

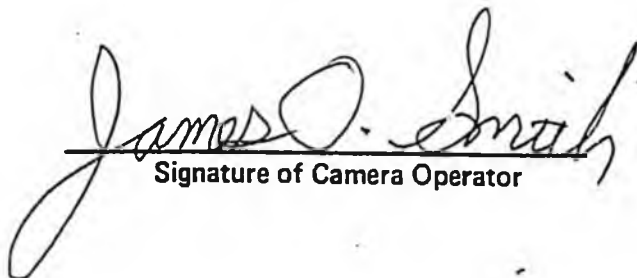
ALASKA LEGISLATURE COMMITTEE FILES 1985-1986 86/2

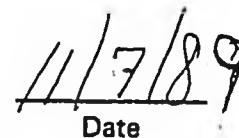
4062 SJUD SB 73 - SB 80 93



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

S B

7 3

BILL FILE LOG

BILL # SB73

3/11 Committee files prepared. (SSB73 (SA)
Public safety position + FN; Sponsors
intent; State Affairs Committee report
summary

Edwards
3/13/85 ✓

Original sponsor: Abood

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 73 (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 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) The
11 arresting officer or law enforcement agency that has custody of a
12 person shall obtain a photograph and fingerprints from that person
13 before release from custody if the person is 18 years of age or older
14 and is under arrest for

15 (1) driving while intoxicated under AS 28.35.030 or an
16 ordinance with substantially similar elements at the time the offense
17 was committed; or

18 (2) another offense and there is probable cause to believe
19 that at the time of the offense the person operated or drove a motor
20 vehicle or operated an aircraft or a watercraft in violation of
21 AS 28.35.030 or an ordinance with substantially similar elements at
22 the time the offense was committed.

23 (b) A law enforcement agency that obtains fingerprints under
24 this section shall forward two sets of fingerprints and information
25 concerning the subject's arrest to the Alaska State Troopers, Scien-
26 tific Crime Detection Laboratory.
27
28
29

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

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SENATE BILL 73

"An Act relating to the identification of persons arrested when driving while intoxicated."

SB 73 will force law enforcement agencies to take photographs and fingerprints from a person arrested for DWI, negligent homicide or assault in connection with driving incidents. As DWI and related statutes around the country are given more meaningful penalties for repeated violators, it becomes more and more important to be able to prove in court that a particular offense on a person's criminal record printout was actually committed by that person. Fingerprints do not lie. In Alaska, where defendants are routinely released on their own recognizance by the court before they are even booked into jail (where the fingerprints are normally obtained), law officers do not normally perform these operations themselves; they can do it, however, and should be required to do so.

There are people who have actually killed their victims in traffic accidents and whose names are not in either the state or federal criminal records, simply because they were not arrested at the scene of the accident and were later brought into court voluntarily without being fingerprinted or arrested.

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSB 73 (SA)

Support

February 14, 1985

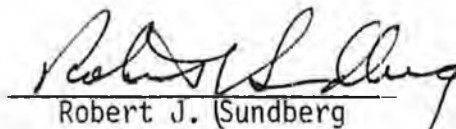
CSSB 73(SA) - An Act relating to the identification of persons arrested when driving while intoxicated.

The purpose of this legislation is to require the photographing and fingerprinting of all suspects arrested for driving while intoxicated.

In most, but not all, Alaska State Troopers posts these suspects are processed through a booking facility which obtains both photographs and fingerprints. In other locations including Anchorage, the suspects are brought before a magistrate after video taping and intoximeter testing. They are usually released on their own recognizance or to a third party, thus avoiding photographing or fingerprinting which are the best means of identification.

The recent installation of the Automated Fingerprint Identification Network (AFIN) in the AST Crime Lab has provided the law enforcement community with the ability to quickly identify suspects based upon their fingerprints if they are suspects in other crimes. This identification can then be confirmed through the examination of photographs.

Passage of this legislation will enhance the effective use of AFIN and will increase the number of arrests in both misdemeanor and felony cases.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB 73 (SA)
 Title: "..identification of persons arrested for Driving While Intoxicated."
 Sponsor: Sen. Abood
 Requestor: Sen. Judiciary
 Date of Request: 2/21/85

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		.5				
500 EQUIPMENT		4.5				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		5.0				

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		5.0				
FEDERAL FUNDS						
OTHER						
TOTAL		5.0				

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

\$4,500 is required to purchase cameras capable of taking pictures of the quality necessary to ascertain identity for booking purposes.

Prepared By: Paul Conger
 Division: Administrative Services

Phone: 465-4338

Date: 2/21/85

Approved by Commissioner: Robert J. Sundberg
 Agency: Public Safety

Date: 2-22-85

Distribution (by Agency preparing fiscal note):

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

7/1/84

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: Feb. 21, 1985

REQUEST

Bill/Resolution No.: SB 73
 Title: "identification of persons
 arrested for Driving While Intoxicated."
 Sponsor: Sen. Abood
 Requestor:
 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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT		.5				
600 LAND & STRUCTURES		4.5				
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING						

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND		5.0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

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 Division: Administrative Services
 Phone: 465-4338
 Date: 2/21/85

Approved by Commissioner: Robert J. Sundberg
 Agency: Public Safety
 Date: 2-22-85

Distribution (by Agency preparing fiscal note):

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

Introduced: 1/22/85
Referred: State Affairs, Judiciary
and Finance

1 IN THE SENATE

BY ABOOD

2

SENATE BILL NO. 73

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 73
 Title: "...identification of persons arrested for Driving While Intoxicated."
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-5-85

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		5.0				
500 EQUIPMENT		25.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		30.0				

CAPITAL						
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REVENUE						
----------------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		30.0				
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached analysis.

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers Date: 2/1/85
 Approved by Commissioner: R. J. Sundberg Date: 2-6-85
 Agency: Department of Public Safety

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

7/1/84

SB 73
Fiscal Analysis

Ten of the Alaska State Trooper posts throughout the state do not have immediate access to a booking facility or which operate under procedures dictated by the Court System which do not provide for the suspect to be processed through a local booking facility. These locations are Anchorage, Yakutat, Deadhorse, Coldfoot, Seven Mile, Fort Yukon, Cantwell, Healy, Delta, and Tok.

At each of these locations a \$2,500.00 camera capable of taking pictures of the quality necessary to ascertain identity for booking purposes will need to be installed. No space requirements are anticipated since each location has areas used for Intoximeter Testing that can double for the picture taking and fingerprinting area. Minimal costs are anticipated for the initial film and fingerprint card supplies. Ongoing supply needs can be absorbed in future budgets. The additional Trooper time necessary to implement this system is felt to be minimal.

SENATE BILL 73

"An Act relating to the identification of persons arrested when driving while intoxicated."

SB 73 will force law enforcement agencies to take photographs and fingerprints from a person arrested for DWI, negligent homicide or assault in connection with driving incidents. As DWI and related statutes around the country are given more meaningful penalties for repeated violators, it becomes more and more important to be able to prove in court that a particular offense on a person's criminal record printout was actually committed by that person. Fingerprints do not lie. In Alaska, where defendants are routinely released on their own recognizance by the court before they are even booked into jail (where the fingerprints are normally obtained), law officers do not normally perform these operations themselves; they can do it, however, and should be required to do so.

