do not interpret AS 28.35.030(a)(2) as creating an offense for violation of the statutory .10 grams per 210 liters of breath, without regard

⁶ This observation is not intended to suggest that the Department's use of the Intoximeter 3000 is unauthorized. See Barcott, 741 P.2d at 230.

to the margin of error inherent to the particular testing device utilized. In Alaska, a driver commits a DWI offense when his or her actual alcohol level exceeds .10 grams per 210 liters of breath.

D. Due Process

The question, then, is whether the margin of error must be applied in Haynes' favor. As a matter of statutory interpretation, we answer this question in the affirmative. It is well established that

[a] driver's license is an important property interest, and the driver has a constitutional right to a meaningful hearing before the state can suspend his license. As in a criminal prosecution for driving while intoxicated, the breath test is of central importance in the administrative license revocation proceeding. The ability of the defendant to evaluate these tests is critical to his ability to present his case.

Barcott, 741 P.2d at 228 (quoting Champion v. Dep't of Public Safety, 721 P.2d 131, 133 (Alaska 1986)). In Barcott, we held that the hearing officer violated the appellant's right to due process⁷ when he failed to consider the inherent inaccuracy of the Intoximeter 3000 breath test in determining that a test reading of .10 satisfied the statutory requirements to revoke the appellant's

⁷ Article I, section 7 of the Alaska Constitution provides:

No person shall be deprived of life, liberty, or property, without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Alaska Const. art. 1, § 7.

license. Thus, we reversed the decision and remanded the case to the Department for further proceedings consistent with the opinion.⁸ Barcott, 741 P.2d at 230.

Given the .10 margin of error inherent to the Intoximeter 3000, a test reading of .106 could equate to a .096 actual test result. If the .10 margin of error is not applied in Haynes' favor, the deprivation of an important property interest could result where the actual breath test result was below .10 grams. Absent express legislative intent to the contrary, we hold that failure to apply the inherent margin of error of a particular testing device in favor of the person subject to license revocation violates due process of law as guaranteed by the Alaska Constitution.⁹ Alaska Const. art. I, § 7.

In summary, we hold that a chemical breath test reading or result which may be reduced below the level of .10 grams per 210 liters of the person's breath, by applying the margin of error inherent in the particular test used, cannot serve as the basis for

⁸ The issue of whether the margin of error must be applied in favor of the defendant was not before this court in Barcott. Thus, it would have been premature to address the issue at that time.

⁹ Although the margin of error inherent to the Intoximeter 3000 is .01, the margin of error inherent to another type of testing device may be more or less than .01. See, e.g., People v. Campos, 188 Cal. Rptr. 366 (Cal. App. Dep't Super. Ct. 1982) (.005 margin of error); People v. Cansel, 520 N.Y.S.2d 509, 510 (N.Y. Crim. Ct. 1987) (.001 margin of error). The Alaska Legislature had not set forth a "margin of error" standard. See AS 28.35.033(d). Thus, the Department may, at some point in the future, adopt a testing procedure or device which has a higher or lower margin of error than the Intoximeter 3000. Were we to presume that the legislature intended the .10 statutory level to reflect a test reading instead of an actual test result, we would be sanctioning a varying statutory level, depending upon the device utilized.

a license revocation under AS 28.15.165(c). Extrinsic evidence of intoxication does not mitigate the inherent error; the error remains, and must be applied to the test reading. In light of the .01 acknowledged margin of error in the breath test administered to Danny Haynes in the case at bar, the Department was not authorized to revoke Haynes' driver's license under AS 28.15.165(c). The decision of the hearing officer is REVERSED and the case is REMANDED for further proceedings consistent with this opinion.

MATTHEWS, Justice, joined by RABINOWITZ, Chief Justice, dissenting.

I.

Under AS 28.15.165(a) and (c), the Department of Public Safety is required to revoke the driver's license of a person driving a motor vehicle where a chemical test administered to the person "produces a result described in AS 28.35.030(a)(2) . . ." namely, "0.10 grams or more of alcohol per 210 liters of the person's breath . . ." Today's opinion construes this statutory system to mean that the department must revoke the driver's license of a driver who is administered a chemical test where the test produces a result of .11 grams or more of alcohol. This result is required, according to the majority opinion, because "[a]s a matter of statutory construction" (Slip Op. 7, 8) there is no evidence that the legislature considered the .01 margin for error inherent in the testing device.¹

¹ The majority thus has adopted what one journal has called the "discount approach": the breath test reading is reduced to the lowest level possible given the margin for error. Note, Is DWI DOA?: Admissibility of Breath Testing Evidence in the Wake of Recent Challenges to Breath Testing Devices, 20 Sw. U. L. Rev., 247, 272-78 (1991). According to this article, the discount approach was very briefly employed by courts in Nebraska and New Jersey, but now has been judicially overruled in both of those states. Id. at 273-74, 276. Neither the article nor the majority opinion mention any jurisdiction which currently uses the discount approach.

