

ALASKA LEGISLATIVE COMMITTEES FILLED 1900-1900 00/2

3258 HJUD TELECONFERENCE WITH LEMON CREEK. - HB 3

134

1 (d) In this section, "unconditional discharge" has the meaning  
2 given in AS 12.55.185.

3 Sec. 33.30.201. DISPOSAL OF ABANDONED PERSONAL PROPERTY. (a)  
4 It is the obligation of each person committed to the custody of the  
5 commissioner to provide for the appropriate disposition of all person-  
6 al property within 90 days of the date of the person's release or  
7 transfer from a correctional facility.

8 (b) Any personal property remaining at a correctional facility  
9 after 90 days from the date of release or transfer is deemed aban-  
10 doned, and will be delivered to the Department of Administration for  
11 disposal pursuant to AS 44.71.010.

12 (c) The state shall not be liable for any loss or damage to  
13 personal property deemed abandoned under (b) of this section.

14 Sec. 33.30.301. DEFINITIONS. In this chapter, unless the con-  
15 text requires otherwise,

16 (1) "crime against a person" means a crime as set out in  
17 AS 11.41, except custodial interference under AS 11.41.320 and 11.41-  
18 .330; or a crime against a person in this or another jurisdiction  
19 having elements substantially identical to those of a crime as set out  
20 in AS 11.41, except custodial interference under AS 11.41.320 and  
21 11.41.330;

22 (2) "commissioner" means the commissioner of the Department  
23 of Corrections or the commissioner's designee;

24 (3) "correctional facility" or "facility" means a prison,  
25 jail, camp, farm, half-way house, group home, or other placement  
26 designated by the commissioner for the custody, care, and discipline  
27 of prisoners; a "state correctional facility" means any correctional  
28 facility owned or run by the state;

29 (4) "court" means the supreme court, the court of appeals,

1 the superior court, the district or magistrate court, or a justice or  
2 judge of a court;

3 (5) "department" means the Department of Corrections;

4 (6) "furlough" means an authorized leave of absence from  
5 actual confinement for a designated purpose and period of time;

6 (7) "municipality" means a borough or city in the state, or  
7 a municipality unified under AS 29.68.240 -- 29.68.440, authorized by  
8 law to establish a correctional facility;

9 (8) "prisoner" means a person, other than a juvenile, held  
10 under authority of state law in official detention as defined in  
11 AS 11.81.900(b);

12 (9) "temporary commitment" means detention of a person for  
13 any period under authority of state law, but does not include confine-  
14 ment upon conviction and judgment of a court of this state;

15 (10) "victim" has the meaning given in AS 12.55.185.

16 \* Sec. 6. AS 33.32.015(b) is amended to read:

17 (b) The commissioner of corrections may

18 (1) subject to the Fiscal Procedures Act (AS 37.05), use,  
19 purchase, lease, equip, and maintain buildings, machinery, and other  
20 equipment, and may purchase materials and enter into contracts, which  
21 may be necessary for the correctional industries program;

22 (2) provide for prisoners to be employed in rendering  
23 services and producing articles, materials, and supplies needed by a  
24 state agency, a political subdivision of the state, an agency of the  
25 federal government, other states or their political subdivisions, or  
26 for use by nonprofit organizations;

27 (3) if the Correctional Industries Commission established  
28 in AS 33.32.070 approves, employ prisoners to provide services or  
29 products as needed by private industry if the services or products

1 have potential for contributing to the economy of the state and will  
2 have minimal negative impact on an existing private industry or labor  
3 force in the state;

4 (4) subject to the provisions of AS 37.05, enter into joint  
5 cooperative ventures with private industry for the establishment and  
6 operation of "Free Venture" industries pursuant to AS 33.32.017, or as  
7 otherwise necessary to fulfill the purpose of this chapter.

8 \* Sec 7. AS 33.32 is amended by adding a new section to read:

9 Sec. 33.32.017. "FREE VENTURE" CORRECTIONAL INDUSTRIES. (a)  
10 Upon recommendation of the Correctional Industries Commission estab-  
11 lished under AS 33.32.070, the commissioner may establish "Free Ven-  
12 ture" correctional industries for the sale of goods or services to the  
13 public or private sector. A "Free Venture" correctional industry is a  
14 correctional industry which is operated and managed in total or in  
15 part by a private industry or organization within a correctional  
16 facility pursuant to an agreement entered into under AS 33.32.-  
17 015(b)(4).

18 (b) The commissioner shall provide appropriate space, utilities,  
19 security and inmate workers to the private industry or organization.

20 (c) The private industry or organization shall provide all  
21 machinery, tools, supplies, materials, transportation, training,  
22 supervisory personnel, management marketing, and insurance necessary  
23 for the operation of the "Free Venture" industry.

24 (d) In exchange for the space, utilities, and inmate workers  
25 provided to it, the private industry or organization shall pay to the  
26 commissioner a weekly payment in an amount not less than the sum of  
27 the existing minimum hourly wage, established under AS 23.10.065,  
28 multiplied by the total number of hours worked during that week by  
29 inmates employed in the "Free Venture" correctional industry.

1 \* Sec. 8. AS 33.32.030 is amended by adding a new subsection to read:

2 (f) The provisions of this section do not apply to "Free Ven-  
3 ture" industries established under AS 33.32.017.

4 \* Sec. 9. AS 39.35.360(e) is amended to read:

5 (e) An employee of a detention facility provided by a local  
6 government unit to the territorial or state government under AS 33.-  
7 30.031 [AS 33.30.060], who continues in state employment upon transfer  
8 of the facility to the state, is entitled to credited service for  
9 prior service with the facility if the employee remains in continuous  
10 employment with the state until July 1, 1976. To obtain credited  
11 service the employee is required to make retroactive contributions for  
12 the period of service between January 1, 1961, and the effective date  
13 of the transfer of the facility to the state.

14 \* Sec. 10. AS 44.65.050 is amended by adding a new subsection to read:

15 (d) The Department of Corrections and the Department of Trans-  
16 portation and Public Facilities may enter into agreements under this  
17 chapter for the construction, renovation, repair or alteration of  
18 state correctional facilities as defined in AS 33.30.301. An agree-  
19 ment entered into under this subsection is limited to an estimated  
20 cost of \$100,000 per project as determined by the terms of the agree-  
21 ment.

22 \* Sec. 11. Regulations adopted under a statute amended or repealed by  
23 this Act continue in effect until amended or repealed by the commissioner  
24 of corrections.

25

Introduced: 1/28/85  
Referred: Health, Education &  
Social Services and Judiciary

*Allow  
Prisoner,  
Parole  
if served.*

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2

HOUSE BILL NO. 141

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the parole of offenders; and  
7 providing for an effective date."

7

8

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

9

\* Section 1. AS 12.55 is amended by adding a new section to read:

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Sec. 12.55.115. FIXING ELIGIBILITY FOR DISCRETIONARY PAROLE AT

11

SENTENCING. The court may, as part of a sentence of imprisonment,

12

further restrict the eligibility of a prisoner for discretionary

13

parole for a term greater than that required under AS 33.16.100.

14

\* Sec. 2. AS 33 is amended by adding a new chapter to read:

15

CHAPTER 16. PAROLE ADMINISTRATION.

16

Sec. 33.16.010. PAROLE. (a) A prisoner who is serving a term

17

of at least 181 days is eligible for either discretionary or mandatory

18

parole.

19

(b) A prisoner who is eligible under AS 33.16.090 may be granted

20

discretionary parole by the board of parole.

21

(c) A prisoner who is not eligible for discretionary parole, or

22

who is not released on discretionary parole, must be released on

23

mandatory parole for the term of good time deductions credited under

24

AS 33.20, if the term or terms of imprisonment exceed 180 days.

25

(d) A prisoner released on discretionary or mandatory parole is

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subject to the conditions of parole imposed under AS 33.16.150.

27

Parole may be revoked under AS 33.16.220.

28

Sec. 33.16.020. BOARD OF PAROLE. (a) There is in the Depart-

29

ment of Corrections a board of parole consisting of five members

1 appointed by the governor.

2 (b) Members of the board serve for staggered terms of five years  
3 and until their successors are appointed.

4 (c) The governor shall choose the presiding officer of the board  
5 from among the membership.

6 (d) The governor shall make appointments to the board with due  
7 regard for representation on the board of the ethnic, racial, sexual,  
8 and cultural populations of the state.

9 Sec. 33.16.030. SELECTION CRITERIA FOR BOARD MEMBERS. (a) The  
10 governor shall appoint board members on the basis of their qualifi-  
11 cations to make decisions that are compatible with the welfare of the  
12 community and of individual offenders. The governor shall appoint  
13 members who are able to consider the character and background of  
14 offenders and the circumstances under which offenses were committed.

15 (b) At least one person appointed to the board must have ex-  
16 perience in the field of criminal justice.

17 (c) Officers or employees of the state may not be appointed to  
18 the board.

19 Sec. 33.16.040. COMPENSATION AND EXPENSES. A board member is  
20 entitled to compensation of \$150 a day for each day the member is  
21 participating in business of the board, and is also entitled to the  
22 per diem and travel allowances provided under AS 39.20.180.

23 Sec. 33.16.050. MEETINGS OF THE BOARD. (a) The board may meet  
24 as often as it considers necessary to carry out its responsibilities,  
25 but shall meet at least four times a year.

26 (b) Three members of the board constitute a quorum for the  
27 conduct of business.

28 (c) Decisions and orders of the board require the affirmative  
29 votes of a majority of the members present.

1           (d) The board may conduct meetings by the use of teleconferenc-  
2 ing facilities.

3           Sec. 33.16.060. DUTIES OF THE BOARD. (a) The board shall

4           (1) serve as the parole authority for the state;

5           (2) upon receipt of an application, consider the suitability  
6 ity for parole of a prisoner who is eligible for discretionary parole;

7           (3) impose parole conditions on all prisoners released  
8 under discretionary or mandatory parole;

9           (4) under AS 33.16.210, discharge a person from parole when  
10 custody is no longer required;

11           (5) maintain records of the meetings and proceedings of the  
12 board;

13           (6) adopt standards determining when a prisoner should be  
14 granted discretionary parole;

15           (7) recommend to the governor and the legislature changes  
16 in the law administered by the board;

17           (8) recommend to the governor or the commissioner changes  
18 in the practices of the department and of other departments of the  
19 executive branch necessary to facilitate the purposes and practices of  
20 parole;

21           (9) upon request of the governor, review and recommend  
22 applicants for executive clemency;

23           (10) execute other responsibilities prescribed by law.

24           (b) The board shall adopt regulations under the Administrative  
25 Procedure Act (AS 44.62)

26           (1) establishing standards under which the suitability of a  
27 prisoner for discretionary parole will be determined;

28           (2) providing for the supervision of parolees and for  
29 recommitment of parolees; and

1 (3) governing procedures of the board.

2 Sec. 33.16.070. PROCESS. The board or a member of the board may  
3 issue subpoenas and subpoenas duces tecum in the performance of board  
4 duties under AS 33.16.060(a).

5 Sec. 33.16.080. EXECUTIVE DIRECTOR. The board shall hire an  
6 executive director to serve the board in the discharge of its duties.  
7 The executive director must have had training and experience in the  
8 field of criminal justice. The executive director may employ addi-  
9 tional staff to assist the board.

10 Sec. 33.16.090. ELIGIBILITY FOR DISCRETIONARY PAROLE. (a) A  
11 prisoner who is serving a term of at least 181 days, and who is not  
12 otherwise ineligible under (b) of this section, may, in the discretion  
13 of the board, be released on discretionary parole subject to AS 12.-  
14 55.086(b), 12.55.115, and AS 33.16.100(c) and (d).

15 (b) A prisoner is not eligible for discretionary parole if the  
16 prisoner is serving a presumptive sentence. A presumptive sentence  
17 means

18 (1) a sentence imposed under AS 12.55.125(c)(1) -- (4),  
19 (d)(1) -- (3), (e)(1) -- (3), or (i)(1) -- (4), including any period  
20 of imprisonment imposed after adjustment under AS 12.55.155(a), (c),  
21 or (d); or

22 (2) sentences imposed under the statutes listed in (1) of  
23 this subsection which are to be served consecutively.

24 (c) In determining the eligibility of a prisoner for discretion-  
25 ary parole, the board may rely upon the verbatim written transcript of  
26 sentencing proceedings prepared under AS 12.55.025(a)(1), as well as  
27 the judgment entered by the court.

28 Sec. 33.16.100. GRANTING OF DISCRETIONARY PAROLE. (a) The  
29 board may authorize the release of a prisoner on discretionary parole

1 if it determines that

2 (1) the prisoner eligible for discretionary parole will,  
3 with reasonable probability, live and remain at liberty without vi-  
4 olating any laws and without violating any conditions imposed by the  
5 board; and

6 (2) the release of the prisoner on discretionary parole is  
7 compatible with the welfare of society and would not diminish the  
8 seriousness of the crime.