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DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 73

Support

January 31, 1985

SB 73 - An Act relating to the identification of persons arrested when driving while intoxicated.

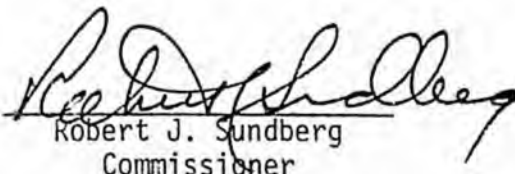
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The recent installation of the Automated Fingerprint Identification Network (AFIN) in the AST Crime Lab has provided the law enforcement community with the ability to quickly identify suspects based upon their fingerprints if they are suspects in other crimes. This identification can then be confirmed through the examination of photographs.

Passage of this legislation will enhance the effective use of AFIN and will increase the number of arrests in both misdemeanor and felony cases.

Section (b) of this proposed legislation requires that all law enforcement agencies forward a copy of the fingerprint cards to the Federal Bureau of Investigation. The Federal Bureau of Investigation will not accept these cards directly from all local law enforcement agencies. They should be forwarded through the Department of Public Safety. The following wording change is suggested: "shall forward two sets of fingerprints and information concerning the subject's arrest to the Alaska State Troopers, Scientific Crime Detection Laboratory."


Robert J. Sundberg
Commissioner

CSSB 73 (SA) - "An Act relating to the identification of persons arrested when driving while intoxicated."

Sec. 1(a)

Will require law enforcement agencies to take photographs and fingerprints from a person arrested for DWI, negligent homicide or assault in connection with driving incidents.

Sec. 1(b)

Specifies that the law enforcement agency shall forward two sets of fingerprints and information concerning the subject's arrest to the Alaska State Troopers, Scientific Crime Detection Laboratory.

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE, ALASKA 99501
(907) 274-2843

WHILE IN SESSION
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4747



CHAIRMAN
STATE AFFAIRS
MEMBER
BUDGET & AUDIT
TRANSPORTATION

Senator Mitch Abood
SENATE DISTRICT G-A

COMPARISON OF SB 73 AND CSSB 73 (SA)

"An Act relating to the identification of persons arrested when driving while intoxicated."

The difference of the bills lie in subsection b. Originally the law enforcement agency was to send a set of the fingerprints and information concerning the subject's arrest to the Federal Bureau of Investigation.

At the suggestion of the Dept. of Public Safety, the language was changed to require that two sets of fingerprints and information concerning the subject's arrest be sent to the Alaska State Troopers, Scientific Crime Detection Laboratory.

The reason for the change is due to the fact that the FBI will not accept these cards directly from all local law enforcement agencies.

COMMITTEE REPORT
SENATE

FURTHER:

JUDICIARY
FINANCE

1/22/85

Date

2/8/84

Mr. President

The Committee on STATE AFFAIRS considered SB 73
identification of persons arrested when driving while intoxicated.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 73 (SA)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT"
- reports it back without recommendation
- recommends referral to _____ Committee

NEW FISCAL NOTE
F.Y. Note

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Edna De Vries
Bice Ray

[Signature]
Chairman
[Signature]
Chairman recommendation

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

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21 tific Crime Detection Laboratory.

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Introduced: 1/22/85
Referred: State Affairs, Judiciary
and Finance

1 IN THE SENATE

BY ABOOD

2 SENATE BILL NO. 73

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

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STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 73
 Title: "...identification of persons arrested for Driving While Intoxicated."
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Administration of Justice
 WRU, 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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		5.0				
500 EQUIPMENT		25.0				
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		30.0				

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS		30.0				
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See attached analysis.

Prepared By: Francis C. Allan *F.C.A.* Phone: 269-5691
 Division: Alaska State Troopers Date: 2/1/85
 Approved by Commissioner: R. J. Sundberg *[Signature]* Date: 2-6-85
 Agency: Department of Public Safety

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

SB 73
Fiscal Analysis

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James O. Smith
Signature of Camera Operator

11/7/89
Date

S B

7 4

BILL FILE LOG

BILL # 74

Original bill + back-up

~~CS~~

CS received in committee

2/1 Position statement - Dept. of Public Safety

3/19 Bill passed out - CSSB74 (Jud)

CS offered by Gayle Honetski

Jim Uaden - Public Safety - supports

Commentary: Proposed CSSB 74 (Jud)

The proposed judiciary committee substitute for SB 74 makes several changes in the present bill. Sections 1, 2, 3, and 4 have been deleted. Pending litigation may resolve the issue addressed in sections 3 and 4, and it is believed advisable to undertake more thorough legal research before redrafting sections 1 and 2.

Sections 1, 3 and 4 of proposed CSSB 74 (Jud) contain new material. These sections transfer administrative and regulatory authority for the state's alcohol breath testing program from the Department of Health and Social Services (DHSS) to the Department of Public Safety (DPS). This transfer would improve the administration of Alaska's breath testing program by eliminating unnecessary confusion, expense, and duplication of effort, and would help to ensure that the state's breath test program is conducted in the most efficient and legally defensible manner.

Transfer of the breath test program to the DPS was one of the secondary recommendations made by the Governor's Task Force on Drunk Driving in January of this year. In the interests of consolidation of resources and administrative efficiency, both DPS Commissioner Robert Sundberg and DHSS Commissioner John Pugh have recommended that the transfer be made. This change is also supported by the Department of Law.

Under existing law, DHSS possesses regulatory authority for the state's breath test program. Much of the responsibility for the actual administration and day-to-day functioning of the program rests with DPS, however. Historically, DPS has purchased and distributed the breath test instruments, repaired the instruments, purchased and distributed necessary supplies, and conducted the training of breath test operators and supervisor-instructors. This defacto division of functions between the two departments has led to some unfortunate difficulties in the administration of the present program. Since there is no one office or agency with clear administrative oversight authority over the breath test program, some uncertainty about areas of responsibility and lines of authority has developed. Occasionally some necessary duties have "fallen between the cracks." As a direct result of this lack of a centralized oversight authority prosecutors have had to dismiss numerous DWI prosecutions and have had to defend scores of DWI cases on appeal.

Alaska's first "implied consent" statute (requiring all persons suspected of drunken driving to consent to a chemical test to determine blood alcohol content) was adopted

in 1969. AS 28.35.033(d) made the Department of Health and Social Services (at that time called the Department of Health and Welfare) responsible for approving "satisfactory techniques, methods, and standards of training" for analysis of the alcohol content of a DWI arrestee's breath sample. This responsibility was given to DHSS at that time because there was no other state agency which had either the facilities or the technical expertise to perform this function.

In 1978 a state forensic crime laboratory was established in the Department of Public Safety to provide essential scientific support services to local law enforcement officers and state troopers throughout the state. Since that time the state crime laboratory has performed a steadily increasing array of scientific functions and analyses. The laboratory now employs four full time chemists who routinely analyze suspected controlled substances and have testified in numerous criminal trials. In recent years laboratory personnel have begun conducting analyses of diverse crime scene evidence, including physical evidence in arson cases, urine and blood testing, foot print comparisons, and some limited fiber, trace, and serological analyses.

In 1983 and 1984 the legislature appropriated 5½ million dollars to DPS to build and equip a sophisticated new crime laboratory facility in Anchorage. Construction of that facility is underway, and is expected to be complete by September of this year. The new laboratory will provide expanded testing capabilities in the areas of forensic chemistry, serology, toxicology, firearms identification, and trace evidence identification.