This article also demonstrates that the problem we are confronted with today is only the tip of the margin for error iceberg. Because of individual physiological differences, the ratio used to convert breath alcohol concentrations into blood alcohol concentrations -- the partition ratio -- currently fixed at 1 to 2100, is not universal and may yield improperly high results in some individuals. Id. at 260; see Cooley v. Municipality of Anchorage, 649 P.2d 251, 254 n.7 (Alaska App. 1982) (expert (continued...))

"Where a statute's meaning appears clear and unambiguous . . . the party asserting a different meaning bears a correspondingly heavy burden of demonstrating contrary legislative intent." University of Alaska v. Geistauts, 666 P.2d 424, 428 n.5 (Alaska 1983) (quoted in Lagos v. City and Borough of Sitka, 823 P.2d 641, 643 (Alaska 1991)). This means that the plainer the language of the statute, the more convincing the evidence of contrary legislative intent must be. State v. Alex, 646 P.2d 203, 208 n.4 (Alaska 1982). Here the statute is plain in that it precisely defines the minimum test result which mandates license revocation. Since, as the majority opinion points out, there is no legislative history indicating that the legislature intended to use a different minimum level, we are required to construe the statute to mean what it says. I do not believe that it is right to say that a statute does not mean what it appears to mean because there is no legislative history indicating that the apparent plain meaning of the statute is the actual meaning. That is what today's opinion does.

¹(...continued)
testimony indicated breathalyzer yielded improperly high results in 14% of cases). A lower partition ratio can skew breathalyzer readings significantly. For example, the Nebraska Supreme Court reduced a defendant's breath test reading by 52.38% because of the possibility that his partition ratio was 1:1,100 rather than 1:2,100. See State v. Burling, 400 N.W.2d 872 (Neb. 1987) (following discount approach subsequently abandoned in State v. Babcock, 419 N.W.2d 527, 530 (Neb. 1988)).

II.

While I think the above correctly identifies the logical flaw in the majority opinion, I should add that it also oversimplifies the problems presented by this case. There are two related problems which we should face. The first is that this court has never defined the elements of the license revocation offense. They should be defined. The second is that our prior decision in Barcott v. State, Dep't of Public Safety, 741 P.2d 226 (Alaska 1987), is poorly reasoned and based on an erroneous assumption regarding the elements of the license revocation offense. It should be overruled. The following discussion addresses these problems.

A. Elements of the License Revocation Offense

The critical debate here is whether a failing test result alone is all that is required to revoke a driver's license or whether a failing test result and an illegal blood or breath alcohol level are needed.² To fully understand this question our statutes which define the criminal offense of driving while intoxicated as well as the license revocation offense must be examined.

The statutory provisions which govern this case are AS 28.15.165, 28.15.166, and 28.35.030(a). Under AS 28.15.165(a) if a chemical test given to a driver "produces a result described in

² The second footnote in today's majority opinion suggests that if non-test evidence of intoxication were allowed even a driver who passed a test might suffer a license revocation. However, such a result would not be possible as long as the elements of the offense include a failing test score and an illegal alcohol level. Of course, if a failing test result alone suffices, non-test evidence of intoxication is irrelevant.

AS 28.35.030(a)(2)" a notice must be given to the driver that the Department of Public Safety intends to revoke the driver's license to operate a motor vehicle. (Emphasis added.) License revocation follows unless the driver makes a request for review under AS 28.15.166 within seven days after receipt of the notice. When a request for review is made, the driver is entitled to a hearing before a hearing officer designated by the Commissioner of Public Safety. AS 28.15.166(f). The issues to be determined at the hearing are expressly limited as follows:

(g) The hearing under this section shall be limited to the issues of whether the arresting officer has reasonable grounds to believe that the person was driving a motor vehicle while intoxicated and whether . . . (2) the chemical test . . . produced a result described in AS 28.35.030(a)(2).

AS 28.15.166(g) (emphasis added). If both of these issues are determined in the affirmative by a preponderance of the evidence the license is revoked. AS 28.15.166(j). If one or both of the issues are determined in the negative the license is not revoked. Id. Alaska Statute 28.35.030(a)(2) describes the "result" referred to in AS 28.15.165(a) and AS 28.15.166(g)(2). It provides:

(a) A person commits the crime of driving while intoxicated if the person operates or drives a motor vehicle or operates an aircraft or a watercraft

. . . .