9 (b) If the board finds a change in circumstances in a prisoner's  
10 parole release plan submitted under AS 33.16.130(a), or discovers new  
11 information concerning a prisoner who has been granted a parole re-  
12 lease date, the board may rescind or revise the previously granted  
13 parole release date. In reconsidering the release date, the proce-  
14 dures set out in AS 33.16.130(b) and (c) must be followed.

15 (c) Except as provided in (d) of this section, a prisoner may  
16 not be released on discretionary parole until the prisoner has served  
17 at least one-fourth of the period of confinement imposed, or any  
18 minimum term set under AS 12.55.115 at sentencing, whichever is great-  
19 er.

20 (d) A prisoner who is sentenced for a term under AS 12.55.125(a)  
21 or (b) may not be released on discretionary parole until the prisoner  
22 has served the mandatory minimum term under AS 12.55.125(a) or (b), at  
23 least one-third of the period of confinement imposed, or any minimum  
24 term set under AS 12.55.115 at sentencing, whichever is greater.

25 Sec. 33.16.110. SUITABILITY FOR DISCRETIONARY PAROLE. In de-  
26 termining whether a prisoner is suitable for discretionary parole, the  
27 board shall consider the preparole reports including,

28 (1) the presentence report made to the sentencing court;

29 (2) the recommendations made by the sentencing court, by

1 the prosecuting attorney, by the defense attorney, and any statements  
2 made by the victim or the prisoner at sentencing;

3 (3) the prisoner's institutional conduct history while  
4 incarcerated;

5 (4) recommendations made by the staff of the correctional  
6 facilities in which the prisoner was incarcerated;

7 (5) reports of prior crimes, juvenile histories, and previ-  
8 ous experiences of the prisoner on parole or probation;

9 (6) physical, mental, and psychiatric examinations of the  
10 prisoner;

11 (7) information submitted by the prisoner, the sentencing  
12 court, the victim of the crime, the prosecutor, or other persons  
13 having knowledge of the prisoner or the crime; and

14 (8) other relevant information that may be reasonably  
15 available.

16 Sec. 33.16.20. RIGHT OF VICTIM TO COMMENT ON PAROLE OF PRISON-  
17 ER. (a) Upon request of the victim, notice of a hearing to review or  
18 consider the parole eligibility or the setting of a parole date for a  
19 prisoner in a state prison who is convicted of a crime against a  
20 person must be sent to the victim of the crime at least 30 days before  
21 the scheduled hearing.

22 (b) It is the responsibility of the victim to keep the board  
23 apprised of the victim's most current mailing address. The board  
24 shall send the notice required under (a) of this section to the last  
25 known address of the victim. The address of the victim may not be  
26 disclosed to the prisoner or the prisoner's attorney.

27 (c) The victim has a right to comment in writing on the proposed  
28 action of the board. Copies of the comments must be provided to the  
29 prisoner and the prisoner's attorney before action by the board.

1 (d) The board shall consider the comments presented under (c) of  
2 this section in deciding whether to release the prisoner on parole.

3 (e) Upon request of the victim, if the board decides to release  
4 on parole a prisoner who is convicted of a crime against a person, the  
5 board shall make every reasonable effort to notify the victim before  
6 the prisoner's release date. Notification under this subsection must  
7 include the expected date of the prisoner's release, the geographic  
8 area in which the prisoner is required to reside, and other pertinent  
9 information concerning the prisoner's conditions of parole that may  
10 affect the victim.

11 (f) Upon request of the victim, if a prisoner is released under  
12 AS 33.16.010(c), the board shall make every reasonable effort to  
13 notify the victim before the prisoner's release date. Notification  
14 under this subsection must include the expected date of the prisoner's  
15 release, the geographic area in which the prisoner is required to  
16 reside, and other pertinent information concerning the prisoner's  
17 conditions of parole that may affect the victim.

18 Sec. 33.16.130. APPLICATION FOR DISCRETIONARY PAROLE. (a) A  
19 prisoner eligible for discretionary parole may apply to the board for  
20 discretionary parole. As part of the application for parole, the  
21 prisoner must submit to the board a parole release plan which includes  
22 the prisoner's plan for employment, residence, and other information  
23 concerning the prisoner's rehabilitative plans if released on parole.

24 (b) Before the board determines a prisoner's suitability for  
25 discretionary parole, the prisoner is entitled to a hearing before the  
26 board. The prisoner must be furnished a copy of the preparole reports  
27 listed in AS 33.16.110, and permitted access to all records, except  
28 those that are otherwise excluded by law, that will be considered by  
29 the board in making its decision. The prisoner may also respond in

1 writing to all materials considered by the board, be present at the  
2 hearing, and present evidence to the board.

3 (c) The board shall issue its decision in writing and provide  
4 the basis for a denial of discretionary parole. A copy of the deci-  
5 sion must be provided to the prisoner.

6 Sec. 33.16.140. ORDER FOR PAROLE. An order for parole, setting  
7 out the conditions imposed by AS 33.16.150(a) and by the board under  
8 AS 33.16.150(b), and the date parole custody ends, must be furnished  
9 to each prisoner released on discretionary or mandatory parole.

10 Sec. 33.16.150. CONDITIONS OF PAROLE. (a) As a condition of  
11 parole, a prisoner released on discretionary or mandatory parole shall  
12 refrain from violation of state or federal law or municipal ordinance.

13 (b) The board may require as a condition of discretionary or  
14 mandatory parole that a prisoner released on parole

15 (1) meet family obligations;

16 (2) pursue employment, education, counseling, or training;

17 (3) remain within stated geographic limits unless written  
18 permission to depart from the stated limits is granted the parolee;

19 (4) report upon release to the parole officer assigned to  
20 the parolee;

21 (5) report as required to the parole officer assigned to  
22 the parolee;

23 (6) reside at a stated place and notify the board of any  
24 change in place of residence;

25 (7) not possess or control firearms or other dangerous  
26 weapons;

27 (8) refrain from possessing or consuming alcoholic bever-  
28 ages;

29 (9) refrain from possessing or consuming a controlled

1 substance without a doctor's prescription;

2 (10) submit to reasonable searches and seizures by a parole  
3 officer, or a peace officer acting under the direction of a parole  
4 officer;

5 (11) submit to appropriate medical, mental health, or con-  
6 trolled substance or alcohol examination, treatment, or counseling;

7 (12) submit to periodic examinations designed to detect the  
8 use of alcohol or controlled substances;

9 (13) make restitution to a victim of the prisoner's crime,  
10 according to a schedule established by the board;

11 (14) refrain from opening, maintaining, or using a checking  
12 account or charge account;

13 (15) refrain from entering into a contract other than a  
14 prenuptial contract or a marriage contract;

15 (16) refrain from operating a motor vehicle;

16 (17) refrain from entering an establishment where alcoholic  
17 beverages are served, sold, or otherwise dispensed;

18 (18) refrain from participating in any other activity or  
19 associating with any other person that the board determines is rea-  
20 sonably likely to diminish the rehabilitative goals of parole, or  
21 which may endanger the public.

22 (c) Except for a condition imposed under (b)(4), (7), (9), (10),  
23 (12) or (13) of this section, the board may generally delegate imposi-  
24 tion of special conditions under (b) of this section to the discretion  
25 of the parole officer.

26 (d) The board may require a prisoner released on parole to  
27 comply with special conditions imposed under (b) of this section for  
28 any period up to the maximum term under which the prisoner is subject  
29 to the custody and jurisdiction of the board.

1           Sec. 33.16.160. CHANGE IN PAROLE CONDITIONS. (a) Upon appli-  
2 cation of the state or the parolee, the board may change a condition  
3 of parole previously imposed under AS 33.16.150(b).

4           (b) If the proposed change in conditions of parole is more  
5 restrictive of a parolee's liberty, the parolee is entitled to notice  
6 of the proposed change, the reasons for the proposed change, a hearing  
7 before the board, and an opportunity to respond to the proposed change  
8 and to present evidence.

9           (c) Notwithstanding (a) and (b) of this section, when a parole  
10 officer determines that an emergency situation requires an immediate  
11 change in a condition of parole, or the imposition of a new condition,  
12 the parole officer may impose the change or new condition immediately,  
13 without a hearing. The parole officer shall immediately notify the  
14 board of the imposition of the emergency change or new condition and  
15 shall provide a written report setting out the basis for the change or  
16 new condition and the nature of the emergency. The effective period  
17 of a change in condition or imposition of a new condition under this  
18 subsection may not exceed 15 working days.

19           (d) A condition of parole may be changed, a new condition of  
20 parole may be imposed, or a new or changed condition imposed under (c)  
21 of this section may be extended by a member of the board or the  
22 board's designee if, after a preliminary hearing, an emergency situa-  
23 tion is found which requires a change in condition. The effective  
24 period of a change in condition under this subsection, the imposition  
25 of a new condition under this subsection, or the extension under this  
26 subsection of a new or changed condition imposed under (c) of this  
27 section may not exceed 90 days.

28           Sec. 33.16.170. CONFIDENTIALITY OF RECORDS AND INFORMATION. The  
29 preparole reports listed in AS 33.16.110, and other information

1 obtained and used by the board under this chapter, are confidential  
2 and may not be disclosed to anyone other than the board, the sentenc-  
3 ing judge, the prosecuting and defense attorneys, the prisoner, the  
4 prisoner's attorney, the attorney for the board, the staff of the  
5 board, or others granted access to this information under this chap-  
6 ter.

7 Sec. 33.16.180. DUTIES OF THE COMMISSIONER. The commissioner  
8 shall

9 (1) conduct investigations of prisoners eligible for discre-  
10 tionary parole, as requested by the board;

11 (2) supervise the conduct of parolees;

12 (3) appoint and assign parole officers and personnel;

13 (4) provide the board, within 30 days after sentencing,  
14 information on a sentenced prisoner who may be eligible for discre-  
15 tionary parole under AS 33.16.090;

16 (5) notify the board and provide information on a prisoner  
17 120 days before the prisoner's mandatory release date, if the prisoner  
18 is to be released to mandatory parole; and

19 (6) maintain records, files, and accounts as requested by  
20 the board.

21 Sec. 33.16.190. PAROLE AND PROBATION OFFICERS. An officer ap-  
22 pointed by the commissioner under AS 33.05.020(a) or under AS 33.16.-  
23 180, may discharge duties under AS 33.05 or AS 33.16.

24 Sec. 33.16.200. CUSTODY OF PAROLEE. Except as provided in  
25 AS 33.16.210, the board retains custody of discretionary and mandatory  
26 parolees until the expiration of the maximum term or terms of impris-  
27 onment to which the parolee is sentenced.

28 Sec. 33.16.210. DISCHARGE OF PAROLEE. The board may uncondi-  
29 tionally discharge a parolee from the jurisdiction and custody of the

1 board after the parolee has completed two years of parole, if the  
2 sentence of the parolee does not include any residual period of pro-  
3 bation. A parolee with a residual period of probation may, after two  
4 years of parole, be discharged by the board to immediately begin  
5 serving the residual period of probation.

6 Sec. 33.16.220. REVOCATION OF PAROLE. (a) The board may revoke  
7 parole for violation of a state or federal law, a municipal ordinance,  
8 or a condition imposed under AS 33.16.150(b).

9 (b) Except as provided in (e) of this section, within 15 working  
10 days after the arrest and incarceration of a parolee for violation of  
11 a condition of parole, the board or its designee shall hold a prelimi-  
12 nary hearing. At the preliminary hearing, the board or its designee  
13 shall determine if there is probable cause to believe that the parolee  
14 violated the conditions of parole and, when probable cause exists,  
15 whether the parolee should be released pending a final revocation  
16 hearing. A grand jury indictment or a finding of probable cause at a  
17 preliminary hearing in a criminal case is conclusive proof of probable  
18 cause that a parole violation occurred.

19 (c) In determining whether a parole violator should be released  
20 pending a final revocation hearing, the board or its designee shall  
21 consider

22 (1) the likelihood of the parolee's appearance at a final  
23 revocation hearing;

24 (2) the seriousness of the alleged violation;

25 (3) whether the parolee presents a danger to the community;

26 and

27 (4) whether the parolee is likely to further violate con-  
28 ditions of parole.

29 (d) If the parole violator is released pending a final

1 revocation hearing, the board or its designee may impose additional  
2 conditions necessary to ensure the parolee's appearance at the final  
3 revocation hearing, and to prevent further violation of conditions of  
4 parole.

5 (e) A preliminary hearing under (b) of this section is not re-  
6 quired if the board holds a final revocation hearing within 20 working  
7 days after the parolee's arrest and incarceration.

8 (f) The board shall hold a final revocation hearing no later  
9 than 120 days after a parolee's arrest, subject to restrictions aris-  
10 ing under AS 33.10.010 and (g) of this section.

11 (g) When the basis for the revocation proceeding is a criminal  
12 offense, the parolee may request, or the board upon its own motion may  
13 propose that further proceedings on the revocation be delayed. In  
14 making the determination to delay further proceedings, the board shall  
15 consider prejudice that may result to the parolee's and the state's  
16 interests in the pending criminal case and the parolee's decision to  
17 delay final revocation proceedings. If good cause to proceed is  
18 found, the board shall consult with the attorney general before con-  
19 tinuing the final revocation proceeding.