In light of this expansion of the public safety laboratory, it makes administrative and public policy sense to transfer the responsibility for administration of Alaska's alcohol breath testing program to the DPS laboratory. Transfer of this function to the DPS laboratory would be consistent with the national trend in DWI law enforcement and breath testing. Currently, over half of the states in the country have placed full administrative responsibility for their alcohol breath test programs with their departments of public safety. Several of these states, such as Texas, Minnesota, New York, New Jersey, and Michigan, have sophisticated programs which serve as models for other states. In only about ¼ of the states does administrative oversight authority for the state breath test program remain in the department of public health.

Section 3 of the proposed CS for SB 74 provides that existing breath test regulations will remain in effect until new regulations are adopted by the Department of

Public Safety, and section 4 establishes a special effective date of July 1, 1985. This special effective date has been included because it will be necessary to transfer some resources from DHSS to DPS when the bill takes effect. July 1st is the beginning of the new fiscal year, and a convenient point at which to transfer positions.

Section 2 of the proposed CS addresses a problem which has surfaced as a result of the Court of Appeals decision in Bass v. Municipality of Anchorage, Op. No. 429 (Alaska Ct. App., December 14, 1984). Bass overturned his car in a one-car accident in September of 1983. When the police arrived at the scene of the accident Bass appeared to be extremely intoxicated. Bass had been injured in the accident, and so was immediately taken to a hospital. Because Bass was required to remain at the hospital for several hours, he could not be taken to the police station for a breath test.

After consulting with the municipal prosecutor, the investigating officer asked Bass to provide a sample of his blood for analysis to determine alcohol content. Bass refused, but a blood sample was taken over his objections. The sample was taken under the authority of AS 28.35.035(b), which allows a blood alcohol test to be administered to a DWI suspect who is "unconscious or otherwise in a condition rendering that person incapable" of refusing a breath test.

The appellate court held that Bass, who was injured and hospitalized but not unconscious, did not fall under the "narrow language" of AS 28.35.035 and therefore suppressed the result of the defendant's blood alcohol test (0.243). The amendment to AS 28.35.035(b) contained in section 2 of this bill would plug this "loophole" and allow collection of essential evidence of the blood alcohol level of a DWI suspect who cannot be transported to the police station for a breath test.

DRAFT

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 74 (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 driving while intoxicated; and
7 providing for an effective date."

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

9 * Section 1. AS 28.35.033(d) is amended to read:

10 (d) To be considered valid under the provisions of this section
11 the chemical analysis of the person's breath or blood shall have been
12 performed according to methods approved by the Department of Public
13 Safety [HEALTH AND SOCIAL SERVICES]. The Department of Public Safety
14 [HEALTH AND SOCIAL SERVICES] is authorized to approve satisfactory
15 techniques, methods, and standards of training necessary to ascertain
16 the qualifications of individuals to conduct the analysis. If it is
17 established at trial that a chemical analysis of breath or blood was
18 performed according to approved methods by a person trained according
19 to techniques, methods and standards of training approved by the
20 Department of Public Safety [HEALTH AND SOCIAL SERVICES], there is a
21 presumption that the test results are valid and further foundation for
22 introduction of the evidence is unnecessary.

23 * Sec. 2. AS 28.35.035(b) is amended to read:

24 (b) A person who is unconscious, injured, or otherwise in a
25 condition rendering that person incapable of providing a breath sample
26 [REFUSAL] is considered not to have withdrawn the consent provided
27 under AS 28.35.031(a) and a chemical test may be administered to
28 determine the amount of alcohol in that person's breath or blood. A
29 person who is unconscious, injured, or otherwise incapable of

DRAFT
Law

1 providing a breath sample [REFUSAL] need not be placed under arrest
2 before a chemical test may be administered.

3 * Sec. 3. Transition. Regulations adopted by the Department of Health
4 and Social Services under authority of AS 28.35.033(d) remain in effect
5 until revoked or amended by the Department of Public Safety.

6 * Sec. 4. This Act takes effect on July 1, 1985.
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Original sponsor: Abood

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BY THE JUDICIARY COMMITTEE

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SENATE BILL 74

"An Act relating to driving while intoxicated"

Section 1

Would solve the problem created by defendants who drive under the influence of alcohol and drugs, or drugs alone, where the drug is one which affects the ability to drive, but which is not listed in the statutes set forth in AS 28.35.030(a)(1). In attempting to prohibit such conduct, the Legislature stated in AS 28.35.030(a)(3) that it was unlawful to drive under the influence of "alcohol and another substance." The Alaska Supreme Court found that subsection unconstitutionally vague in Williford v. State, 675 P.2d 1329 (Alaska 1983). The amendment, which is patterned after comparable subsections of the Uniform Vehicle Code, would solve this legal problem.

Section 2

Adds a new paragraph to specify the meaning of "drug".

Section 3 and 4

Would make clear the Legislature's intent that all persons convicted of DWI or breath test refusal should serve time in jail, not just those who could not afford some type of residential alcohol treatment program. Under the court cases of Nygren v. State, 658 P.2d 141 (Alaska 1983), and Lock v. State, 609 P.2d 539 (Alaska App. 1980), if a defendant is required to spend time in a residential alcohol program prior to sentencing, as a condition of bail, then he or she must receive credit for that time spent in the program against the total jail time to be served. At least one district judge in Anchorage has held that, under a variation of this concept, the defendant may enter the treatment program after sentencing and still receive credit against the jail sentence. These new subsections will clarify that the time spent in a residential alcohol treatment or rehabilitation program cannot be credited towards part or all of a mandatory sentence.

Section 5

Would cure a defect in the wording of AS 28.35.035 which, in some cases, permits uncooperative DWI defendants to avoid conviction for either DWI or refusal. An example is a DWI defendant who is injured, but who did not injure any other person, in an accident; if he is held at the hospital emergency room for treatment and will not take a blood alcohol test, the police are often unable to obtain any evidence of blood alcohol concentration. Adding the words or at a location would make it clear that, if a person is at a medical facility and, for that reason alone, cannot be offered a breath test (the court-approved instruments are not portable), the person may be subjected to an involuntary blood test because he is "at a location rendering that person incapable of providing a breath sample." There is not constitutional impediment to this procedure. Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966).

DEPARTMENT OF PUBLIC SAFETY
POSITION PAPER - CSSB 74(SA)

Support

February 14, 1985

CSSB 74(SA) - "An Act relating to driving while intoxicated."

The intent of this legislation is to clarify the language in 28.35.030 to close loopholes through which suspects have been able to avoid prosecution.


Robert J. Sundberg
Commissioner

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 74
 Title: An Act relating to driving while intoxicated...
 Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 2-6-85

Approved by Commissioner: *Michael J. Jensen* Date: 2-6-85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84



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James O. Smith

Signature of Camera Operator

11/7/89

Date

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BILL FILE LOG

BILL # 75

New fiscal + position on C.S. requested -
Logan

* Bill Brown will testify

Alaska State Legislature

INTERIM OFFICE
1024 WEST SIXTH AVENUE
ANCHORAGE ALASKA 99501
(907) 274-2843

IN SESSION:
POUCH V
JUNEAU, ALASKA 99811
(907) 465-4714



Senator Mitch Aboud
CHAIRMAN

Senate Committee on State Affairs

LETTER OF INTENT

February 22, 1985

The Honorable Don Bennett
Senate President
Pouch V
Juneau, Alaska 99811

Dear Senator Bennett:

The State Affairs CS for SB 75 is drafted to provide that a person's "privilege to obtain a license" may be suspended or revoked in the same manner and under the same conditions as a person's driver's license may be suspended or revoked under existing law.