(2) when, as determined by a chemical test taken within four hours after the alleged offense was committed, there is 0.10 percent or more by weight of alcohol in the person's blood or 100 milligrams or more of alcohol per 100 milliliters of blood, or when there is

0.10 grams or more of alcohol per 210 liters
of the person's breath[.]

AS 28.35.030(a)(2).

The primary function of AS 28.35.030(a)(2) is to express the elements of one of three ways in which a person may commit the crime of driving while intoxicated.³ Although the elements of the subsection (a)(2) DWI offense have never been defined by this court or by the court of appeals, the court of appeals has interpreted language in a municipal ordinance similar to AS 28.35.030(a)(2). See Erickson v. Municipality of Anchorage, 662 P.2d 963, 967 (Alaska App. 1983). The court construed the ordinance to require the driver's actual breath alcohol level to be above legal levels at the time of operation of a motor vehicle. Id. at 967. According to the plurality of the court, an elevated test result was intended to be presumptive proof of an actual illegal alcohol level. Id. Judge Singleton wrote a concurring opinion in which he expressed the view that a bad test result alone -- so long as the driver had not consumed alcohol between the time that he drove and was tested -- was the essence of the offense. Id. at 970 (Singleton, J., concurring). Judge Singleton stated: "The jury need not determine the precise blood alcohol level that existed at any given time while the defendant was operating his vehicle." Id. at 968. This difference of opinion is reflected in the case law of other jurisdictions.

³ The other two means are driving (1) while under the influence of intoxicating liquor or controlled substance or (3) while under the combined influence of intoxicating liquor and another substance. AS 28.35.030(a)(1) and (3).

Some courts read their DWI statute, as Judge Singleton did, to create an offense of registering a blood/breath alcohol test reading in excess of the statutory limit. See Nucent v. Iowa Dep't of Transp., 390 N.W.2d 125, 128 (Iowa 1986); Schildgen v. Commissioner of Pub. Safety, 363 N.W.2d 800, 801 (Minn. App. 1985); State v. Lentini, 573 A.2d 464, 466-67 (N.J. Super. App. Div. 1990). If a properly administered test registers a result at or above the statutory level the offense is automatic.⁴ Under this view, any margin of error or inherent inaccuracy in the testing technology can be seen as tolerated by the legislature which prescribed the statutory requirements of the offense. See State v. Rucker, 297 A.2d 400, 403 (Del. Super. 1972); Slagle v. State, 570 S.W.2d 916, 919 (Tex. 1978). Thus, evidence concerning the testing equipment's margin of error is irrelevant because such evidence tends to prove the individual's actual alcohol content and does not shed light upon the proper functioning or use of the testing equipment.

Under a second approach, courts read their DWI statute, as the plurality of the court of appeals did in Erickson, to require an actual blood or breath alcohol content at or above the statutory level. See e.g., People v. Campos, 188 Cal. Rptr. 366,

⁴ Importantly, even these courts recognize that the test must be "properly administered." Any evidence that the test equipment fails to meet legal operating or maintenance requirements or that the officer administering the test failed to follow proper procedures may, of course, be admitted to prove that, in fact, an individual never actually produced a test result above the legal limit. Note, however, that this argument takes the position that this particular test result was unreliable, not that the testing method per se is inaccurate.

368 (Cal. Super. 1982); State v. Prestier, 455 N.E.2d 24, 27 (Ohio Mun. 1982). Under this view, the results of a chemical sobriety test are treated as a means of proving actual alcohol content. Thus, the inherent margin of error for any testing equipment is relevant to the issue of the accuracy of the test equipment's measurement of actual alcohol content. Courts in these jurisdictions admit and permit the utilization of non-test evidence of intoxication. E.g., State v. Babcock, 419 N.W.2d 527 (Neb. 1988); State v. Gates, 777 P.2d 717, 720-21 (Haw. App. 1989); State v. Brockaway, 441 N.E.2d 602 (Ohio App. 1981); State v. Keller, 672 P.2d 412, 413-14 (Wash. App. 1983).