20 (h) At a final revocation hearing, a violation of a condition of  
21 parole must be established by a preponderance of the evidence.

22 (i) If, after the final revocation hearing, the board finds that  
23 the parolee has violated a condition of parole imposed under AS 33.-  
24 16.150(b), or a law or ordinance, the board may revoke all or a por-  
25 tion of the parole, or change any condition of parole.

26 Sec. 33.16.230. WAIVER OF HEARING. A prisoner or parolee may  
27 waive the right to a hearing provided under AS 33.16.120, 33.16.160,  
28 or 33.16.220 by submitting a written waiver to the board.

29 Sec. 33.16.240. ARREST OF A PAROLE VIOLATOR. (a) A parolee may

1 be arrested, with or without a warrant, for a violation of parole.

2 (b) A warrant for the arrest of a parolee who is charged with a  
3 violation of parole may be issued by the board, or a member of the  
4 board, based on probable cause that a violation has occurred.

5 (c) A parole officer may, without a warrant, arrest a parolee  
6 for a violation of parole only if there is danger to the public, if  
7 there is a likelihood that the parolee will flee, or if the parolee  
8 committed a crime in the presence of the parole officer.

9 (d) If a parolee is arrested without a warrant, the parole  
10 officer shall notify the board no later than the working day immedi-  
11 ately following the arrest. The parole officer shall, within five  
12 working days after the arrest, provide the board with a written report  
13 setting out the alleged violation and circumstances that required  
14 immediate arrest of the parolee.

15 (e) A parolee arrested for violation of parole is not entitled  
16 to bail.

17 (f) Time spent in custody pending revocation proceedings must be  
18 credited toward the unexpired term of imprisonment of the parolee;  
19 however, the time the parolee was at liberty on parole does not alter  
20 the time the parolee was sentenced to serve.

21 Sec. 33.16.250. EXECUTION OF WARRANT FOR ARREST OF PAROLEE. (a)  
22 A parole officer, or a peace officer acting at the request of a parole  
23 officer, shall execute a warrant issued under AS 33.16.240 by ar-  
24 resting the parolee and confining the parolee in a correctional facil-  
25 ity designated by the commissioner.

26 (b) The parole officer or peace officer shall immediately notify  
27 the board or a member of the board of an arrest under (a) of this  
28 section.

29 Sec. 33.16.260. DEFINITIONS. In this chapter

- 1           (1) "board" means the board of parole;
- 2           (2) "commissioner" means the commissioner of corrections;
- 3           (3) "controlled substance" means a drug, substance, or  
4 immediate precursor included in the schedules set out in AS 11.71.-  
5 140 -- 11.71.190;
- 6           (4) "crime against a person" has the meaning given in  
7 AS 33.30.900;
- 8           (5) "department" means the Department of Corrections;
- 9           (6) "discretionary parole" means the release of a prisoner  
10 by the board before the expiration of a term, subject to conditions  
11 imposed by the board and subject to its custody and jurisdiction;
- 12           (7) "mandatory parole" means the release of a prisoner who  
13 was sentenced to one or more terms of imprisonment exceeding 180 days,  
14 for the period of good time credited under AS 33.20, subject to con-  
15 ditions imposed by the board and subject to its custody and jurisdic-  
16 tion;
- 17           (8) "parolee" means a prisoner, sentenced to one or more  
18 terms of imprisonment exceeding 180 days, released by the board or by  
19 operation of law before the expiration of the term, subject to the  
20 custody and jurisdiction of the board;
- 21           (9) "prisoner" means an offender confined for a violation  
22 of state law, but does not include a person confined under AS 47;
- 23           (10) "victim" has the meaning given in AS 12.55.185.

24 \* Sec. 3. AS 33.20.040(a) is repealed and reenacted to read:

25           Sec. 33.20.040. RELEASED PRISONER. (a) A prisoner released  
26 under AS 33.20.030 must be released on mandatory parole to the custody  
27 and jurisdiction of the parole board under AS 33.16, until the expir-  
28 ation of the maximum time to which the prisoner was sentenced, if the  
29 time of imprisonment exceeded 180 days. However, a prisoner released

1 on mandatory parole may be discharged under AS 33.16.210 before the  
2 expiration of the term. A prisoner who was sentenced to an imprison-  
3 ment of 180 days or less must be unconditionally discharged, except as  
4 provided in (c) of this section.

5 \* Sec. 4. AS 33.20.040 is amended by adding a new subsection to read:

6 (c) If a prisoner's sentence includes a residual period of  
7 probation, a prisoner released under AS 33.20.030 must immediately  
8 begin serving the residual probationary period, except that if manda-  
9 tory parole is required under (a) of this section, serving the proba-  
10 tionary period must immediately follow discharge from parole.

11 \* Sec. 5. AS 39.50.200(b)(20) is amended to read:

12 (20) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010]);

13 \* Sec. 6. AS 44.66.010(a)(3) is amended to read:

14 (3) [STATE] Board of Parole (AS 33.16.020 [AS 33.15.010])

15 -- June 30, 1989 [1985];

16 \* Sec. 7. AS 33.15 is repealed.

17 \* Sec. 8. The terms of members of the board of parole appointed under  
18 AS 33.15.010, repealed in sec. 7 of this Act, terminate on the effective  
19 date of this Act. The governor shall appoint members to the board of  
20 parole under AS 33.16.020 for the following initial terms: one member for a  
21 five-year term; one member for a four-year term; one member for a three-  
22 year term; one member for a two-year term; and one member for a one-year  
23 term.

24 \* Sec. 9. This Act takes effect January 1, 1986.

Offered: 2/13/85  
Referred: Judiciary

Original sponsors: Kelly, Sturgulewski,  
Faiks, et al

BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 4 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to correctional restitution cen-  
7 ters."

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

9 \* Section 1. AS 12.55.015 is amended by adding a new subsection to  
10 read:

11 (e) If the defendant is ordered to serve a definite term of  
12 imprisonment, the court may recommend that the defendant serve all or  
13 part of the term in a correctional restitution center.

14 \* Sec. 2. AS 12.55.086(a) is amended to read:

15 (a) When the imposition of sentence is suspended under AS 12.-  
16 55.085, the court may require, as a special condition of probation,  
17 that the defendant serve a definite term of continuous or periodic im-  
18 prisonment, not to exceed the maximum term of imprisonment that could  
19 have been imposed. The court may recommend that the defendant serve  
20 all or part of the term in a correctional restitution center.

21 \* Sec. 3. AS 33.30 is amended by adding new sections to read:

22 ARTICLE 3A. CORRECTIONAL RESTITUTION CENTERS.

23 Sec. 33.30.282. CORRECTIONAL RESTITUTION CENTERS. (a) The  
24 commissioner shall establish correctional restitution centers in the  
25 state. The purpose of the centers is to provide certain nonviolent  
26 offenders with rehabilitation through community service and employment  
27 while protecting the community through partial incarceration of the  
28 offender, and to create a means to provide restitution to victims of  
29 crimes.

1 (b) The commissioner shall adopt regulations setting standards  
2 for the operation of the centers including

3 (1) requirements that the centers be secure and in compli-  
4 ance with state and local safety laws;

5 (2) standards for disciplinary rules to be imposed on  
6 prisoners confined to the centers;

7 (3) standards for the granting of emergency absence to  
8 prisoners confined to the centers; and

9 (4) standards for periodic review of the performance of  
10 prisoners confined to the centers.

11 Sec. 33.30.283. ELIGIBILITY TO SERVE TIME IN A CORRECTIONAL  
12 RESTITUTION CENTER. (a) The commissioner may not allow a prisoner to  
13 serve time in a correctional restitution center unless the commis-  
14 sioner specifically finds that the prisoner meets the eligibility  
15 requirements imposed by this section.

16 (b) To be eligible to serve time in a correctional restitution  
17 center, the prisoner

18 (1) must be employable and agree to secure employment and  
19 obey the rules of the center;

20 (2) may not have been convicted of an offense, in this  
21 state or another jurisdiction, involving violence or the use of force,  
22 as defined in AS 11.81.900; in this section, violence or the use of  
23 force includes possession of a firearm, as defined in AS 11.81.900, in  
24 the commission of an offense, whether or not the firearm was actually  
25 used; and

26 (3) may not have been convicted of an offense under AS 11.-  
27 41.410 - 11.41.470 or an offense in the state or another jurisdiction  
28 having elements substantially identical to an offense under AS 11.41.-  
29 410 - 11.41.470.

1           Sec. 33.30.284. COMMUNITY ADVISORY COMMITTEES. The commissioner  
2 shall appoint a community advisory committee for each center, to  
3 consist of five members of the community in which the center is locat-  
4 ed. The committee shall consider complaints made against prisoners  
5 confined to a center and shall make recommendations to the commis-  
6 sioner.

7           Sec. 33.30.285. CONTRACTS FOR OPERATION OF RESTITUTION CENTERS.  
8 The commissioner may enter into an agreement with a public or private  
9 agency to provide necessary facilities under AS 33.30.282 - 33.30.288.  
10 The commissioner may not enter into an agreement with an agency that  
11 is unable to provide a degree of custody, care, and discipline similar  
12 to that required by the laws of the state.

13           Sec. 33.30.286. DISTRIBUTION OF PRISONER'S EARNINGS. The em-  
14 ployer of a prisoner confined to a center shall pay the prisoner's  
15 earnings to the commissioner. The commissioner shall deposit the  
16 earnings in a fund to be paid to the prisoner upon release from the  
17 center after making and distributing deductions for

18           (1) an amount determined by the commissioner for the cost  
19 of the housing, food, and clothing provided to the prisoner;

20           (2) necessary travel expenses to and from work and other  
21 incidental expenses of the prisoner;

22           (3) an amount determined by the commissioner to be neces-  
23 sary for the support of the prisoner's dependents; and

24           (4) a fine or restitution ordered by the court.

25           Sec. 33.30.288. CONFINEMENT TO THE CENTER. A prisoner shall be  
26 confined to the center at all times except while

27           (1) at work and traveling to and from work;

28           (2) at and traveling to and from a community service pro-  
29 ject approved by the commissioner;

- 1                   (3) on emergency absence; or
- 2                   (4) at and traveling to and from a job interview.
- 3       \* Sec. 4. AS 33.30.900 is amended by adding a new paragraph to read:
- 4                   (10) "center" means a correctional restitution center.

Introduced: 1/22/85  
Referred: Health, Education and Social Services  
          Judiciary and Finance

1 IN THE SENATE

BY ABOOD

2

SENATE BILL NO. 72

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to sentencing."

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

8 \* Section 1. AS 12.55.015(a) is amended to read:

9           (a) Except as limited by AS 12.55.125 - 12.55.175, the court, in  
10 imposing sentence on a defendant convicted of an offense, may singly  
11 or in combination

12           (1) impose a fine when authorized by law and as provided in  
13 AS 12.55.035;

14           (2) order the defendant to be placed on probation under  
15 conditions specified by the court which may include provision for  
16 active supervision;

17           (3) impose a definite term of periodic imprisonment;

18           (4) impose a definite term of continuous imprisonment;

19           (5) order the defendant to make restitution as provided in  
20 AS 12.55.045;

21           (6) order the defendant to carry out a continuous or peri-  
22 odic program of community work as provided in AS 12.55.055;

23           (7) suspend execution of all or a portion of the sentence  
24 imposed as provided in AS 12.55.080;

25           (8) suspend imposition of sentence as provided in AS 12.-  
26 ".085;

27           (9) order the defendant, unless indigent, to pay, in an  
28 amount determined by the court and in addition to amounts determined  
29 under Rule 39(c) of the Rules of Criminal Procedure for costs of

1        defense attorneys, all or part of the court costs and the expenses of  
2        prosecution.

3        \* Sec. 2. AS 12.55.085 is amended by adding a new subsection to read:

4                (f) A suspended imposition of sentence, whether or not dis-  
5        charged by the court, is considered a prior conviction for purposes of  
6        presumptive sentencing under AS 12.55.125(c) - (e) and (i) or another  
7        law requiring enhanced penalties for repeat offenders.

8        \* Sec. 3. AS 12.80.030 is repealed.

Offered: 2/8/85  
Referred: Judiciary and Finance

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 73 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL  
6 For an Act entitled: "An Act relating to the identification of persons  
7 arrested when driving while intoxicated."

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

9 \* Section 1. AS 12.25 is amended by adding a new section to read:

10 Sec. 12.25.240. PHOTOGRAPH AND FINGERPRINTS REQUIRED. (a) When  
11 a person is arrested for an offense committed while that person was  
12 operating a motor vehicle, and the arresting officer has probable  
13 cause to believe that the person was in violation of AS 28.35.030 or  
14 an ordinance with substantially similar elements at the time the  
15 offense was committed, the arresting officer or the law enforcement  
16 agency that has custody of the person shall obtain a photograph and  
17 fingerprints before that person's release from custody.

18 (b) A law enforcement agency that obtains fingerprints under  
19 this section shall forward two sets of fingerprints and information  
20 concerning the subject's arrest to the Alaska State Troopers, Scien-  
21 tific Crime Detection Laboratory.