In the case of Francis v. Municipality of Anchorage, 641 P.2d 226 (Alaska App. 1982), the Alaska Court of Appeals held that a person who had never applied for a driver's license could not be charged with the misdemeanor crime of driving while license suspended (DWLS) for driving after the Department of Motor Vehicles (DMV) had suspended a person's "privilege to drive" following an accident for which the person failed to establish financial responsibility. The court held that since the defendant had never had a license, there was nothing for DMV to suspend, and the most that the defendant could be charged with was driving without a valid license.

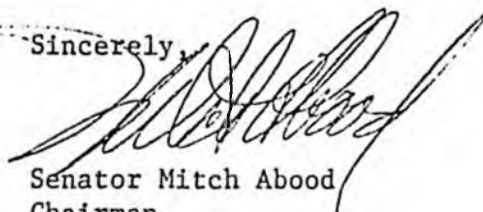
Driving without a valid license in violation of AS 28.15.011 carries a maximum penalty of 90 days in jail, a \$500 dollar fine, or both (see AS 28.35.320(a) and (b)). In contrast, DWLS carries a maximum penalty of one year in jail, a \$5,000 dollar fine, or both (see AS 28.15.291(d)). Additionally, a conviction for driving without a valid license does not require the mandatory minimum sentences which must be imposed following a conviction for DWLS (see AS 28.15.291(a) and (c)).

The intent of this legislation is fulfilled, in the most part, by section 4. This section provides that all court or department actions relating to a suspension or revocation of a driver's license, all Title 28 procedures relating to a suspension or revocation of a driver's license, and all Title 28 references to the suspension or revocation of a license also apply to the "privilege to obtain a driver's license." This method was chosen in preference to adding or privilege to obtain a license in each of the 70 odd places where "revocations" or "suspension" of a "license" or "driver's license" is mentioned throughout Title 28.

Letter to the Honorable Don Bennett
February 22, 1985
Page 2

The only place in Title 28 where the language "or privilege to obtain a license" is added is in the section establishing the crime or driving while license suspended or revoked (AS 28.15.291). The Committee felt that special notice should be given in this section because it is a criminal statute concerning the offense in question.

Sincerely,



Senator Mitch Abood
Chairman

MA/eb

SENATE BILL 75

"An Act relating to suspension of the privilege
to obtain a driver's license"

SB 75 will solve a problem brought about by the Court of Appeals decision in Francis v. Municipality of Anchorage, 641 P.2d 226 (Alaska App. 1983). The gist of that decision is that a person who has never held a driver's license cannot be convicted of driving on a revoked license, even if the "revocation" was the result of a DWI conviction. Because of a standing order by the presiding judge in Anchorage, such a person can only receive a maximum sentence of a \$300 fine and be convicted of driving without a valid license.

This problem is solved by adding the language "privilege to obtain a driver's license."

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: CSSB75(SA)
 Title: An Act relating to sus-
pension of the privilege to obtain
a driver's license
 Sponsor: Abcod
 Requestor: Sen. Judiciary
 Date of Request: 2-27-85

FISCAL DETAIL

Agency Affected: Public Safety
 Program Category Affected: Life and
Property Protection
 BRU, Program or Subprogram(s) Affected:
Division of Motor Vehicles

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Bill Brown Phone: 465-2650
 Division: Motor Vehicles Date: 2-27-85

Approved by Commissioner: Michael Cleary Date: 2-27-85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

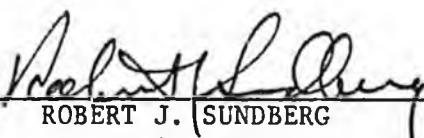
DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - CSSB75(SA)

February 27, 1985

CSSB75(State Affairs), An Act relating to suspension of the privilege to obtain a driver's license.

This bill addresses a problem brought to our attention by the Alaska Court of Appeals decision in the case of Francis vs Municipality of Anchorage in 1982. That decision held that a person who had never applied for a driver's license could not be charged with driving while license suspended if stopped for driving after the Division of Motor Vehicles had issued him a suspension following an accident for which he failed to establish financial responsibility. The court held that since the defendant had never had a license, there was nothing for the Division of Motor Vehicles to suspend. The most the defendant could be charged with was for driving without a valid license.


ROBERT J. SUNDBERG
Commissioner

SIB 75

M E M O R A N D U M

TO: Pat Rodey
FROM: Pat Corbett
DATE: November 6, 1984
SUBJ: Limited License Privileges in case of DWI

Administrative revocations and Court revocations have the same minimum periods and the same criteria for granting limited license privileges.

CRITERIA

A hearing officer may grant limited license privileges for the final 60 days of the period of revocation if:

- 1) revocation is for DWI
- 2) no prior DWI or refusal of chemical test w/in 10 years
- 3) livelihood will be impaired
- 4) no excessive danger to the public

A hearing officer may not grant limited license privileges for a license revoked because of refusal to take chemical tests.

AS 28.15.166 (j)

MINIMUMS *Periods for Revocations*

- 1) 90 days no prior within last 10 years
- 2) 1 year 1 prior within last 10 years
- 3) 10 years more than one prior within last 10 years

AS 28.15.181 (c)

AS 28.15.165 Administrative Revocations
 28.15.166 (1) Administrative Review of Revocation
 28.15.181 (c) & (e) Court Suspension, Revocations, and Limitations



RECORDS CERTIFICATION



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James O. Smith
Signature of Camera Operator

11/7/89
Date

S B

76

BILL CONTACT/ACTION

DATE	CONTACT/ACTION
3/29	Per Roger - Lisa Nelson will testify
4/9	Lisa Nelson
	Held over

Introduced: 1/22/85
Referred: State Affairs, Judiciary
and Finance

1 IN THE SENATE

BY ABOOD

2

SENATE BILL NO. 76

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) As soon as feasible [IMMEDIATELY] after an arrest, after law

11

enforcement officers have conducted any tests necessary to preserve

12

dissipating physical evidence of intoxication, a prisoner shall have

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the right to telephone or otherwise communicate with the prisoner's

14

attorney and any relative or friend. Any [, AND ANY] attorney at law

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entitled to practice in the courts of Alaska shall, at the request of

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the prisoner or any relative or friend [FRIENDS] of the prisoner, have

17

the right to [IMMEDIATELY] visit the prisoner immediately after the

18

testing [PERSON 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. As soon as feasible [IMMEDIATELY] after [HIS] arrest, after

23

law enforcement officers have conducted any tests necessary to pre-

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serve dissipating physical evidence of intoxication, a [THE] prisoner

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shall have the right [FORTHWITH] to telephone or otherwise [TO] commu-

26

nicate with the prisoner's [BOTH HIS] attorney and any relative or

27

friend. Any attorney at law entitled to practice in the courts of

28

Alaska shall, at the request of [EITHER] the prisoner or any relative

29

or friend of the prisoner, [SHALL] have the right [FORTHWITH] to visit

1 the prisoner in 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.