While AS 28.35.030(a)(2) is ambiguous with respect to the necessary elements of the crime of DWI, does the ambiguity carry through to the conduct necessary to give rise to an administrative license revocation under AS 28.15.165 and .166? Today's majority opinion states that the criminal DWI offense requires an actual alcohol level at or above statutory limits, and implies that an illegal actual alcohol level is also needed for license revocation. I disagree with the latter conclusion. It seems to me that the most straightforward reading of our statutes is that all that is required for license revocation is a failing test result based on a properly administered test. Alaska Statute 28.15.165(a) requires only "a chemical test" properly administered which "produces a result" at or above statutory limits. Use of the term "result" in .165(a) rather than language which suggests the need for illegal levels of alcohol present in the person's blood or breath, as in

AS 28.35.030(a)(2), points to this conclusion. Moreover, the fact that by the express terms of AS 28.15.166(g) the issue at the license revocation hearing is limited to whether the chemical test "produced a result" at illegal levels also suggests that the test result itself is the critical element.

As noted above, in jurisdictions where an actual level of alcohol is critical, evidence of intoxication independent of the test result is admissible. Today's opinion concludes that no evidence other than the test result may be admitted to prove actual alcohol levels. This is an accurate reading of the limitation imposed by AS 28.15.165(g)(2) but that limitation only makes sense if the test result rather than actual alcohol level is the critical fact for determination. One must ask why a legislature would enact a statutory scheme in which actual levels of alcohol are critical and then preclude the state from employing non-test evidence which tends to prove that such levels exceeded legal limits in particular cases? The answer is that this would be a very odd thing for a legislature to do. No rationale for a system weighted so artificially and heavily in favor of the drinking driver can readily be hypothesized. Thus, the legislature probably intended that the critical element for license revocation was merely a failing test result.

B. Barcott v. State, Dep't of Public Safety

As in this case, the driver in Barcott v. State, Dep't of Public Safety, 741 P.2d 226 (Alaska 1987), was tested by an Intoximeter 3000. The test indicated a .10 alcohol level and the

driver's license was suspended. Id. at 227. Barcott claimed that the administrative hearing officer denied him due process of law by refusing to consider the device's .01 inherent margin for error. Id. We agreed and remanded for further proceedings. Id.

The Barcott opinion is unclear as to whether a failing test result produced by a properly administered test was sufficient for license revocation or whether a failing test and an illegal alcohol breath or blood level are required. There is much in the opinion which suggests that the court assumed that both a failing test result and an illegal level of alcohol were essential. Throughout the opinion the controlling issue is framed in terms of the hearing officer's refusal to consider evidence of the margin for error, not that the margin for error was necessarily dispositive. See id.

The rehearing history of Barcott as reflected in the public records of this court, but not in the published opinion, makes clear that our decision was based on the assumption that actual alcohol content was relevant. When the original Barcott opinion was issued the final sentence read: "The decision of the hearing officer is reversed." The State filed a petition for rehearing, contending that the reversal without a remand instruction amounted to a finding by this court that revocation of Barcott's license was not permissible under any circumstances and, therefore, Barcott's license had to be restored without the State having an opportunity to present its case to a hearing officer. The court granted the State's petition and added the current remand

language: "and the case is remanded to the department for further proceedings consistent with this opinion." Id. at 230. The only sensible explanation for this action is that the Barcott court assumed that a driver's actual alcohol level was an element of the license revocation offense, therefore the State should be allowed on remand to present evidence of the driver's actual alcohol level in addition to the test score.

Given my conclusion that a failing test result alone is the critical element in license revocation cases and that a driver's actual alcohol level is irrelevant, Barcott's holding that it is a violation of due process not to consider a testing device's inherent margin for error is plainly wrong. Drunken driving is a social problem of considerable magnitude. The legislature can respond to this problem by making it an offense to drive when a test of the driver's blood or breath yields a given test reading as long as there is a reasonable relationship between the level established by the legislature and driver impairment. In setting a level, a certain testing margin of error is tolerable within reasonable limits. Clearly the legislature could prohibit driving with an actual alcohol content of .09.⁵ Thus, there is no reason to condemn as fundamentally unfair, and therefore unconstitutional,

⁵ A number of states have established an .08% blood alcohol level at or above which a driver is per se guilty of DWI. Cal. Veh. Code § 23152(b) (West Supp. 1990); Me. Rev. Stat. Ann. tit. 29, § 1312-B(1)(B) (West Supp. 1989); Or. Rev. Stat. § 813.010(1)(a) (1987); Utah Code Ann. § 41-6-44(1)(a) (1988). Congress has encouraged all states to adopt a 4% level for commercial vehicle drivers, 49 U.S.C. § 2707(f)(4) (Supp. 1990) and Alaska has complied. AS 28.33.030(a).

a license revocation procedure in which a driver is sanctioned for a test reading of between .10 and .109, given a .01 margin for error.