Offered: 2/8/85  
Referred: Judiciary and Finance

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 74 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to driving while intoxicated."  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 \* Section 1. AS 28.35.030(a) is amended to read:

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

12 (1) while under the influence of intoxicating liquor, or  
13 any controlled substance listed in AS 11.71.140 - 11.71.190, or a  
14 combination of intoxicating liquor and a controlled substance;

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

21 (3) while the person is under the combined influence of  
22 intoxicating liquor and a drug or another substance that acts as a  
23 central nervous system depressant, hallucinogen or stimulant; or

24 (4) while the person is under the influence of a drug or  
25 another substance that acts as a central nervous system depressant  
26 hallucinogen or stimulant.

27 \* Sec. 2. AS 28.35.030(g) is amended by adding a new paragraph to read:

28 (j) "drug" has the meaning given in AS 11.71.900.

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

1           (h) A person convicted under this section may not receive credit  
2 toward all or part of a minimum mandatory sentence for time spent in a  
3 residential alcohol treatment or rehabilitation program.

4 \* Sec. 4. AS 28.35.032 is amended by adding a new subsection to read:

5           (k) A person convicted under this section may not receive credit  
6 toward all or part of a minimum mandatory sentence for time spent in a  
7 residential alcohol treatment or rehabilitation program.

8 \* Sec. 5. AS 28.35.035(b) is amended to read:

9           (b) A person who is unconscious or otherwise in a condition or  
10 at a location rendering that person incapable of providing a breath  
11 sample [REFUSAL] is considered not to have withdrawn the consent  
12 provided under AS 28.35.031(a) and a chemical test may be administered  
13 to determine the amount of alcohol in that person's breath or blood.  
14 A person who is unconscious or otherwise incapable of providing a  
15 breath sample [REFUSAL] need not be placed under arrest before a  
16 chemical test may be administered.

Offered: 2/22/85  
Referred: Judiciary and Finance  
Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 75 (State Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to suspension of the privilege to  
7 obtain a driver's license."

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

9 \* Section 1. AS 22.15.100 is amended to read:

10 Sec. 22.15.100. FUNCTIONS AND POWERS OF DISTRICT JUDGE AND  
11 MAGISTRATE. Each district judge and magistrate has the power

12 (1) to issue writs of habeas corpus for the purpose of  
13 inquiring into the cause of restraint of liberty, returnable before a  
14 judge of the superior court, and the same proceedings shall be had on  
15 the writ as if it had been granted by the superior court judge under  
16 the laws of the state in such cases;

17 (2) of a notary public;

18 (3) to issue marriage licenses and to solemnize marriages;

19 (4) to issue warrants of arrest, summons and search war-  
20 rants according to manner and procedure prescribed by law and the  
21 supreme court;

22 (5) to act as an examining judge or magistrate in prelimi-  
23 nary examinations in criminal proceedings; to set, receive and forfeit  
24 bail and to order the release of defendants under bail;

25 (6) to act as a referee in matters and actions referred to  
26 the judge or magistrate by the superior court, with all powers con-  
27 ferred upon referees by laws;

28 (7) of the superior court in all respects including but not  
29 limited to contempts, attendance of witnesses and bench warrants;

1 (8) to order the temporary detention of a minor, or take  
2 other action authorized by law or rules of procedure, in cases arising  
3 under AS 47.10, when the minor is in a condition or surrounding dan-  
4 gerous or injurious to the welfare of the minor or others which re-  
5 quire immediate action; the action may be continued in effect until  
6 reviewed by the superior court in accordance with rules of procedure  
7 governing these cases;

8 (9) to issue a temporary order for emergency injunctive  
9 relief in cases involving domestic violence as provided in AS 25.35.-  
10 020;

11 (10) to review an administrative revocation of a person's  
12 driver's license, [OR] nonresident privilege to drive, or privilege to  
13 obtain a driver's license, and an administrative refusal to issue a  
14 original license, when designated as a hearing officer by the commis-  
15 sioner of public safety and with the consent of the administrative  
16 director of the state court system.

17 \* Sec. 2. AS 28.15.061(b) is amended to read:

18 (b) An application under (a) of this section shall

19 (1) contain the applicant's full name, date and place of  
20 birth, sex, and mailing and residence addresses;

21 (2) state whether the applicant has been previously li-  
22 censed as a driver and, if so, when and by what jurisdiction;

23 (3) state whether any previous driver's license issued to  
24 the applicant has ever been suspended or revoked, [OR] whether an  
25 application for a driver's license has ever been refused, or whether  
26 the applicant's privilege to obtain a driver's license has ever been  
27 revoked by a court or the department or a similar agency in another  
28 state and, if so, the date of and reason for the suspension, revoca-  
29 tion, or refusal; and

1           (4) contain other information which the department may  
2 reasonably require to determine the applicant's identity, competency,  
3 and eligibility.

4 \* Sec. 3. AS 28.15.165(a) is amended to read:

5           (a) If a chemical test administered under AS 28.35.031(a) to a  
6 person driving a motor vehicle for which a driver's license is re-  
7 quired produces a result described in AS 28.35.030(a)(2) or if a  
8 person under arrest for driving a motor vehicle for which a driver's  
9 license is required refuses to submit to a chemical test under AS 28.-  
10 35.031(a), a law enforcement officer shall read a notice and deliver a  
11 copy to the person. The notice shall advise that

12           (1) the department intends to revoke the person's driver's  
13 license or nonresident privilege to drive, or refuse to issue an  
14 original license to the person;

15           (2) the person has the right to administrative review of  
16 the revocation or determination not to issue an original license;

17           (3) the notice itself is a temporary driver's license, for  
18 persons then holding a valid license, that expires seven days after it  
19 is delivered to the person;

20           (4) revocation of the person's driver's license or nonresi-  
21 dent privilege to drive, or a determination not to issue an original  
22 license shall take effect upon expiration of the temporary driver's  
23 license unless the person within seven days requests an administrative  
24 review.

25 \* Sec. 4. AS 28.15 is amended by adding a new section to read:

26           Sec. 28.15.176. SUSPENSION OR REVOCATION OF PRIVILEGE TO OBTAIN  
27 A LICENSE. (a) A court or the department may suspend or revoke a  
28 person's privilege to obtain a driver's license in the same manner and  
29 for the same reasons as a driver's license issued under this chapter.

1 (b) If a court or the department is required by statute or  
2 regulation to suspend or revoke a person's driver's license, then the  
3 privilege to obtain a driver's license shall be suspended or revoked  
4 if the person does not have a driver's license.

5 (c) Procedures and references in AS 28 relating to the suspen-  
6 sion or revocation of a driver's license are equally applicable to the  
7 suspension or revocation of the privilege to obtain a driver's li-  
8 cense.

9 \* Sec. 5. AS 28.15.291 is amended to read:

10 Sec. 28.15.291. DRIVING WHILE LICENSE OR PRIVILEGE TO OBTAIN A  
11 LICENSE CANCELLED, SUSPENDED, REVOKED OR IN VIOLATION OF LIMITATION.

12 (a) A person may not drive a motor vehicle on a highway or vehicular  
13 way or area at a time when that person's driver's license, privilege  
14 to obtain a driver's license, or privilege to drive has been canceled,  
15 suspended or revoked in this or another jurisdiction, or when driving  
16 in violation of a limitation placed upon that person's license or  
17 privilege to drive in this or another jurisdiction. Except as provid-  
18 ed in (c) of this section, upon conviction of a violation of this  
19 section, the court shall impose a sentence of imprisonment of not less  
20 than 10 days. The execution of sentence may not be suspended nor may  
21 probation or parole be granted until the minimum imprisonment provided  
22 in this section has been served; nor may imposition of sentence be  
23 suspended. In addition, the person's license, privilege to obtain a  
24 license, or privilege to drive shall be revoked, and the person may  
25 not be issued a new license nor may the privilege to drive be restored  
26 for an additional period of not less than one year after the date that  
27 the person would have been entitled to restoration of driving privi-  
28 leges or issuance of a license.

29 (b) When a person's license or privilege to obtain a license is

1 canceled, limited, suspended or revoked, that person shall be informed  
2 by the department or the court that takes the action at the time of  
3 the action that, upon a conviction of driving on a highway or vehicu-  
4 lar way or area in this state at a time when that person's driver's  
5 license, [OR] privilege to drive or privilege to obtain a driver's  
6 license in this state has been canceled, suspended or revoked, or upon  
7 a conviction of driving in violation of a limitation of the license,  
8 that person will be subject to the mandatory minimum sentence of  
9 imprisonment under this section.

10 (c) The court shall impose a sentence of imprisonment of not  
11 less than 30 days and a fine of not less than \$500 upon conviction of  
12 a violation of this section if the person's driver's license or privi-  
13 lege to obtain a driver's license was revoked under circumstances  
14 described in AS 28.15.181(c)(1). The court shall impose a sentence of  
15 imprisonment of not less than 90 days and a fine of not less than  
16 \$1,000 upon conviction of a violation of this section if the person's  
17 driver's license or privilege to obtain a driver's license was revoked  
18 under circumstances described in AS 28.15.181(c)(2) or (3). The  
19 execution of sentence may not be suspended nor may probation or parole  
20 be granted until the minimum imprisonment provided in this subsection  
21 has been served. Imposition of sentence may not be suspended. In  
22 addition, the person's privilege to drive and to obtain a driver's  
23 license shall be revoked for an additional period of not less than one  
24 year after the date that the person would have been entitled to resto-  
25 ration of driving privileges or to obtain a driver's license if the  
26 person had not been convicted under this section.

27 (d) A person convicted of a violation of this section is guilty  
28 of a class A misdemeanor.

Offered: 2/11/85  
Referred: Judiciary

Original sponsor: Abood

1 IN THE SENATE BY THE STATE AFFAIRS COMMITTEE  
2 CS FOR SENATE BILL NO. 76 (Stat. Affairs)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL

6 For an Act entitled: "An Act relating to rights of prisoners; and amending  
7 Rule 5(b) of the Alaska Rules of Criminal Procedure."

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

9 \* Section 1. AS 12.25.150(b) is amended to read:

10 (b) Immediately after an arrest, but after law enforcement  
11 officers have conducted any tests necessary to preserve dissipating  
12 physical evidence of intoxication, a prisoner shall have the right to  
13 telephone or otherwise communicate with the prisoner's attorney and  
14 any relative or friend. Any [, AND ANY] attorney at law entitled to  
15 practice in the courts of Alaska shall, at the request of the prisoner  
16 or any relative or friend [FRIENDS] of the prisoner, have the right to  
17 [IMMEDIATELY] visit the prisoner immediately after the testing [PERSON  
18 ARRESTED].

19 \* Sec. 2. Rule 5(b), Alaska Rules of Criminal Procedure, is amended to  
20 read:

21 (b) Rights of Prisoner to Communicate with Attorney or Other  
22 Person. Immediately after [HIS] arrest, but after law enforcement  
23 officers have conducted any tests necessary to preserve dissipating  
24 physical evidence of intoxication; a [THE] prisoner shall have the  
25 right [FORTHWITH] to telephone or otherwise [TO] communicate with the  
26 prisoner's [BOTH HIS] attorney and any relative or friend. Any  
27 attorney at law entitled to practice in the courts of Alaska shall, at  
28 the request of [EITHER] the prisoner or any relative or friend of the  
29 prisoner, [SHALL] have the right [FORTHWITH] to visit the prisoner in

1        private immediately after the testing.

2        \* Sec. 3. Section 2 amends Rule 5(b) of the Alaska Rules of Criminal  
3 Procedure by delaying the right to contact an attorney until after dis-  
4 sipating physical evidence of intoxication can be obtained.

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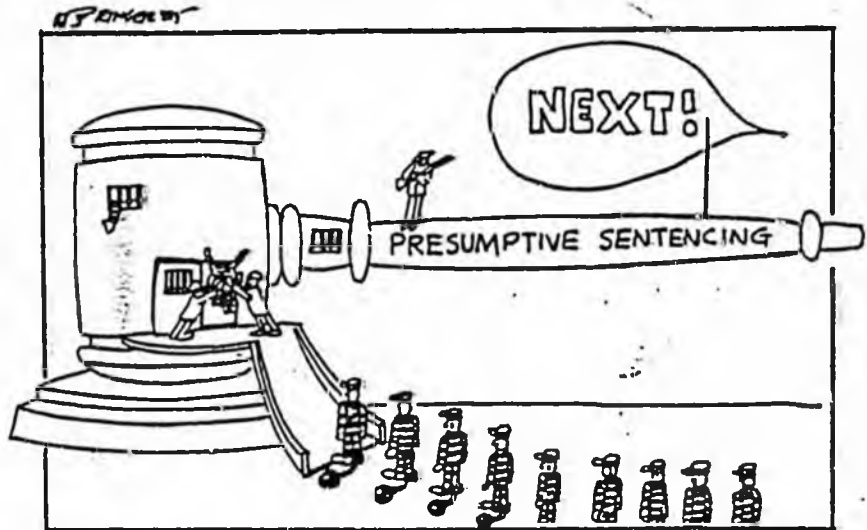
## Lawmakers Focus on Presumptive Sentencing

Representatives of the state's criminal justice system spoke before a joint meeting of the House and Senate Judiciary committees on February 13 and offered differing opinions on the effects and success of presumptive sentencing in Alaska.