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 76
 Title: Rights of prisoners.....

Sponsor: Sen. Abood
 Requestor: Sen. State Affairs
 Date of Request: 2-6-85

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
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Paul Conger Phone: 465-4338
 Division: Administrative Services Date: 2-6-85

Approved by Commissioner: Michael J. Cleary Date: 2-6-85
 Agency: Public Safety

Distribution (by Agency preparing fiscal note):

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

7/1/84

SENATE BILL 76

"An Act relating to rights of prisoners; and amending Rule 5(b) of the Alaska Rules of Criminal Procedure."

SB 76 modifies AS 12.25.150(b) and Alaska Criminal Rule 5(b) thus eliminating the difficulties caused police officers who are attempting to give breath alcohol test to DWI suspects. Since it would force a change in a rule promulgated by the Alaska Supreme Court, it must be passed by a two-thirds majority of each house of the Alaska Legislature.

The amendment would allow officers to wait until after they have given breath tests to drunk drivers to permit the suspects to call their attorneys. There is no constitutional impediment to this change, as the constitution already permits the gathering of such evidence without a search warrant, or giving the defendant access to an attorney, as a search incident to an arrest. (Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908(1966); Burnett v. Municipality of Anchorage, 678 P.2d 1364 (Alaska App. 1984), cert. den. 36 Cr.L. 2001)

Even though there is no right to refuse a breath test under Alaska law (Palmer v. State, 604 P.2d 1106 (Alaska 1979, and Jensen v. State, 667 P.2d 188 (Alaska App. 1983)), the Supreme Court of Alaska in Copelin v. State, 659 P.2d 1206 (Alaska 1983), stated that AS 12.25.150(b) and Criminal Rule 5(b) required that a DWI suspect be given access to a telephone, if he request it, before taking a breath test or videotaped sobriety test. This causes delay of 15 to 30 minutes, or longer, in giving the breath test--a test for a substance that is quickly disappearing from the defendant's body.

This change would also be in response to the recommendation of the Presidential Commission on Drunk Driving "That an individual's right to consult his attorney may not be permitted to unreasonably delay administration of the test." A common defense tactic in drunk driving trials is to suggest that the defendant may have been intoxicated at the time of the breath test, but that his breath alcohol concentration at the time of his driving was not over the legal limit. It is therefore imperative that there be as little delay as possible prior to the breath test.

DEPARTMENT OF PUBLIC SAFETY

POSITION PAPER - SB 76

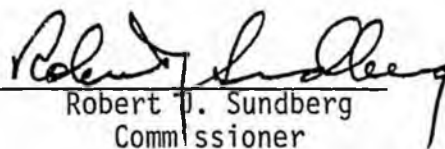
Support

February 1, 1985

SB 76 - "An Act relating to rights of prisoners; and amending Rule 5(b) of the Alaska Rules of Criminal Procedure."

The purpose of this legislation is to clarify the rights of Driving While Intoxicated suspects during the period they are to be tested.

Occasionally suspects have been able to delay the implementation of Driving While Intoxicated testing by demanding to speak to their attorney prior to the admission of the test. This statute establishes the priority of the testing without interfering with the rights of the suspects. This will allow for smoother processing of Driving While Intoxicated suspects by law enforcement officers and thus improve their efficiency.


Robert J. Sundberg
Commissioner

here, and we decline to reverse on the basis of the evidence in the record.

KANSAS RULES THAT DEFENDANT MUST HAVE OPPORTUNITY TO CONTACT COUNSEL BEFORE TAKING BLOOD TEST?

In *State v. Bristor*, 9 Kan. App. 2d 404, 682 P. 2d 122 (1984), the Kansas Court of Appeals upheld the trial court's sustaining a motion to suppress the results of a blood alcohol test where the defendant was not allowed any opportunity whatsoever to contact counsel before making a decision whether to submit to a blood alcohol test.

In determining whether the right to counsel attaches, the court first determined whether the consent to a blood alcohol test is a "critical state" in the prosecution of driving under the influence case. The court concluded:

K.S.A. 8-1001(c) grants the inviolable right to refuse to submit to a BAT [Blood Alcohol Test]. The exercise of this right, however, carries with it two possible sanctions: one, the fact of refusal may be used as evidence against the accused on the DUI charge; and two, the fact of refusal will result in an administrative proceeding against the accused, which proceeding may result in a suspension of driving privileges. If the accused relinquishes his right to refuse, by consenting to a BAT, then K.S.A. 8-1004 operates and the accused has a right to a reasonable opportunity to obtain an independent and objective BAT. Also, K.S.A. 8-1002 gives the accused who submits a right to a copy of the results of the BAT requested by the police.

The Kansas appellate courts have consistently held that there is no duty upon the arresting officer to explain to the accused his rights under the foregoing statutes...

The question obviously is how can an accused make an intelligent decision regarding submission to a BAT if he is ignorant of his various rights, and how can he in his ignorance protect those rights, if the officer is under no duty to enlighten him. The answer, clearly, is that only through the advice and counsel of an attorney can the accused

be expected to make his decisions in an intelligent and knowledgeable manner. We find it particularly noteworthy that at least one court which refused to impose upon the officer a duty to inform the accused of his rights based its holding, at least in part, on the fact that the accused therein had been allowed to consult with counsel prior to submitting to a BAT. See *City of Shawnee v. Gruss*, 2 Kan.App.2d at 134, 576 P.2d 239.

However, the court conceded there were limits to the defendant's right to counsel:

The right to counsel, we have announced today, must be understood as something of a limited right. The accused must be given a reasonable opportunity to contact and to consult with an attorney before being required to elect whether to consent to the administration of a BAT. In his exercise of his right to a reasonable opportunity to consult with counsel, the accused must also act with reasonableness. He cannot be allowed to abuse the right in a manner which would unduly delay or unreasonably interfere with the administration of the BAT. Furthermore, vindication of this right does not necessarily require that the consulting attorney be face-to-face with the accused. Sometimes the accused will have to sacrifice a face-to-face consultation, and settle for telephonic communication, when the delay inherent in arranging a face-to-face meeting would unduly and unreasonably interfere with the administration of the BAT. However, in those cases where the attorney's presence can be secured without unreasonable delay, face-to-face consultations should not be prevented.

We deem it important to note that Kansas has always held that the lapse of time between the operation of a motor vehicle and the administration of a BAT does not reflect on the admissibility of the test results, but only goes to the weight of such evidence. See *State v. Parson*, 226 Kan. 491, 495, 601 P.2d 680 (1979). Therefore, any delays in the administration of a BAT which are not unreasonable should not be justification for denying the accused his right to consult with an attorney.