If, on the other hand, actual alcohol level is the critical element, I agree that it would be unfair not to permit consideration of the testing device's margin for error. However, it is one thing to allow consideration of a device's margin for error along with other evidence bearing on the issue of intoxication.⁶ This is what we did in Barcott. It is another and much more questionable thing to conclude that whenever a test result is such that considering the margin for error an innocent alcohol level is possible, there can be no license revocation because no other evidence of intoxication can be received. This conclusion is strange not only because there is no apparent purpose for the limitation, but also because no other jurisdiction in which actual alcohol level is critical employs such a limitation.

III.

In conclusion, I would affirm the decision of the superior court which affirmed the revocation of Haynes' driver's license. The critical requirement for license revocation is a

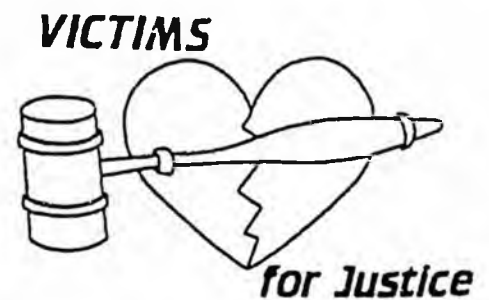
⁶ It is well settled that non-test evidence by either lay witnesses or trained police officers concerning a party's intoxication is admissible. Loof v. Sanders, 686 P.2d 1205, 1213 (Alaska 1984). In addition to observation evidence concerning intoxication, non-test evidence of intoxication may include independent quantitative evidence as to the amount of drinking the driver has done before the arrest. This is sometimes very persuasive, as was the case in State v. Keller, 672 P.2d 412, 414 (Wash. App. 1983), where the defendant admitted drinking "six beers and two tequilas" prior to driving.

properly given test which produces a failing score. Barcott, which assumes otherwise, should be overruled. The legislature has established the point at and above which a test score is to be regarded as failing. That point is .10. The majority opinion errs in changing that point to .11 where an Intoximeter 3000 is used. Under our view of the plain meaning rule of statutory construction, the apparent plain meaning of a statute cannot be changed except where there exists compelling legislative history that a different meaning was intended. By relying on the absence of legislative history to alter the plain meaning of the current statutory system, today's opinion stands the plain meaning rule on its head.



**POSITION STATEMENT
FROM THE COALITION OF
THE ALASKA PEACE OFFICER'S ASSOCIATION
and MOTHERS AGAINST DRUNK DRIVERS**

before the
19th Alaska Legislature
March 1993



SB 32/HB 61
LOWERING THE PRESUMPTIVE LEVEL TO .08%

Drinking and driving under the influence of drugs or alcohol continues to be a matter of grave concern to the citizens of Alaska. Behavior and attitudes toward the drinking driver have changed remarkably in the last decade. Drinking and driving is no longer as socially acceptable as it once was. People have come to understand and realize the high price we pay for such excesses. As attitudes change in recognition of the problem, so should our laws.

The trend nationally has been to lower the presumptive level in Driving While Intoxicated cases from .10% to .08%. Studies show that drivers with this lower level of alcohol in their blood are significantly impaired. Drivers with this level of impairment are responsible for a large percentage of motor vehicle accidents causing untold damage to property and human life.

We believe that there is a relationship between a lower limit of blood alcohol content and the reduction of the alcohol related accidents. The passage of this bill will assist law enforcement in removing the impaired driver off the roadways, and the citizens of Alaska will be better protected.

Besides lowering the presumptive level of intoxication from .10% to .08%, we encourage the legislature to change the Implied Consent Law to require motorists to submit to a test of any combination of blood, breath, or urine tests, with the type of test to be administered left to the discretion of the arresting officer. Presently, the only test required is a breath test which is incapable of determining drug intoxication.

Further, we propose rescinding the statutory language that became effective in 1991 which allows people who refuse to take a breath test and people who are DWI re-offenders to have a limited license. This language makes Alaska ineligible for Federal 410 Funds (approximately \$400,000 annually). Another requirement of 410 Funds is that the state adopt the .08% presumptive intoxication level within 4 or 5 years of the receipt of the funds. Unless the legislature changes the language mentioned above, the State of Alaska will continue to be ineligible for federal funds.