Testimony split along predictable lines, with representatives of the Departments of Law, Public Safety and Corrections generally lauding the adoption of presumptive sentencing, and representatives of the Judiciary, Public Defender and Public Advocate's Offices opposing it.

Presumptive sentencing was enacted in 1978 as part of a comprehensive revision of the state's criminal code. Under presumptive sentencing, judicial discretion in sentencing repeat felons is channelled by the legislature, which sets a specific prison term "presumed" to be appropriate for the average offender in the absence of specific aggravating or mitigating factors. These factors can be applied to increase or reduce the presumptive sentence within a specified range.

Chief Prosecutor Dan Hickey from the Criminal Division of the Dept. of Law cited a mid-70's study by the Alaska Judicial Council which studied several hundred felony sentences in Alaska and concluded that the two most important factors influencing the sentence a person received were the race of the defendant and the identity of the judge.



Before 1980, when presumptive sentencing went into effect, judges had sole discretion in handing down sentences, subject only to a statutory maximum. In adopting presumptive sentencing, the legislature hoped to eliminate the disparities in sentencing that occurred under the system of unlimited discretion.

Rep. Robin Taylor (F-Wrangell), a former judge, took exception to the citing of the 1977 study by Hickey. He said he was "offended" that Hickey would bring it up "as some sort of excuse for why we should continue presumptive sentencing." In an angry statement at the conclusion of the hearing, Taylor said that "95% of all the cases which were cited to you by Mr. Hickey today were the result of plea bargains between district attorneys' offices and defense counsels -- a plea bargain over which the judge

has no control." Taylor claimed that the 1978 ban on plea bargaining by then-Attorney General Avrum Gross was the primary reason for the elimination of disparities in sentencing. A follow-up study by the Judicial Council performed two years ago would seem to confirm this, since it showed that by 1980 racial disparities had been eliminated, and that they were low in the years 1978 to 1979.

Judge Alex Brenner of the Alaska Court of Appeals stated that in general judges don't like presumptive sentencing, although they have scrupulously applied the law since 1980. He is concerned about the "over-mechanization of the process" that can lead to poor decisions based strictly on mechanical requirements of the law.

Brenner said there was an "undue

(Continued on page 8)

## Sentencing . . .

(Continued from page 1)

limit" on judicial sentencing discretion, since in the absence of aggravating or mitigating factors, a judge has no discretion at all in the awarding of a sentence. In fact, he stated, one effect of presumptive sentencing has been to transfer much of the discretionary power to the prosecution (District Attorney's Office). The D.A. makes crucial decisions on how to charge a defendant that can significantly affect the sentence. He said that the District Attorney's office is not abusing this power, but that the potential for abuse exists.

According to Brenner the most serious negative effect of presumptive sentencing stems from consecutive sentences. With consecutive sentences "you throw uniformity out the window," said Brenner. If there happens to be two charges, you end up with a double sentence.

He also sees a potential for backlash when sentences are perceived as too harsh. Given the eight-year automatic presumptive sentence for first degree sexual assault and child abuse, he feels there would be less inclination on the part of abused women and children to report interfamilial cases.

Dept. of Public Safety Commissioner Robert Sundberg testified in support of the system. He says it has increased public credibility in the state's criminal justice system. "We haven't heard anyone say lower anything," said Sundberg, who added, "no one has complained about Hansen," (referring to the stiff sentence received by Anchorage serial murderer Robert Hansen).

Public Defender Dana Fabe outlined what she feels are some of the problems with the system. She questions whether presumptive sentencing is an equitable or fair system since individual differences or problems (such as alcohol/drug addiction, youth, and background) cannot be taken into consideration. She feels that if a person has no record whatsoever, it should be considered a mitigating factor. Under presumptive sentencing, a person with a long string of misdemeanor convictions is treated exactly the same as a person with no record at all. She also pointed out that there is no

mitigating factor for turning oneself in or for consideration of a good likelihood of rehabilitation.

Addressing the question of racial imbalances in sentencing, Fabe said she thought that the disparities were eliminated in part because judges became more sensitive to the problem, not because presumptive sentencing was adopted.

She also questioned the increasing use of presumptive sentencing for first time offenders. The law was amended in 1982 to mandate an eight-year automatic sentence for first time offenders convicted of first degree sexual assault. In 1983 the law was further amended to include first degree sexual abuse of a minor. First-time offenders are also sentenced presumptively for class A felonies (robbery, arson, serious assault and manslaughter) and assaults on peace officers and other emergency service providers.

Fabe said one effect of the law is that it encourages more trials. Before 1980, she said, she would often advise clients to "put together a sentencing package," plead guilty perhaps to a lesser charge, and hope for a lenient sentence, rather than taking a weak case all the way. Now, with presumptive sentencing, there is no benefit in pleading guilty if the sentence is automatic.

Fabe recommended that the legislature carefully analyze the existing aggravating and mitigating factors. She also recommended that even if the target sentence is found to be appropriate, the legislature should grant judges the latitude to suspend sentences under certain circumstances and to allow for probation for some prisoners. She said that prisoners sentenced presumptively (no possibility of parole) often leave jail "penniless and unsupervised," increasing the likelihood that they will get into trouble again.

Public Advocate Brant McGee labeled the system a "blind and mechanical process" and offered five reasons for his opposition to it. He feels presumptive sentencing is unfair, that it distorts the criminal justice process, that it removes discretion from the judge to the District Attorney, that it has no deterrent value, and that reduces the likelihood that sexual assault cases within the family will be reported due to the

reiterated Ms. Fabe's points on the unfairness of the system: that no consideration is given to individual differences, that sentences are far too severe, and that the system is "widely perceived as unfair."

He claimed it distorts the system in that it promotes trials over ridiculous issues, such as whether an aggravating or mitigating factor applies. McGee said there was no benefit to avoiding trial, and that defendants often go to trial hoping for a procedural error which would invalidate the proceedings.

McGee said that the three-panel judge procedure is inherently biased and unfair since it depends completely on the composition of the panel. The panel reviews cases that a judge determines would be "manifestly unjust" to sentence presumptively.

He said presumptive sentencing has no deterrent value because people don't understand the system or know the penalties. He said that it "has not alleviated public concern over crime."

Most that testified advised the legislators to study the system as a whole, then to examine the specific components of it such as aggravating and mitigating factors, the specific presumptive sentences, and whether to allow judges the option of granting parole or probation.

## Oil & Gas . . .

(Continued from page 6)

Legislative counsel, Randall Mullen, testified that the legislation was written to apply in general to anyone, not to one particular person so it does not violate the law.

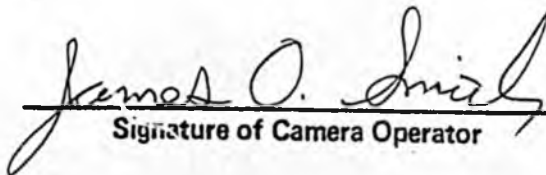
Mike Kelly, general manager for GVEA, said that no other contracts will fall under the category listed in Sec. 1 of the bill. Kelly added that if GVEA suspends its oil take, which has been continuous since 1981, a loss of \$130,000 in revenue to consumers will result. GVEA is a co-operative electric association. Unless SB 152 passes, Kelly stated, GVEA will experience a gap in oil flow, a gap he termed a "paperwork gap" and he requested the committee's approval of the bill to continue GVEA's royalty oil flow. "I'd just as soon get this thing moving while you fine tune the

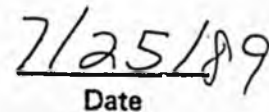


# RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

  
Signature of Camera Operator

  
Date

H B

2

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY  
LEGISLATIVE REFERENCE LIBRARY

FOUCHY - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

H. Judiciary 3/4/85 1:30

Original sponsors: Szymanski, Goll  
and Boucher

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 2 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to adoption medical records; and  
7 providing for an effective date."

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

9 \* Section 1. AS 18.50 is amended by adding new sections to read:

10 Sec. 18.50.214. ACCESS TO ADOPTION INFORMATION. Upon request,  
11 the state registrar shall provide the adoptive parents of a person or  
12 the adopted person with whatever nonidentifying information is avail-  
13 able on the medical history of each biological parent, adopted person,  
14 and blood relative of each biological parent. The information shall  
15 be on a standard form prepared by the department.

16 Sec. 18.50.216. MAINTENANCE OF RECORDS. (a) The department, a  
17 child adoption agency, or a person placing a person for adoption shall  
18 furnish the state registrar the information concerning biological  
19 parents required under AS 18.50.214 for all adoptions. If the infor-  
20 mation concerning biological parents and adopted person and blood  
21 relatives of each biological parent required under AS 18.50.214 is  
22 requested but is not available for an adoption, the state registrar  
23 shall attempt to obtain the required information from the child adop-  
24 tion agency, records of the department, or court adoption records, or  
25 a person placing a person for adoption.

26 (b) A child adoption agency licensed under AS 47.35.100 and a  
27 person placing a person for adoption shall maintain records required  
28 under this chapter or by the regulations of the commissioner. If a  
29 child adoption agency or a person placing a person for adoption ceases

1 to place persons for adoption, it shall transfer its records to the  
2 commissioner.

3 \* Sec. 2. AS 18.50.370 is amended by adding new paragraphs to read:

4 (14) "adoptive parent" means a parent who adopted a person  
5 under AS 25.23;

6 (15) "biological parent" means a birth parent who is named  
7 on the original certificate of birth of an adopted person;

8 (16) "child adoption agency" means a child adoption agency  
9 licensed under AS 47.35.100;

10 (17) "medical history" means information identifying pre-  
11 vious medical conditions and their treatment, immunization records,  
12 and other medical information that would be relevant to the health  
13 care of a genetically-related person.

14 \* Sec. 3. AS 25.23.080(c) is amended to read:

15 (c) A certified copy of the birth certificate or verification of  
16 the birth record of the person to be adopted, if available, the non-  
17 identifying information specified in AS 18.50.214, if available, and  
18 the required consents, relinquishments, and termination orders shall  
19 be filed with the clerk by the person or agency petitioning for  
20 adoption.

21 \* Sec. 4. AS 25.23 is amended by adding a new section to read:

22 Sec. 25.23.185. RECORDS AND INFORMATION. (a) A person or  
23 agency petitioning for adoption shall attempt to obtain from each  
24 known biological parent of the adopted person for the state registrar  
25 the information described in AS 18.50.214 on a form prepared by the  
26 department.

27 (b) The information provided by a biological parent under (a) of  
28 this section shall be filed with the state registrar.

29 Sec. 5. This Act takes effect January 1, 1986.

COMMITTEE REPORT  
HOUSE

3/7

( 7 )

FURTHER: FINANCE

2/6/85

Date: 3-4-85

The Committee on JUDICIARY has had HB 2

"An Act relating to adoption medical records; and providing for an effective date."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 2 (JUD)  same title  new title
- and recommends CS HP 2 (JUD) DO PASS
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

[Signature]

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[Signature]

CHAIRMAN



Alaska State Legislature  
House of Representatives  
COMMITTEE ON HEALTH, EDUCATION  
AND SOCIAL SERVICES

OFFICIAL BUSINESS

POUCHV  
JUNEAU, AK 99811  
465-3759

MEMORANDUM

TO: Members of the House HESS Committee  
FROM: Deborah Niedermeyer, Committee Aide  
RE: HB2, Relating to Adoption Medical Records  
DATE: 25 January, 1985

IN YOUR FOLDER YOU WILL FIND

A copy of HB2

A memo from Representative Szymanski, prime sponsor

A position paper and zero fiscal note from the Department of Health,  
Education and Social Services

A memo from Karla Forsythe, General Counsel for the Alaska Court System

Written testimony from Fairbanks Counseling and Adoption



## Fairbanks Counseling and Adoption

222 Front St. Graehl  
P.O. Box 1544  
Fairbanks, Alaska 99707  
(907) 456-4729

January 25, 1985

Niilo Koponen  
Chair Person  
House ~~Bill~~ ss

Dear Mr. Koponen:

We fully support House Bill 2, pertaining to adoption medical records. We believe that an adopted person should have access to nonidentifying medical information relating to his/her birth background. This information could be crucial to an adopted person's health and well being.

However, we also feel that this housebill is too limited in scope. While we feel that nonidentifying information related to medical needs is important, other information can also be of great importance to an adopted person. Therefore, we would support a bill that provides for the disclosure to the adoptive parents of a person or the adopted person the following non-identifying information;

- 1) the age of the biological parent at the birth of the adopted person but not the birth date of the biological parent;
- 2) the heritage of the biological parent, including:
  - (A) national origin;
  - (B) ethnic background; and
  - (C) race;
- 3) education, which is the number of years of school completed by the biological parent at the time of the adopted person;
- 4) general physical appearance of the biological parent at the time of the birth of the adopted person in terms of height, weight, color of hair, eyes, skin, and other information of a similar nature;



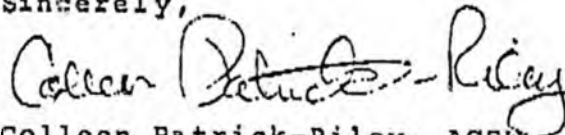
A United Way Member Agency

- 5) talents, hobbies, and special interests of the biological parent;
- 6) the existence of another child or children of the biological parent;
- 7) whether the parental rights of the biological parent were voluntarily relinquished or involuntarily terminated;
- 8) the religion of the biological parent;
- 9) the legal relationship, if any, between the biological parents.