In summary, we do not herein hold that the defendant's attorney must be

present when the BAT is administered. Neither do we hold that a defendant in every instance is entitled to consult with an attorney before he must make a choice as to whether to take the BAT or not. What we do hold is that the defendant must be afforded a reasonable opportunity to consult with an attorney as to whether or not to submit to the BAT. In the instant case, the defendant was not afforded any opportunity whatsoever to attempt to contact an attorney before making such choice. We are well aware that some defendants might, by their alleged desire to confer with counsel, attempt to postpone the BAT until sufficient time has elapsed for their blood alcohol level to diminish. There is no excuse, at all, however, in not allowing the defendant at least to attempt telephonic consultation with an attorney, or where such can be done with reasonable expedition, to have his attorney come to the place of defendant's confinement for personal consultation. This is a matter that is not, in our opinion, susceptible to hard and fast rules or procedures, but is a matter within the sound discretion of the trial court when that court is faced with a decision as to whether to suppress the results of such a test. It is clear that a decision on suppression must be made on a case by case method by the trial court. Where, as in the instant case, the trial court ordered suppression of the BAT results, where no opportunity of any kind, and however brief, was afforded the defendant to confer with an attorney, it is clear to us, and we hold, that the trial court was correct.

DO ALCOHOLICS BURN OFF FASTER?

It was concluded that ethanol elimination is a zero order process. For subjects classified as non-drinkers (consume less than 6 ounces of ethanol/month), the mean ethanol elimination rate as determined in the study was 12 ± 4 mg%/hr. For subjects classified as social drinkers (consume more than 6 ounces but less than 30 ounces of ethanol/month), the mean ethanol elimination rate was 15

± 4 mg%/hr, and for alcoholics, the mean ethanol elimination rate was 30 ± 9 mg%/hr. These results indicate that the rate of ethanol elimination increases with drinking experience.

This conclusion, published in *Forensic Science International*, 25, 159 (1984), is offered in an attempt to further define the extent of ability to predict the number of drinks that are required to reach a specified level of alcohol concentration, or to predict an alcohol concentration from a specified number of drinks over a specified period of time. This article, **The Rate and Kinetic Order of Ethanol Elimination**, by Charles L. Winek and Kathy L. Murphy, indicates that an individual's past drinking history is far more important in the elimination of ethanol from the body than is the concentration or amount of ethanol consumed.

Twenty individuals were selected for this study in which they were instructed to fast for a period of at least 3 hours prior to initiation of testing. Subjects were given measured amounts of ethyl alcohol on two separate occasions. On both occasions the entire dose of ethanol was to be consumed within a 40 minute period. Simultaneous blood and breath alcohol determinations were carried out employing a Perkin Elmer Sigma 4B Gas Chromatograph and a Breathalyzer™ Model 1000.

Based on the data presented in this study, ethanol elimination is more accurately described as a zero order process over the concentration range of interest. This conclusion is in agreement with the generally accepted position. This study also demonstrated that a variance in ethanol elimination rates exists among individuals.

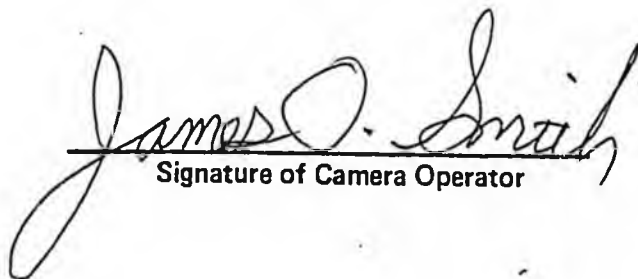
More accurate predictions of blood ethanol concentrations could be made if two breath samples were collected over a specific spaced time period. Analysis of two spaced samples would allow a calculation of elimination rate and a determination of an individual's position on the blood ethanol curve.

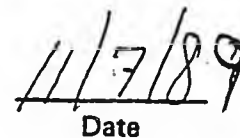
Another factor which often enters into the prediction of a BAC is the time required after drinking for an individual to reach his peak ethanol concentration. In contrast to the absorption rate values reported in this study, [other studies] in-



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

S B

7

7

Introduced: 1/22/85
Referred: Judiciary and
Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2

SENATE BILL NO. 77

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 small claims jurisdictional
7 limitation and the duties of magistrates; and
8 providing for an effective date."

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

10 * Section 1. AS 22.15.040 is amended to read:

11 Sec. 22.15.040. SMALL CLAIMS. When a claim for relief does not
12 exceed \$5,000 [\$2,000] exclusive of costs, interest and attorney fees,
13 and request is so made, the district judge or magistrate shall hear
14 the action as a small claim unless important or unusual points of law
15 are involved. The supreme court shall prescribe the procedural rules
16 and standard forms to assure simplicity and the expeditious handling
17 of small claims. *Alaska 1978 (1978)*

18 * Sec. 2. AS 22.15.120 is amended to read:

19 Sec. 22.15.120. LIMITATIONS ON PROCEEDINGS WHICH MAGISTRATE MAY
20 HEAR. A magistrate shall preside only in cases and proceedings under
21 AS 22.15.040, 22.15.100, and 22.15.110, and as follows,

22 (1) for the recovery of money or damages only when the
23 amount claimed, exclusive of costs, interest, and attorney fees, does
24 not exceed \$5,000 [\$1,000];

25 (2) for the recovery of specific personal property when the
26 value of the property claimed and the damages for the detention do not
27 exceed \$5,000 [\$1,000];

28 (3) for the recovery of a penalty or forfeiture, whether
29 given by statute or arising out of contract, not exceeding \$5,000

1 [\$1,000];

2 (4) to give judgment without action upon the confession of
3 the defendant for any of the cases specified in this section, except
4 for a penalty or forfeiture imposed by statute;

5 (5) to give judgment of conviction upon a plea of guilty by
6 the defendant in a criminal proceeding within the jurisdiction of the
7 district court;

8 (6) to hear, try, and enter judgments in all cases
9 involving misdemeanors, if the defendant consents in writing that the
10 magistrate may try the case;

11 (7) to hear, try and enter judgments in all cases involving
12 infractions under AS 28 and violations of ordinances of political
13 subdivisions. [;

14 (8) REPEALED]

15 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
16 10.070(c).

SECTIONAL ANALYSIS

SB77 "AN ACT RELATING TO THE SMALL CLAIMS JURISDICTIONAL LIMITATION
AND THE DUTIES OF MAGISTRATES; ED"

- Section One Raises small claims amount from \$2000 to \$5000. The \$2000 was set in 1978; up from \$1000 in 1970 and \$500 in 1961. Attached sheet shows rate of inflation used by the Alaska Permanent Fund for the years 1979-1985 (FY).
- Section Two Brings the dollar amount in other proceedings over which magistrates preside into conformity with the amendment in section one (small claims). The \$1000 limit was set in 1972, up from \$500 set in 1964. (Note: in both 1972 and 1964, the amendment was included in the revisor's bill, suggesting either that the amendments were not controversial, or that the revisor was attempting uniformity in this dollar limit.)



Official Business

Alaska State Legislature

Senate

Committee on Judiciary

Pouch V
State Capitol
Juneau, Alaska 99811

RATES OF INFLATION USED BY THE ALASKA PERMANENT FUND CORPORATION

F.Y. 1979	6.66%
F.Y. 1980	10.26%
F.Y. 1981	13.52%
F.Y. 1982	10.35%
F.Y. 1983	6.10%
F.Y. 1984	3.22%
F.Y. 1985	4.26%

7.77% Average for the period

T 12 S R 30 W, S.M., to the SE corner of T 12 S R 30 W, S.M., thence easterly along the south boundary of T 12 S R 29 W, S.M., to the shoreline of Horseshoe Cove located in Section 32, T 12 S R 29 W, S.M., thence northerly, westerly, and northerly along the line of mean high tide to the point of beginning.