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Alaska State Legislature
House of Representatives



DISTRICT 11:
SAND LAKE
SPENARD
TAKU-CAMPBELL

Representative Jim Nordlund

	# OF DRINKS TO .10 BAC (1HR PERIOD)	#OF DRINKS TO .08 BAC (1HR PERIOD)
FEMALE 100 LBS.	2	2
FEMALE 140 LBS.	3	3
FEMALE 180 LBS.	4	3
MALE 120 LBS.	3	3
MALE 160 LBS.	5	4
MALE 200 LBS.	6	5
MALE 240 LBS.	7	6

* Information from the "Controlled Drinking Guide" published by The Alaska Center for Responsible Alcohol Control

STATE LEGISLATIVE FACT SHEET

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

October 1992

0.08 ILLEGAL PER SE LEVEL

The U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) encourages States to have laws that make it illegal for a person to operate a motor vehicle if he or she has a blood or breath alcohol concentration (BAC) of 0.08 or more (i.e., an illegal per se law at this level). Alcohol concentration is to be based on either the number of grams of alcohol in 100 milliliters of blood or the number of grams of alcohol in 210 liters of breath.

- At the present time only five States have an illegal per se law at the 0.08 level: California, Maine, Oregon, Utah and Vermont.
- Forty-one other States and the District of Columbia have illegal per se laws at the 0.10 level.
- Four States have no illegal per se law: Maryland, Massachusetts, South Carolina and Tennessee. In addition, the Commonwealth of Puerto Rico has no such law.

Key Facts

- In 1991, 48 percent of the 41,462 motor vehicle related deaths were alcohol-related. This percentage translates into 19,900 alcohol-related deaths last year.
- Over 80 percent of drivers involved in fatal crashes with positive BACs had levels exceeding 0.08.
- A BAC level of 0.08 means about four drinks within one hour on an empty stomach for an average male weighing 160 pounds.

Why 0.08?

Research indicates that many drivers are impaired at low blood alcohol levels. Some research indicates that such impairment starts as low as 0.015. By the time a level of 0.08 is reached, even experienced drinkers show driving skill impairment.

Recent research indicates that the relative fatality risk for drivers in single vehicle crashes with BACs between 0.05 and 0.09 is over 11 times greater than for drivers with a zero BAC.

-
- A program to prevent drivers under age 21 from obtaining alcoholic beverages.

States can also earn supplemental grants, one of which is based on meeting the .08 BAC criteria in the first three years of the incentive program.

Additional Sources of Information

Alcohol Limits for Drivers: A Report on the Effects of Alcohol and Expected Institutional Responses to New Limits. NHTSA, Report Number DOT HS 807 692, April 1991.

Alcohol-Related Risk of Fatal Driver Injuries in Relation to Driver Age and Sex. Zador, Paul, Insurance Institute for Highway Safety, Arlington, VA, April 1989.

Driving Under the Influence: A Report to Congress on Alcohol Limits. NHTSA, in press, 1992.

The Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence. Moscowitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, July 1987.

The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se Law in California. NHTSA, Report Number DOT HS 807 777, August 1991.

Impaired Driving Issues Compendium. Prepared by Mothers Against Drunk Driving, Irving, TX, 1988.

Zero Alcohol and Other Options. Special Report 216, Transportation Research Board. National Research Council, Washington, DC, 1987.

These reports and additional information are available from your state highway safety office, the NHTSA Regional office serving your state, or from NHTSA Headquarters, Traffic Safety Programs, ATTN: NTS-20, 400 7th Street, S.W., Washington, D.C. 20590 202/366-9588.

STATE LEGISLATIVE FACT SHEET

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Recent research indicates that the relative fatality risk for drivers in single vehicle crashes with BACs between 0.05 and 0.09 is over 11 times greater than for drivers with a zero BAC.

Lowering the limit to 0.08 would set the boundary at a level at which driving skills are proven to be compromised for the vast majority of drivers. It is a limit which is reasonable and necessary for the driving safety of all.

Life Saving Benefits of 0.08

On January 1, 1990, California reduced the legal limit for blood alcohol concentration from 0.10 to 0.08. Six months later, it instituted an Administrative Per Se law, allowing police and driver licensing authorities to suspend the driver's license of drivers who fail or refuse an alcohol test. NHTSA studied the effects of these laws, and found that while the study could not quantify the separate effects of each law, alcohol-related fatalities declined by 12 percent after January 1, 1990. A survey of 1,600 California drivers in May, 1991 disclosed that eight out of ten were aware that the BAC limit had become stricter. In addition, half of the survey respondents who drink alcohol indicated they are less likely to drive after drinking, as a result of the lowered limit.

Impact on the Criminal Justice System

California found that the lowered limit had little impact on court administrators or judges. The main impact has been on prosecutors' decisions concerning whether cases should be filed. Previously, DWI arrestees with BACs below 0.12 typically were allowed to plea to reduced charges. Since the limit was changed, this plea-bargain "cut off" has dropped to about 0.10 percent. No increases have been reported in the proportion of DWI defendants pleading guilty, requesting jury trials or appealing convictions.

Who Supports 0.08?