The type of nonidentifying information that we have outlined in this letter can be extremely helpful to an adolescent or young adult who is in the process of forming an identity. Since an adopted person's identity is in part, a blending of his birth and adoptive backgrounds it is important he/she have knowledge of his total heritage.

We hope your committee will consider the needs of adoptees by endorsing HB 2.

Sincerely,



Colleen Patrick-Riley, ACSW  
Executive Director

January 24, 1984

M E M O R A N D U M

TO: Rep. Niilo Koponen  
Rep. Max Gruenberg  
Co-Chairmen, House Health, Education  
and Social Services Committee

FROM: Karla Forsythe *Karla Forsythe*  
General Counsel  
Alaska Court System

SUBJECT: HB 2

I have been asked by Deborah Niedermeyer, committee aide, to inform the committee of the Alaska Court System's views about HB 2.

The Alaska Court System takes no position on the merits of this legislation. With regard to the administrative and procedural impact on the courts, no fiscal impact is anticipated. The duties assigned to the court by this bill are appropriate to the court's role in adoption cases.

Thank you for the opportunity to comment on this legislation.

c: Arthur H. Snowden, II

POSITION PAPER

HOUSE BILL NO. 2

"An Act relating to adoption medical records"

House Bill No. 2 amends the Vital Statistics Act and the adoption statute to require collection of nonidentifying information on the health history of each biological parent, adopted person, and blood relatives of each biological parent, if available.

The Department agrees that this information should be collected because of its usefulness to adoptees and adoptive parents, but much of that information, particularly about blood relatives, has not been collected for past adoptions mainly because the majority of adoptions in Alaska are not handled through agencies.

The Department proposes the following changes to Page 1, lines 18 and 28 from "a person authorized by law to place a person for adoption" to "a person placing a person for adoption". This change is suggested because not all persons placing a person for adoption are required to be authorized by law. An example would be an attorney who handles only one or two adoptions a year. This change is consistent with the wording on Page 1, line 26 and Page 2, line 1.

With these changes, the Department of Health and Social Services would support passage of House Bill No. 2.

RECOMMENDED BY:

Joan P. Brooks  
JOAN P. BROOKS

STATE REGISTRAR OF VITAL STATISTICS

DATE:

January 17, 1985

RECOMMENDED BY:

Newton Chase  
NEWTON CHASE

ACTING DIRECTOR

DIVISION OF PLANNING

DATE:

1/17/85

APPROVED BY:

John R. Pugh  
JOHN R. PUGH

COMMISSIONER

DATE:

1/20/85

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

Revision Date:

**REQUEST**

Bill/Resolution No.: H B 2  
Title: Adoption Medical Records

**FISCAL DETAIL**

Agency Affected: Health & Social Services  
Program Category Affected: Health

Sponsor: Szymanski, Goll & Rouchen  
Requestor:  
Date of Request: 1/17/85

BRU, Program or Subprogram(s) Affected:  
Div. of Planning, Bureau of Vital Statistics

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

**POSITIONS:**

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

ANALYSIS: Attach a separate page if necessary

Prepared By: John P. Brooks (C) Phone: 465-3391  
Division: Planning/Bureau of Vital Statistics Date: 1/17/85

Approved by Commissioner: John R. Poy Date: 1/21/85  
Agency: HEALTH + SOCIAL SERVICES

Distribution (by Agency preparing fiscal note):  
Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget



Official Business

# Alaska State Legislature

House of Representatives

Representative Mike Szymanski

Rep. Mike Szymanski  
801 W. Fireweed Lane, Suite 102  
Anchorage, Alaska 99503  
Phone 276-6731

SR-A Box 1304B  
Anchorage, Alaska 99502  
Phone (907) 349-3373

While in Session:  
Room V  
State Capitol  
Juneau, Alaska 99811

January 17, 1985

TO: HOUSE HEALTH & SOCIAL SERVICES COMMITTEE

FROM: Representative Mike Szymanski

SUBJECT: HB 2, relating to adoption medical records

This legislation, which I introduced two years ago, reflects changes that were made (from the original bill) in the House HESS and the House Judiciary committees during the 13th Legislature and these changes were the result of recommendations made by both the Department of Health and Social Services and by the Court System.

Under present statuten there is no provision which makes it mandatory for an adopted child's medical history and records to be made available to both the adopted child and the adoptive parents. While, in fact, such information is often obtained and provided by the person or agency placing the child, there are many instances, especially in the area of private adoptions, where this information is not provided, nor is an attempt made to obtain the information.

A constituent of mine had contacted me because her adopted child had developed an illness which was "predictable" had the child's medical history/records been available.

It is the intent of this legislation to accomplish several changes:

1. the legislation would require that information relating to the medical history of an adopted child be collected and recorded on a form and attached to the adoption records at the time of adoption. This would be for all adoptions, private, agency, or State.
2. For those adoptions which have occurred prior to the effective date of this legislation, the Department of Health and Social Services would now be required to obtain this information, if it is available, and if requested by the child or the adoptive parents.

3. This legislation would make the information available upon request to the adoptive parents and to the adopted child.

4. It is the intent of the legislation that the information which will be included will be nonidentifying information.

There was a zero fiscal note from the Department of Health and Social Services and the position paper from the Department was supportive of this legislation, with recommendations for certain "clean-up" language which, as I have indicated, have been included.

I appreciate the Committee's consideration of this legislation.

Introduced: 1/14/85  
Referred: Health, Education &  
Social Services, Judiciary and  
Finance

1 IN THE HOUSE

BY SZYMANSKI, GOLL AND BOUCHER

2 HOUSE BILL NO. 2

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to adoption medical records; and  
7 providing for an effective date."

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

9 \* Section 1. AS 18.50 is amended by adding new sections to read:

10 ARTICLE 6. ADOPTION INFORMATION.

11 Sec. 18.50.500. ACCESS TO ADOPTION INFORMATION. Upon request,  
12 the state registrar shall provide the adoptive parents of a person or  
13 the adopted person with whatever nonidentifying information is avail-  
14 able on the medical history of each biological parent, adopted person,  
15 and blood relative of each biological parent. The information shall  
16 be on a standardized form prepared by the department.

17 Sec. 18.50.510. MAINTENANCE OF RECORDS. (a) The department, a  
18 child adoption agency, or a person authorized by law to place a person  
19 for adoption shall furnish the state registrar the information con-  
20 cerning biological parents required under AS 18.50.500 for all adop-  
21 tions. If the information concerning biological parents and adopted  
22 person and blood relatives of each biological parent required under  
23 AS 18.50.500 is requested but is not available for an adoption, the  
24 state registrar shall attempt to obtain the required information from  
25 the child adoption agency, records of the department, or court adop-  
26 tion records, or a person placing a person for adoption.

27 (b) A child adoption agency licensed under AS 47.35.100 and a  
28 person authorized by law to place a person for adoption shall maintain  
29 records required under this chapter or by the regulations of the

30 COMMITTEE COPY

1 commissioner. If a child adoption agency or a person placing a person  
2 for adoption ceases to place persons for adoption, it shall transfer  
3 its records to the commissioner.

4 Sec. 18.50.520. DEFINITIONS. In AS 18.50.500 - 18.50.520

5 (1) "adoptive parent" means a parent who adopted a person  
6 under AS 25.23;

7 (2) "biological parent" means a birth parent who is named  
8 on the original certificate of birth of an adopted person;

9 (3) "child adoption agency" means a child adoption agency  
10 licensed under AS 47.35.100;

11 (4) "medical history" means information identifying pre-  
12 vious medical conditions and their treatment, immunization records,  
13 and other medical information that would be relevant to the health  
14 care of a genetically-related person.

15 \* Sec. 2. AS 25.23.080(c) is amended to read:

16 (c) A certified copy of the birth certificate or verification of  
17 the birth record of the person to be adopted, if available, the non-  
18 identifying information specified in AS 18.50.500, if available, and  
19 the required consents, relinquishments, and termination orders shall  
20 be filed with the clerk by the person or agency petitioning for  
21 adoption.

22 \* Sec. 3. AS 25.23 is amended by adding a new section to read:

23 Sec. 25.23.135. RECORDS AND INFORMATION. (a) A person or  
24 agency petitioning for adoption shall obtain from each known biologi-  
25 cal parent of the adopted person for the state registrar the informa-  
26 tion described in AS 18.50.500 on a form prepared by the department.

27 (b) The information provided by a biological parent under (a) of  
28 this section shall be filed with the state registrar.

29 \* Sec. 4. This Act takes effect January 1, 1986.

POSITION PAPER

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2 (Judiciary)

"An Act relating to adoption medical records"

The Judiciary Committee substitute for House Bill No. 2 incorporates the language changes recommended in the Department's position paper approved on January 20, 1985. In addition, it combines the new definitions generated by this amendment to the Vital Statistics Act with those already listed under AS 18.50.370.

The Department of Health & Social Services supports the passage of Committee Substitute for House Bill No. 2 (Judiciary).

RECOMMENDED BY: Joan P. Brooks  
JOAN P. BROOKS  
STATE REGISTRAR OF VITAL STATISTICS

DATE: March 11, 1985

RECOMMENDED BY: Patricia R. Alexander  
PATRICIA R. ALEXANDER  
DIRECTOR  
DIVISION OF PLANNING

DATE: 3/11/85

APPROVED BY: John R. Pugh  
JOHN R. PUGH  
COMMISSIONER

DATE: 3/12/85

**STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE**

**Revision Date:** March 11, 1985

**REQUEST**

**Bill/Resolution No.:** CS HB 2 (Jud.)  
**Title:** Adoption Medical Records

**FISCAL DETAIL**

**Agency Affected:** Health & Social Services  
**Program Category Affected:** Health

**Sponsor:** Szymanski, Goll & Boucher  
**Requestor:** \_\_\_\_\_  
**Date of Request:** 3/11/85

**BRU, Program or Subprogram(s) Affected:**  
Div. of Planning/ Bureau of Vital Statistics

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>		0	0	0	0	0

<b>CAPITAL</b>						
----------------	--	--	--	--	--	--

<b>REVENUE</b>						
----------------	--	--	--	--	--	--

**FUNDING: (Thousands of Dollars)**

GENERAL FUND			0	0	0	0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		0	0	0	0	0

**POSITIONS:**

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

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

*Patricia R. Alexander*  
*John P. Orsak*

**Prepared By:** John P. Orsak  
**Division:** Planning/ Bureau of Vital Statistics

**Phone:** 465-3391  
**Date:** March 11, 1985 3/11/85

**Approved by Commissioner:** John R. By  
**Agency:** Health & Social Services

**Date:** 3/12/85 JCC

**Distribution (by Agency preparing fiscal note):**

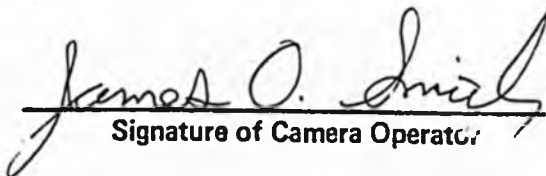
- Legislative Finance
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- Impacted Agency(ies)

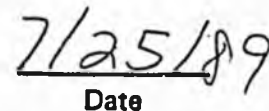


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Signature of Camera Operator

  
Date

HPB

3

# STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

## LEGISLATIVE AFFAIRS AGENCY

### LEGISLATIVE REFERENCE LIBRARY

May, 1986

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS date base CM 14. In order to save space copies of minutes have not been left in the files.

Jeanie Henry

House	Judiciary	Standing	Committee	2/15/85	1:30 pm
"	"	"	"	2/11/85	1:30 pm
"	"	"	"	2/7/85	1:30 pm

COMMITTEE REPORT  
HOUSE

( 7 )

FURTHER:

1/25/85

Date: 2-15-85

The Committee on JUDICIARY has had HB 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

under consideration and recommends:

- do pass  do not pass
- do pass with attached amendments(s)
- replace with CS for HB 3  same title  
 new title
- and recommends \_\_\_\_\_
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation  Zero Fiscal Note Attached
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

[Signature]

[Signature]

[Signature]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature]

[Signature]

[Signature]

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\_\_\_\_\_

[Signature]  
CHAIRMAN

Original sponsors: Szymanski, Bowsher,  
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open containers of alcoholic  
7 beverages in motor vehicles."