* Sec. 16. AS 18.65.060(b) is amended to read:

(b) The Department of Public Safety may adopt regulations necessary to carry out the purposes of this section; however, regulations proposed by the department shall be submitted to the presiding officer of each house of the legislature on the day the house convenes. The legislature has 60 days of a regular session, or a full session if of shorter duration to disapprove the proposed regulations. Unless disapproved by a special concurrent resolution introduced in either house, concurred in by a majority of the members of the legislature in joint session, the regulations become effective at a date to be designated by the department.

* Sec. 17. AS 19.30.171(b) is amended to read:

(b) The costs incurred by the commissioner in acquiring this land or interest in land includes all costs and any fees incidental to acquisition, including relocation assistance and payments in accordance with AS 34.60. All costs incurred by the commissioner in connection with the acquisition of the land or interest in land shall be paid by the local government for which the land or interest in land is acquired.

* Sec. 18. AS 22.15.120(1) is amended to read:

(1) for the recovery of money or damages only when the amount claimed, exclusive of costs, interest, and attorney fees, does not exceed \$1,000;

* Sec. 19. AS 22.15.120(2) is amended to read:

(2) for the recovery of specific personal property when the value of the property claimed and the damages for the detention do not exceed \$1,000;

* Sec. 20. AS 22.15.120(3) is amended to read:

(3) for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$1,000;

* Sec. 21. AS 22.20.100 is amended to read:

Sec. 22.20.100. DUTY OF THE COMMISSIONER IN THE SUPREME COURT. The commissioner is the executive officer of the supreme court and shall serve and execute all process issued by the supreme court or a justice of the supreme court, and shall attend the supreme court, and has the authority necessary for the execution of these duties.

* Sec. 22. AS 22.20.120 is amended to read:

Sec. 22.20.120. GENERAL AUTHORITY AND DUTY OF THE

COMMISSIONER. The authority necessary for the performance of the duties of execution, seizure and detention of property, forfeited or levied upon, and arrest with civil matters, is vested in any court of the state issuing any process for execution of service to a designee.

* Sec. 23. AS 22.30.010 is amended to read:

Sec. 22.30.010. COMMISSION ON JUDICIAL QUALIFICATIONS. The Commission on Judicial Qualifications shall have nine members as follows: one justice elected by the justices of the supreme court; one judge of the district court; one judge of the district court; two judges of the district court; two lawyers in this state for 10 years, approved by the organized bar; and two judges, retired judges, or members appointed by the governor and subject to the majority of the members of the legislature. The Commission membership terminates if the position that qualified him for the commission and on the same day. The commission shall elect members to serve as chairman for a term of one year. A vacancy shall be filled by the governor. Power for the remainder of the term shall be exercised by the remaining members.

* Sec. 24. AS 23.20.409(5) is amended to read:

(5) "exhaustee" means an individual who, with respect to any week of unemployment compensation period

(A) has no right to unemployment benefits or allowances, as the case may be, under the Unemployment Insurance Act, as amended, or under the Automotive Products Act, as amended, or under other federal laws which provide for unemployment benefits; and has not received and is not eligible to receive unemployment benefits under the unemployment insurance laws of the Virgin Islands or of Canada; and the commissioner determines that he is not entitled to unemployment benefits under that law he is considered an exhaustee.

(B) has received, or is eligible to receive, unemployment benefits, all of the regular unemployment benefits payable to him under this chapter, including dependents' allowances, or federal civilian employees' allowances under 5 U.S.C. chapter 85, in his calendar week; however, if an individual is considered an exhaustee in a calendar week, he shall not be entitled to added regular unemployment benefits for that week of a pending appeal with respect to that week.

apter, and to make allotment or
money to other state agencies;

to employ necessary person-

to adopt regulations to
at this section.

§ 19.540. Limitations. The pro-
of the Rural Development
are subject to the following
provisions:

no program for any one com-
may exceed \$10,000 in cost a
and

no first- or second-class city
2,000 population is eligible for
see.

This Act takes effect on the
its passage and approval or on
it becomes law without such

Approved April 21, 1964

amendments by the revisor of

(S.B. 267)

the office maintains another
in the state which meets the re-
quirements outlined in secs. 360 and
this chapter.

AS 08.04.630 is amended to

08.04.630. Injunction against Un-
Act. Whenever, in the judgment
board, any person has engaged
in an act which constitutes a violation
of secs. 500-610 of this chapter, the
board may apply to the appropriate
court for an order enjoining the act.
On a showing by the board that a
person has engaged in the act, the
court shall grant an injunction or any
other appropriate order without bond.

AS 10.05.255(a)(8) is amended

any provision limiting or

denying to shareholders the pre-
emptive right to acquire additional or
treasury shares of the corporation;

Sec. 5. AS 10.05.255(a)(9) is amended
to read:

(9) any provision, not incon-
sistent with law, which the incorpora-
tors elect to set out in the articles of
incorporation for the regulation of the
internal affairs of the corporation, in-
cluding a provision which, under this
chapter, is required or permitted to be
set out in the bylaws;

Sec. 6. AS 10.05.564 is amended to
read:

Sec. 10.05.564. Stated Powers and
Duties of Receiver. The order appoint-
ing the liquidating receiver shall state
his powers and duties. The powers and
duties may be increased or diminished
at any time during the liquidation pro-
ceedings.

Sec. 7. AS 10.05.567 is amended to
read:

Sec. 10.05.567. Compensation of Re-
ceiver and Attorneys. The court may
allow from time to time as expenses of
the liquidation compensation to the
receiver and to attorneys in the pro-
ceeding, and direct the payment of
compensation out of the assets of the
corporation or the proceeds of a sale or
disposition of assets.

Sec. 8. AS 11.20.480 is amended to
read:

Sec. 11.20.480. Defrauding Hotel
Keepers. A person who puts up at a
hotel, inn, boardinghouse, or lodging-
house and who procures a fare, board,
or lodging from the owner or keeper by
means of a trick, deception, or false
representation, or a false show of
baggage or effects, with the intent to
cheat or defraud the owner or keeper
out of the pay for the fare, board, lodg-
ing, or accomodation; or who with that
intent absconds, surreptitiously re-
moves, or causes to be removed baggage
or effects from a hotel, inn, boarding-
house, or lodginghouse without first
paying the proper charges due is guilty
of a misdemeanor, and, upon convic-
tion, is punishable by a fine of not more
than \$200, or by imprisonment for
not more than six months, or by both.

The words "fare, board, or lodging" do
not include spirituous or malt liquors
or intoxicants of any description.

Sec. 9. AS 11.30.020(b) is amended to
read:

(b) A person convicted of perjury
committed in a proceeding in a court
other than a criminal action referred
to in (a) is punishable by imprison-
ment in a penitentiary for not less
than three years nor more than 10
years.

Sec. 10. AS 14.15.750(a) is amended
to read:

(a) A school district may construct,
improve, extend, repair, reconstruct,
acquire, and operate school buildings
and facilities connected therewith, and
incur general obligation bond and
revenue bond indebtedness for any of
these purposes.

Sec. 11. AS 14.25.060(a) is amended to
read:

(a) Retroactive contributions are
not required for creditable membership
service prior to June 30, 1955.