The following organizations support a BAC limit of 0.08 or lower:

- American Medical Association
- American Association of Neurological Surgeons
- American Spinal Injury Association
- National Safety Council
- National Committee on Uniform Traffic Laws and Ordinances
- National Commission Against Drunk Driving
- National Highway Traffic Safety Administration
- Mothers Against Drunk Driving (MADD)
- Remove Intoxicated Drivers (RID)
- Insurance Institute for Highway Safety

A number of countries have BAC limits of 0.08 or below. For example, Austria, Canada, Denmark, France, Italy, New Zealand, Spain, Switzerland, and the United Kingdom have an 0.08 limit, while Finland, Iceland, Japan, the Netherlands, and Norway have an 0.05 limit. In 1990 Sweden lowered its BAC limit to 0.02. Australian states have adopted either 0.08 or 0.05 limits.

Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991

ISTEA provides incentive grants to States that achieve at least four of the following milestones:

- An expedited administrative procedure for suspending the license of drunk drivers;
- A law setting a .10 blood alcohol concentration as evidence of driving while intoxicated (after three years, it must drop to .08);
- A statewide sobriety checkpoint program;
- A self-sustaining drunk driving prevention program; and

-
- A program to prevent drivers under age 21 from obtaining alcoholic beverages.

States can also earn supplemental grants, one of which is based on meeting the .08 BAC criteria in the first three years of the incentive program.

Additional Sources of Information

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U.S. Department
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Alcohol-Related Deaths Three-Year Averages

State	Before .08	After .08	Difference
California	2,591 (87-89)	2,215 (90-91)*	376 less fatalities/yr A 14.5% decrease
Utah	138 (80-82)	114 (84-86)	24 less fatalities/yr. A 17.4% decrease
Oregon	316 (80-82)	270 (84-86)	46 less fatalities/yr. A 14.5% decrease
Maine	111 (85-87)	70 (89-91)	41 less fatalities/yr. A 37% decrease
Total 4 States	3,156	2,669	487 less fatalities/yr A 15.4% decrease

*California fatalities are 2-year average of 1990-1991; 1992 data not complete as of 3/93.

Drunk Driving Arrests Three-Year Averages

State	Before .08	After .08	Difference
California (CHP only)	135,260 (87-89)	140,716 (90-92)	+5,456 arrests/yr. A 4% increase.
Utah	9,400 (80-82)	13,700 (84-86)	+4,300 arrests/yr. A 45% increase.
Oregon	29,369 (80-82)	24,743 (84-86)	-4,626 arrests/yr. A 16% decrease.
Maine	9,693 (85-87)	11,827 (89-91)	+2,134 arrests/yr. A 22% increase.
Total 4 States	183,722	190,985	+7,263 arrests/yr. A 3.9% increase.



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U.S. Department
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Arizona, California,
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San Francisco, California 94105

	Before .08			Year .08 Effective With Date	After .08		
	1987	1988	1989		1991	1992	1993
California	1987	1988	1989	1990-1/1	1991	1992	1993
Alco-Fatals	2754	2510	2509	2382	2048	1713*	N/A
DUI Arrests (CHP only)	138.3K	129 K	138.5K	158.5K	142 K	121.7K	N/A
Utah	1980	1981	1982	1983-8/1	1984	1985	1985
Alco Fatals	150	151	113	101	129	110	104
DUI Arrests	8000	9200	11000	12500	13900	13700	13500
Oregon	1980	1981	1982	83-10/15	1984	1985	1986
Alco Fatals	330	344	274	280	264	269	278
DUI Arrests	30911	29827	27370	27464	28003	23807	22418
Maine	1985	1986	1987	1988-8/4	1989	1990	1991
Alco Fatals	110	108	115	91	57	81	73
DUI Arrests	9464	9638	9976	10392	11951	12052	11478

*California 1992 Alcohol-Related Fatalities are preliminary; not yet complete.



AUTO SAFETY HOTLINE
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Lowering BAC Levels to Curb Drunk Driving

By Jeanne Mejeur

Drunk driving is still a problem.

Alcohol is involved in 48% of all fatal accidents, according to the Fatal Accident Reporting System (FARS) of the National Highway Traffic Safety Administration. While that is a decrease from 57% in 1982, alcohol is still a major factor in highway fatalities. Alcohol accounts for 51% of weekend fatalities and 57% of nighttime crashes; for accidents occurring during the nighttime on weekends, the figure jumps to an alarming 63% that involve alcohol.

Illegal per se laws create an irrebutable presumption of drunkenness.