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

9 \* Section 1. AS 28.35 is amended by adding a new section to article 2  
10 to read:

11 Sec. 28.35.029. OPEN CONTAINER. (a) A person may not drive or  
12 operate a motor vehicle on a highway or vehicular way or area when  
13 there is an open bottle, can or other receptacle containing an  
14 alcoholic beverage in the passenger compartment of the vehicle, except  
15 as provided in (b) of this section.

16 (b) A person may transport an open bottle, can, or other recep-  
17 tacle containing an alcoholic beverage in the trunk of a motor vehicle  
18 or, if the open bottle, can or other receptacle is enclosed within  
19 another container, behind the last upright seat in a motor home,  
20 station wagon, hatchback or similar trunkless vehicle.

21 (c) In this section

22 (1) "alcoholic beverage" has the meaning given in AS 04.-  
23 21.080(b);

24 (2) "motor vehicle" means a vehicle for which a driver's  
25 license is required;

26 (3) "open" includes having a broken seal;

27 (4) "passenger compartment" means the area of a motor  
28 vehicle normally occupied by the driver and passengers and includes a  
29 utility or glove compartment accessible to the driver or a passenger

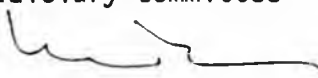
1 while the vehicle is being operated.

2 (d) A person who violates (a) of this section is guilty of an  
3 infraction.  
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89 - HB 3



**Representative Mike Miller**

To: Members of the House Judiciary Committee  
From: M. M. Miller, Chairman 

The Judiciary Committee will consider HB 3, relating to open containers of alcoholic beverages, on Friday, Feb. 15, instead of Wednesday, Feb. 13, as was announced during the meeting today. We have allotted the first 20 minutes of Friday's meeting to consideration of that bill, the remainder of the time to be spent on HB 97.

Edwards  
2/15/85 ✓

Original sponsors: Szymanski, Boucher,  
Duncan, et al

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 3 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to open containers of alcoholic  
7 beverages in motor vehicles."

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

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10 to read:

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12 motor vehicle on a highway or vehicular way or area when there is an  
13 open bottle, can or other receptacle containing an alcoholic beverage  
14 in the passenger compartment of the vehicle except as provided in (b)  
15 of this section.

16 (b) A person may transport an open bottle, can, or other recep-  
17 tacle containing an alcoholic beverage in the trunk of a motor vehicle  
18 or, if the container is enclosed, behind the last upright seat in a  
19 motor home, station wagon, hatchback or similar trunkless vehicle.

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25 (3) "open" includes having a broken seal;

26 (4) "passenger compartment" means the area of a motor  
27 vehicle normally occupied by the driver and passengers and includes a  
28 utility or glove compartment accessible to the driver or a passenger  
29 while the vehicle is being operated.

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(d) A person who violates (a) of this section is guilty of an  
infraction.

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: B 3  
 Title: "An Act relating to open con-  
 tainers of alcoholic beverages in motor vehicles."  
 Sponsor: Szmanski, Beucher, Duncan,\*  
 Requestor: \_\_\_\_\_  
 Date of Request: 2/1/85

FISCAL DETAIL

Agency Affected: Health & Social Services  
 Program Category Affected: Alcohol & Drug  
 Abuse Services  
 BRU, Program or Subprogram(s) Affected:  
Alcohol Services

tainers of alcoholic beverages in motor vehicles."

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
<b>CAPITAL</b>	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
<b>REVENUE</b>	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

\*M.M. Miller and Navarre.

Prepared By: Matthew C. Felix *Matthew C. Felix* Phone: 586-6201  
 Division: Alcoholism and Drug Abuse Date: 2/1/85

Approved by Commissioner: *John R. O'Byrne* Date: 2/15/85 *JOC*  
 Agency: Health and Social Services

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget

POSITION PAPER  
HOUSE BILL 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

The intent of this bill is to assist in lowering the alcohol related traffic accidents and fatalities by prohibiting operators of motor vehicles from consuming alcoholic beverages while driving.

Analysis

Expert testimony at the Presidential Commission on Drunk Driving, Governor's Task Force on Drunk Driving, and Mayor Knowles Drunk Driving Advisory Committee, indicated a strong need for this legislation. The testimony shows a strong relationship between consumption of alcohol and accidents. The act of operating a motor vehicle requires individuals to be free of other activities that may take away from their concentration. Furthermore, consumption of alcohol, a central nervous system depressant drug, often interferes with brain functions required to make special/peripheral judgements while driving.

This statute would bring State law in line with many local ordinances. In Alaska many roads and highways traverse districts with local jurisdictions as well as State enforcement areas. House Bill 3 is needed for continuous and uniform enforcement.

The Statute would give authority for action prior to a driver obtaining the minimum legal limit blood alcohol level. Under a variety of conditions, individuals may become less functional drivers yet not have reached a blood alcohol level of .10 ratio. This statute, with probable cause, allows authorities to take preventive enforcement actions.

Nineteen other states have open container statutes. Other states have more restrictive laws such as "in and about an automobile". When consideration is given to Alaskans rate of alcohol consumption, alcohol related fatalities, and attitude regarding alcohol abuse, this statute becomes very necessary.

Recommendation

The Department is impressed with public testimony in favor of this concept, the Presidential Commission Report's recommendation, and the action of other states in this regard, and accordingly is supportive of SB 71.

Recommended by:

Matthew C. Ferix  
Matthew C. Ferix  
Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

2/1/85

Approved by:

John R. Pugh  
John R. Pugh  
Commissioner  
Dept. of Health &  
Social Services

Date:

2/5/85

## STATE OF ALASKA 1985 LEGISLATIVE SESSION

## FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUESTBill/Resolution No.: HB 3Title: "An Act relating to opencontainers of alcoholic beverages..."Sponsor: Repr. SzvanskiRequestor: House JudiciaryDate of Request: 1/31/85FISCAL DETAILAgency Affected: Department of Law

Program Category Affected: \_\_\_\_\_

Administration of Justice

BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

Prosecution

## EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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## FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

## POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would make it illegal for a person to operate a motor vehicle when there is an open bottle, can or other receptacle containing an alcoholic beverage in the passenger compartment of the vehicle. Although several municipalities have "open container" ordinances, such conduct has not, heretofore, been prohibited by state statute. Consequently, the department does not have enough information to accurately predict what sort of impact may result from enactment of this bill. There could be a fairly substantial impact if there

Prepared By: Richard I. Pegues, Director Phone: 465-3672Division: Administrative Services Date: 2/4/85Approved by Commissioner: Norman C. Gorsuch Date: 2/4/85Agency: Department of Law

## Distribution (by Agency preparing fiscal note):

Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

7/1/84

ANALYSIS (Cont'd.):

is vigorous enforcement, and if that enforcement is contested. Likewise, there could be a substantial impact to the state if municipalities elect to charge violators under state statutes, in lieu of charging under local ordinances, once the bill is enacted. At present, most of the major municipalities in the state have ordinances covering this subject and the department believes that the problem addressed by this bill is one that is best handled at the local government level. Without any hard data the Department of Law does not feel that it would be appropriate to request fiscal note funds. If the events speculated about above do not come to pass, this is the type of bill that, when considered by itself, may not result in a fiscal impact. At the least, this bill, when considered in conjunction with other non-impact measures, will divert prosecution resources from other more serious offenses because of their cumulative effect.

STATE OF ALASKA 1985 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

**REQUEST**

Bill/Resolution No.: HB 3  
 Title: "An Act relating to open  
 containers..."  
 Sponsor: Rep. Szumanski  
 Requestor: House State Affairs  
 Date of Request: \_\_\_\_\_

**FISCAL DETAIL**

Agency Affected: Public Safety  
 Program Category Affected: \_\_\_\_\_  
Administration of Justice  
 BRU, Program or Subprogram(s) Affected: \_\_\_\_\_  
Alaska State Troopers

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>
<b>CAPITAL</b>						
<b>REVENUE</b>						

**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>	<b>-0-</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

Prepared By: Paul Conger Phone: 465-4338  
 Division: Administrative Services Date: 1-21-85

Approved by Commissioner: [Signature] Date: 1/22/85  
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER

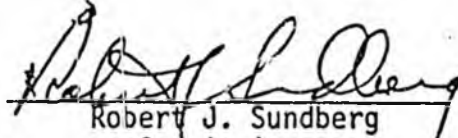
HB 3

SUPPORT

HB 3 - "An Act relating to open containers of alcoholic beverages in motor vehicles."

This bill will provide another law enforcement tool toward reducing the drunk drivers on the road.

Making it a violation to have an open container in the passenger compartment of a motor vehicle should reduce the tendency to drink while in the process of driving, which now is the only violation related to alcoholic beverages in a vehicle.

  
Robert J. Sundberg  
Commissioner

POSITION PAPER

HOUSE BILL 3

"An Act relating to open containers of alcoholic beverages in motor vehicles."

The Department is supportive of HB No. 3 as a preventative measure to drinking and driving. This strategy was favorably reviewed by the Governor's Task Force on Drunk Driving and is a legislative priority of the Alaska Mothers Against Drunk Driving organization.

This legislation would bring the state into conformity with local government ordinances. Alaska is one of the few states that does not have this type of statute.

Recommended by:

Matthew Felix  
Matthew C. Felix  
Coordinator  
Office of Alcoholism/  
Drug Abuse

Date:

1/23/85

Approved by:

John R. Pugh  
John R. Pugh  
Commissioner  
Dept. of Health &  
Social Services

Date:

1/23/85

REQUEST

FISCAL DETAIL

Bill/Resolution No.: HD 3  
Title: "An Act relating to open con-  
tainers of alcoholic beverages in motor vehicles."  
Sponsor: Szmanski, Boucher, Duncan.\*  
Requestor: \_\_\_\_\_  
Date of Request: 1/22/85

Agency Affected: Health & Social Service  
Program Category Affected: Alcoholism and  
Drug Abuse Services  
BRU, Program or Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUNDS						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

\* M.M. Miller and Navarre.

Prepared By: Matthew C. Felix  
Division: Alcoholism and Drug Abuse

Phone: 586-6201  
Date: 1/23/85

Approved by Commissioner: [Signature]  
Agency: Health & Social Services

Date: 1/23/85

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

7/1/84

# Bill would ban having open containers of alcoholic beverages in cars

Continued from Page A-1

ied in the trunk of a car or he cargo compartment of a ruck.

Motorhomes and campers present unique problems, Szymanski said. Violations will occur only if open containers of beer, wine and liquor are 'reasonably accessible to the driver.'

Motorists caught violating the proposed law would be

subject to fines of up to \$50 and jail terms of up to 90 days.

Szymanski doesn't believe his bill will lead to a police crackdown on those who imbibe on the highway. Instead, he said, the law is intended to "reform people . . . to discourage people from the practice of keeping a cooler of beer on the back seat or a six pack between their legs."

A state open container law

is badly needed, said Katherine Bigler, president of Mothers Against Drunk Driving (MADD). Earlier this year Bigler recommended the adoption of similar legislation.

Bigler has not had a chance to review Szymanski's bill.

Ten years ago, the state traffic code did include an "open container" regulation. It was eliminated, said Joe Balfe, an assistant attorney

general assigned to the Alaska State Troopers, after someone questioned the Department of Public Safety's authority to adopt and enforce it.

Public Safety can adopt traffic regulations governing the behavior of people behind the wheel, Balfe said. "But when you start regulating passengers, only the ABC (Alcohol Beverage Control) board can do that."

In Alaska, people who drive while intoxicated are subject to stiff fines and mandatory three-day jail sentences. The penalty for drinking while driving is not as severe, said Sgt. Spike Christopher of the Homer Police Department.

If the driver is not intoxicated, Christopher said, he usually gets a \$15 fine and 2 points against his driver's license.

## Lawmaker proposes 'open container' bill

By RONNIE CHAPPELL  
Daily News reporter

The possession of an open can of beer or liquor in a moving vehicle will be illegal in Alaska if the legislature approves a new bill proposed by Rep. Mike Szymanski, D-Anchorage.

Anchorage already has an "open container" ordinance, but on the Kenai Peninsula

and in other parts of the state it is legal for passengers in campers, trucks and automobiles to sample their favorite alcoholic beverages as they are driving on the highway.

That creates a problem, police and prosecutors say, because it makes it almost impossible to enforce existing regulations against drinking while driving.

To get a conviction a trooper must see a person drinking behind the wheel. Otherwise, said Kenai District Attorney Tom Wardell, violators claim the booze is only in transit or belongs to a passenger.

"If you're concerned about people drinking in cars, an open container law is the way to go," Wardell said.

Under the bill Szymanski

*Anch. Daily News 1/19/85*  
has pre-filed in the legislature, it would be illegal to carry open alcoholic beverage containers in the passenger compartments of moving vehicles. Wine and liquor bottles would be open, Szymanski said, if the seal on the cap has been broken.

Open bottles could be car-

See Back Page, BILL.

PUBLIC SAFETY

OLD  
REGS

which prevents the free and unhampered operation of the vehicle. (Eff. 12/1/69, reg. 31)

Authority: AS 28.05.030

13 AAC 02.545. DRINKING WHILE DRIVING. (a) A person may not drink or have in his possession an open or unsealed receptacle containing an intoxicating beverage while in a motor vehicle.

(b) An open or unsealed receptacle containing an intoxicating beverage is considered in possession of the registered owner of a motor vehicle, or the operator, if the registered owner is not then present in the motor vehicle, unless the container is in the trunk of the motor vehicle or unless it is in the locked glove compartment of a motor vehicle which does not have a trunk. (Eff. 12/1/69, reg. 31)

Authority: Apark 5.030

13 AAC 02.550. LEAVING CHILD UNATTENDED IN STANDING VEHICLE WITH MOTOR RUNNING. A person, while operating or in control of a motor vehicle, may not park or willfully allow the motor vehicle to stand with its motor running if a minor child under the age of 12 years is unattended in the vehicle. (Eff. 12/1/69, reg. 31)

Authority: AS 28.05.030

ARTICLE 12. GENERAL PROVISIONS

Section

- 560. Application of traffic regulations
- 565. Obedience to police officer, flagman and fireman
- 570. Required to give information and cooperate with police officer
- 575. Person riding animal or driving animal drawn vehicle
- 580. Fireman's private vehicle
- 585. Authorized emergency vehicle

13 AAC 02.560. APPLICATION OF TRAFFIC REGULATIONS. The traffic regulations apply exclusively to the equipping, condition, movement or operation of a vehicle, bicycle, person or animal upon a highway or a state operated and maintained ferry facility; except,

(1) where a limited application or a different place is specifically referred to in a section;

(2) where a section provides that it applies on a highway and elsewhere throughout the state.

(b) Unless specifically made applicable by statute or regulation, the traffic regulations do not apply to a person, vehicle or other equipment while actually engaged in construction maintenance or repair work upon, along, above or under a highway but do apply to these persons and vehicles when traveling to or from the work or when traveling to or from the actual work site as part of the work.

PROPOSED  
CHANGES  
See page 2

NOTICE OF PROPOSED CHANGES  
IN THE  
REGULATIONS OF THE DEPARTMENT OF PUBLIC SAFETY

Notice is hereby given that the Department of Public Safety, under authority vested by AS 28.05.030 and AS 28.20.020 proposes to amend and repeal certain regulations in Title 13 of the Alaska Administrative Code as follows:

(1) 13 AAC 02.180 is amended to read:

13 AAC 02.180. PEDESTRIAN SOLICITING RIDE OR BUSINESS. A person may not stand on or along a roadway in a manner that will distract a driver's attention for the purpose of soliciting a ride, employment, business or a contribution from the occupant of a vehicle. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; at Leg. request, am. / / reg. )

Authority: AS 28.05.030

(2) 13 AAC 02.340 (b) is amended to read:

(b) This section does not apply to the driver of a school bus stopped to load or unload a school child or to the driver of a vehicle which is disabled while on a highway in a manner and to an extent that it is impossible to avoid stopping and temporarily leaving the disabled vehicle in that position; provided, if the vehicle is left unattended, the operator shall leave a notice in or on the vehicle which is visible to a person outside the vehicle or leave the hood of the vehicle in a raised position either of which indicates the vehicle is temporarily disabled. This section does not allow a vehicle to be left unattended in or on a bridge, causeway or tunnel or in a hazardous position on a roadway.

(3) 13 AAC 02.340 is amended by adding a new subsection to read:

(c) A vehicle that is stopped, parked or standing in violation of a statute or traffic regulation is considered to have been stopped, parked or left standing by the registered owner of the vehicle, unless at the time of the violation a police officer observes the vehicle being stopped, parked or left standing by a driver who is not the registered owner, in which case any action by the officer shall be directed to that driver. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am / / , reg. )

Authority: AS 28.05.030

Cross Reference: 14 AAC 04.790g  
(parking at airports)

(4) 13 AAC 02.455 (c) is amended to read:

(c) A snow vehicle may not be operated on the roadway of a state highway but may be operated on a path or shoulder adjacent to the roadway of a state

highway, provided the snow vehicle is driven three feet or more from the extreme edge of the roadway.

(5) 13 AAC 02.455(g) is repealed.

(6) 13 AAC 02.545(a) is amended to read

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle.

(7) 13 AAC 02.545(b) is repealed.

(8) 13 AAC 04.145(b) and (c) are amended to read

(b) Except as required or authorized in §§ 90, 100 and 150(b) of this chapter, a person may not drive or move a vehicle or equipment with a lamp or device displaying a red or blue light visible from directly in front of the center of the vehicle or equipment.

(c) A flashing light is prohibited except as required or authorized in §§ 35, 90, 95, 100(a), 105, 110(d) and 150(b) of this chapter. (Eff. before 7/28/59; am 12/15/61, reg. 3; am 8/10/66, reg. 22; am 12/31/69, reg. 31; am. / / , reg. )

Authority AS 28.05.030

(9) 13 AAC 04.155 is repealed, and existing 13 AAC 04.160 is repositioned as 13 AAC 04.155.

(10) 13 AAC 08.105 is amended to read:

13 AAC 08.105. FORM OF NOTICE. A written notice, including a notice of suspension, is considered delivered to that person 10 days after it is registered or certified and deposited in the United States mail, postage prepaid, addressed to that person at his last known address as shown by the most recent records of the department. (Eff. 12/31/69, reg. 31; am. / / , reg. )

Authority: AS 28.20.070

Cross Reference: AS 28.20.050(c) & (d)

AS 28.20.090(a)

AS 28.20.400(c)

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held at Room 423 of the Capital Building, Juneau, Alaska; 830 Water Street, Ketchikan, Alaska; 702 East 30th Avenue, Anchorage, Alaska; 1616 Cushman Street, Fairbanks, Alaska; and the Alaska State Trooper office, Nome, Alaska, at 9:00 a.m. on June 1, 1970.

The Department of Public Safety, upon its own motion or at the instance of any interested person, may at the hearing or after it adopt the above proposals substantially as above set out without further notice.

Date April 20, 1970

A handwritten signature in dark ink, appearing to read 'Mel J. Personett', written over a horizontal line.

Mel J. Personett, Commissioner  
Department of Public Safety

AMENDED  
REGS  
1970

Reg. , Oct. 1970

PUBLIC SAFETY

13 AAC 02.540  
13 AAC 02.560

13 AAC 02.540. EMBRACING ANOTHER WHILE DRIVING. A person may not operate a vehicle when he has in his embrace another person in a manner which prevents the free and unhampered operation of the vehicle. (Eff. 12/31/69, reg. 31)

Authority: AS 28.05.030

13 AAC 02.545. DRINKING WHILE DRIVING. A person may not drink an intoxicating beverage while operating a motor vehicle. (Eff. 12/31/69, reg. 31; am 7/23/70, reg.35 )

Authority: AS 28.05.030

13 AAC 02.550. LEAVING CHILD UNATTENDED IN STANDING VEHICLE WITH MOTOR RUNNING. A person, while operating or in control of a motor vehicle, may not park or willfully allow the motor vehicle to stand with its motor running if a minor child under the age of 12 years is unattended in the vehicle. (Eff. 12/31/69, reg. 31)

Authority: AS 28.05.030

ARTICLE 12. GENERAL PROVISIONS

Section

- 560. Application of traffic regulations
- 565. Obedience to police officer, flagman and fireman
- 570. Required to give information and cooperate with police officer
- 575. Person riding animal or driving animal drawn vehicle
- 580. Fireman's private vehicle
- 585. Authorized emergency vehicle

13 AAC 02.560. APPLICATION OF TRAFFIC REGULATIONS. (a) The traffic regulations applying exclusively to the equipping, condition, movement or operation of a vehicle, bicycle, person or animal upon a highway or a state operated and maintained ferry facility; except,

(1) where a limited application or a different place is specifically referred to in a section;

(2) where a section provides that it applies on a highway and elsewhere throughout the state.

(b) Unless specifically made applicable by statute or regulation, the traffic regulations do not apply to a person, vehicle or other equipment while actually engaged in construction maintenance or repair work upon, along, above or under a highway but do apply to these persons and vehicles when traveling to or from the work or when traveling to or from the actual work site as part of the work.

BILL SHEFFIELD, GOVERNOR

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

February 6, 1985

REPLY TO:

OFFICE OF THE CHIEF PROSECUTOR  
POUCH KC  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

Honorable Kate Hurley  
Chairman, House State Affairs  
Pouch V  
Juneau, AK 99811

Re: House Bill 3 - An Act Relating to Open Containers of Alcoholic Beverages in Motor Vehicles

Dear Chairman Hurley:

On Wednesday, January 23, 1985, I represented the Department of Law, Criminal Division at the House State Affairs committee on House Bill 3 -- an act relating to open containers of alcoholic beverages in motor vehicles. This letter is written in response to your request that my comments be placed in writing.

My comments can be summarized as follows:

(1) A definition of "alcoholic beverage" should be provided in this section. As there is a definition of "alcoholic beverage" already located in Title 4 -- Alcoholic Beverages, the recommended drafting technique would be to cross-reference to that Title 4 definition. Thus, the amendment would read:

"alcoholic beverage" has the meaning given in AS 04.21.080(b)(1)."

In using the cross-reference technique, however, one must realize that any future changes in the Title 4 definition will be incorporated in this Title 28 definition. If the committee feels the two definitions should be independent, the full Title 4 definition can be written out in this bill. We would recommend that the cross-reference technique be used in this case because it is highly likely that any change in the Title 4 definition, which is defined for the purpose of regulating the sale, distribution and consumption of alcoholic beverages, would be a desirable change for the purposes of the open container law, as well.

(2) The legislature should determine whether it wants to make it a crime for a person to have an open

receptacle containing alcoholic beverages while "driving" a motor vehicle only, or while "driving or operating" a motor vehicle. The existing DWI statute makes it a crime to "drive or operate" a motor vehicle while intoxicated. The definition of "driving" is self-explanatory. The definition of "operate" is less obvious and has been the subject of legal argument. A common jury instruction given by Alaska courts for the definition of "operate" reads as follows:

"operating" a motor vehicle means a person voluntarily placed himself behind the wheel of a motor vehicle and (A) had started the motor or permitted it to run, or (B) was in exclusive control of a stationary vehicle in that he was able to immediately control the mechanical or electrical devices that could cause the vehicle to move;

In other words, a person observed sitting in an automobile which has its motor running, which has two wheels on the road and two wheels off the road, who has his head and shoulders on the passenger side of the front seat and his feet and legs below the steering wheel, and who is sleeping, would be seen as "operating" a motor vehicle for the purposes of a DWI prosecution. Jacobson v. State, 551 P.2d 935 (Alaska 1976).

The issue, then, is whether the legislature wants to make it a crime to have an open container of alcoholic beverage in the car just while the car is moving, or also when it is parked, but the driver is in a position to move the car.

(3) It should be decided whether this law should apply only to persons driving a motor vehicle on a highway or vehicular way, or whether it should apply to persons driving anywhere, i.e., on private property, in parking lots, etc. Under existing law, a farmer can be prosecuted for Driving While Intoxicated for driving his tractor in his own barley field while under the influence of intoxicating liquor. This is because a tractor falls under the definition of "motor vehicle" and there is no requirement under the DWI statute that the driving be on a highway or vehicular way. It is felt that any person driving a motor vehicle while impaired is a danger to life and property, no matter where he is driving.

On the other hand, a person can be prosecuted for Driving While License Suspended (DWLS) under AS 28.15.291 only if he is driving the motor vehicle on a highway or vehicular way. That is because a drivers license is not required to operate a motor vehicle in places other than a highway or vehicular area.

(4) I also testified that this bill addresses a local problem, because it is not the type of problem that occurs frequently outside local boundaries. And it does appear that the major cities in Alaska, such as Anchorage, Fairbanks, and Juneau have similar, but not identical, laws. A certain amount of this type of activity occurs on roadways which are not within the jurisdiction of any local government, however, and thus a state statute would be necessary for State Troopers to enforce such a law.

(5) Finally, I mentioned that this new law could possibly be used by local police departments for charging purposes, instead of a similar local ordinance. By charging a misdemeanor under state law, a local government would avoid paying for public defender costs for the defense of indigent offenders, as required by a law passed in the last legislative session (AS 18.85.155). However, this concern appears to be unwarranted as the three largest cities in Alaska -- Anchorage, Fairbanks, and Juneau -- make this violation punishable by a fine only. Only those indigent persons charged with offenses which carry a potential jail penalty are entitled to receive legal representation at public expense.

It should also be noted that the definition of "motor vehicle" under Title 28 includes any vehicle which is self-propelled, except a vehicle moved by human or animal power. This includes tractors, snow machines, three-wheelers, in addition to the traditional automobile or truck.

I hope these comments clarify my testimony on this bill.

At your request, I have provided copies of this letter to the Honorable Mike Miller, Chairman of the House Judiciary Committee and all House Judiciary Committee Members. I have also provided a copy to the prime sponsor of the bill, the Honorable Mike Szymanski.

Very truly yours,

NORMAN C. GORSUCH  
ATTORNEY GENERAL

DANIEL W. HICKEY  
CHIEF PROSECUTOR

By: *Lisa B. Nelson*  
Lisa B. Nelson  
Assistant Attorney General