In an effort to reduce drunk driving, nearly every state has established a threshold to determine when a person is legally intoxicated while driving a motor vehicle, through the use of *illegal per se* (Latin, meaning by itself) laws, which make it a crime to operate a vehicle with a blood alcohol content (BAC) above the statutorily established level. Simply put, if a driver is caught with a BAC level above the legal limit, there is an irrebuttable presumption that he or she is drunk.

Most states established a BAC level of .10.

BAC measures the ratio of grams of alcohol in blood, breath or urine. When states began enacting *illegal per se* laws in the early 1980's, most set the BAC level set at .10. However, over the last several years, a number of states have reconsidered the effectiveness of the .10 standard in reducing drunk driving and some have lowered the level for legal intoxication to .08.

Alcohol affects people after as little as 2 drinks.

Laboratory studies indicate that many people exhibit at least some effects of alcohol with a BAC level as low as .04 and that everyone is impaired to some extent at a .08 level in motor skills, ability to concentrate, reaction time, vision and judgement. The National Safety Council estimates that a BAC level of .08 is reached by consuming 2 to 4 alcoholic beverages, depending on body weight.

10 states now have .08 BAC levels.

As of January 1, 1993, California, Maine, Oregon, Utah and Vermont had adopted .08 as the legal standard for determining drunk driving. During the 1993 legislative session, Florida, Kansas, New Hampshire, New Mexico and North Carolina also changed their laws to reduce the *illegal per se* level to .08.

Effectiveness is hard to measure.

The effectiveness of the .08 standard is not easily measured because it is only one of a variety of countermeasures used by states to curb drunk driving and it is not without controversy. According to FARS, in fatal accidents involving alcohol, only 5% of drivers had a BAC level of .08 to .099, while 83% had levels of .10 or higher (12% were under .08). Activists are divided on whether lowering the BAC is addressing the real problem.

Some results are certain.

However, lowering the legal level for intoxication does permit law enforcement officers to make more arrests and get more drunk drivers off the streets. It may increase the public's perception of strict drunk driving enforcement and suggest to people who may be tempted to drive after having consumed alcohol that their chances of being stopped for drunk driving have increased.

Lower BAC levels may increase costs.

States that enact a lower BAC level as part of their *illegal per se* law can anticipate increases in the workload of law enforcement agencies, the criminal justice system and state and local corrections, and must consider the additional resources that will be needed to enforce the lower level.

Young drivers are particularly at-risk.

Some states are establishing even lower BAC levels for young drivers, who are considered a high risk population for drinking and driving. Despite not being legally able to purchase alcohol until age 21, 44% of fatally injured drivers age 15-20 had positive BAC levels, according to FARS, and a disproportionate share of minors are involved in fatal alcohol-related accidents: minors account for 17% of such accidents, even though they comprise only 9% of the population.

Lower BAC levels are effective for teens.

Ranging from the "not a drop" (.00) standard up to .07, states are trying to reduce drunk driving among minors before they become problem drivers. Statistics from a Boston University study on youth BAC laws in Maine, New Mexico, North Carolina and Wisconsin indicate lower BAC levels for teens are effective in reducing youth drunk driving, when combined with alcohol awareness programs and aggressive law enforcement efforts.

Increased penalties reduce youth drunk driving.

Stronger licensing sanctions, such as mandatory license suspensions and revocations, and increased penalties, including mandatory attendance at alcohol awareness or treatment programs, fines, jail time and community service, are also being used to discourage drunk driving by young drivers.

There are many ways to curb drunk driving.

Lower BAC levels are only one of a variety of countermeasures that states can use to reduce drunk driving. Administration license revocation, mandatory treatment programs, mandatory minimum sentences and fines, stronger penalties for repeat offenders, victim impact awareness and restitution, nation-wide tracking of driving records of drunk drivers, ignition interlock, and open container laws are among the strategies that states are using to get drunk drivers off the road.

Selected References

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States with Lower BAC Levels for Younger Drivers

State	Under Age	BAC Level
Arizona	21	.00
Arkansas	21	.02
California	21	.01
D.C. (temporary)	21	.00
Georgia	18	.06
Maine	21	.02
Maryland	21	.02
Minnesota	21	.00
Nobraska	21	.02
New Hampshire	21	.04
New Jersey	21	.01
New Mexico	21	.02
North Carolina	18	.00
Ohio	18	.02
Oregon	21	.00
Rhode Island	21	.04
Tennessee	21	.02
Texas	21	.07
Utah	21	.00
Vermont	18	.02
Wisconsin	19	.00

Sources: Digest of State Alcohol-Highway Safety Related Legislation, 11th Edition; National Highway Traffic Safety Administration; State Net; Westlaw