Sec. 12. AS 22.15.120 is amended to
read:

Sec. 22.15.120. Limitations on Pro-
ceedings Which Deputy Magistrate May
Hear. A deputy magistrate shall pre-
side only in cases and proceedings un-
der secs. 40, 100, and 110 of this chap-
ter, and as follows,

(1) for the recovery of money or
damages only when the amount
claimed, exclusive of costs, interest, and
attorney fees, does not exceed \$500;

(2) for the recovery of specific
personal property when the value of
the property claimed and the damages
for the detention do not exceed \$500;

(3) for the recovery of a penalty
or forfeiture, whether given by statute
or arising out of contract, not exceed-
ing \$500;

(4) to give judgment without ac-
tion upon the confession of the de-
fendant for any of the cases specified
in this section, except for a penalty or
forfeiture imposed by statute;

for the recovery of a penalty or forfeiture, whether given by statute or arising out of contract, not exceeding \$1,000;

to give judgment without action upon the confession of the defendant in any of the cases specified in this section, except for a penalty or forfeiture imposed by statute;

to give judgment of conviction upon a plea of guilty by the defendant in a criminal proceeding within the jurisdiction of the district court.

to hear, try, and enter judgments in all cases involving misdemeanors, if the defendant consents in writing that the magistrate may try the case;

to hear, try and enter judgments in all cases involving infractions under AS 28 and violations of ordinances of political subdivisions;

repealed by § 8 ch 110 SLA 1967. (§ 19 ch 184 SLA 1959; am § 5 ch 100 SLA 1960; am § 1 ch 85 SLA 1961; am § 2 ch 91 SLA 1961; am § 10 ch 70 SLA 1964; am § 3 ch 24 SLA 1966; am § 8 ch 110 SLA 1967; am § 1 ch 19 SLA 1968; am § 20 ch 71 SLA 1972; am § 1 ch 65 SLA 1978)

Cross references. — As to declaration of judgment proceeding under magistrate, see AS 28.01.20 et seq.

Amendments. — The 1978 amendment deleted "other than violations of ordinances of political subdivisions" and "cases involving misdemeanors" and inserted "infractions

under AS 28.01.010 — 28.35.270 and" in paragraph (7).

Editor's notes. — This section was redrafted by the revisor of statutes to remove personal pronouns in conformity with AS 01.05.031(c) and § 4, Chapter 58, SLA 1982.

NOTES TO DECISIONS

Magistrates are "judges of other courts within the meaning of Alaska Statute, art. IV, § 4. Buckalew v. Holloway, 604 P.2d 182 (File No. 1988 (File No. 4058), 604 P.2d 182 (1979).
Applied in Larson v. State, Sup. Ct. Op.

No. 1430 (File No. 2433), 564 P.2d 365 (1977).

Stated in Theodore v. State, Sup. Ct. Op. No. 305 (File No. 550), 407 P.2d 182 (1965), cert. denied, 384 U.S. 951, 86 S. Ct. 1570, 16 L.Ed.2d 547 (1966).

Cross references. — Constitutional restrictions on nonattorney acting

as judge in criminal proceeding. 71 ALR3d 562.

Sec. 22.15.130. Seal of court.

Repealed by § 2 ch 64 SLA 1974.

Cross references. — As to seals of courts, see AS 22.05.060.

derived from § 9, ch. 184, SLA 1959; § 5, ch. 143, SLA 1968.

Editor's note. — The repealed section

Sec. 22.15.140. Process. Process of the district court shall be in the name of the State of Alaska, be signed by the district judge, magistrate,

CHAPTER 91

AN ACT

Relating to the district magistrates court; amending Ch. 184, SLA 1959; and providing for an effective date.

(S.S.S.B. 78)

Be it enacted by the Legislature of the State of Alaska: 19, Ch. 184, SLA 1959 are amended to read:

Section 1. Sec. 8, Ch. 184, SLA 1959 is amended by the addition of Subsec. (4) to read:

(4) When the claim for relief so requests and does not exceed \$500.00 exclusive of costs, interest and attorneys fees, the district magistrate or deputy magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard forms to assure simplicity and the expeditious handling of small claims.

Sec. 2. Subsecs. (1), (2) and (3), Sec.

(1) For the recovery of money or damages only when the amount claimed exclusive of costs, interest and attorneys fees does not exceed \$500.00;

(2) For the recovery of specific personal property, when the value of the property claimed and the damages for the detention do not exceed five hundred (\$500.00) dollars;

(3) For the recovery of any penalty or forfeiture, whether given by statute or arising out of contract, not exceeding five hundred (\$500.00) dollars;

Sec. 3. This Act takes effect on May 1, 1961.

Approved April 14, 1961

CHAPTER 92

AN ACT

Relating to the relief of tax liability incurred under the Cigarette Tax Act; and providing for an effective date.

(S.B. 128)

Be it enacted by the Legislature of the State of Alaska:

Section 1. The purpose of this Act is to relieve the tax liability of a class of vendors of tobacco products who the legislature has determined have in good faith attempted to comply with the Cigarette Tax Act, but who have been over a period of approximately three years misinformed by the state as to their liability and who have as a result not collected any cigarette tax from the retailer of ultimate consumer of cigarettes purchased on military reservations. The legislature determines that this tax relief is necessitated by the gross inequity created by

the state in giving misinformation regarding tax liability, and that this relief is given to this class of taxpayers in the best interest of the state.

Sec. 2. Vendors of tobacco products are relieved of any tax liability, including penalties and interest, incurred under Ch. 187, SLA 1955, before December 1, 1961 for cigarettes acquired for sale or resale through vending machines on military reservations when the tax was not included in the retail sales price.

Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without such approval.

Approved April 14, 1961

District court lacked jurisdiction over action for accrued rent. — Where district court had no jurisdiction over forcible entry and detainer in district court also lacked jurisdiction to grant judgment on a second cause of accrued rent under the special summons used in forcible entry and detainer actions. *McDowell v. State*, Sup. Ct. Op. No. 1242 (File No. 1346 P.2d 1315 (1976)).
 Serving as a district judge constitutes the "practice of law." In re Application of Brewer, Sup. Ct. Op. No. 864 (File No. 1643, 506 P.2d 676 (1973)).
 District judge is continuously involved with legal problems of a wide variety as indicated by the statutory juris-

diction of the district court, and the nature of the judge's duties includes conducting court hearings, ruling on questions of evidence, and adjudicating issues of law and fact, so as clearly to constitute the "practice of law." In re Application of Brewer, Sup. Ct. Op. No. 864 (File No. 1643), 506 P.2d 676 (1973).

Applied in *Oxereok v. State*, Sup. Ct. Op. No. 2076 (File No. 3902), 611 P.2d 913 (1980).

Cited in *Dowling Supply & Equip., Inc. v. City of Anchorage*, Sup. Ct. Op. No. 739 (File No. 1450), 490 P.2d 907 (1971); *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

§ 22.15.040. Small claims. When a claim for relief does not exceed \$2,000 exclusive of costs, interest and attorney fees, and request for judgment, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved. The supreme court shall prescribe the procedural rules and standard of review to assure simplicity and the expeditious handling of small claims. (AS 22.15.040 ch 184 SLA 1959; added by § 1 ch 91 SLA 1961; am § 1 ch 10 SLA 1970; am § 1 ch 23 SLA 1978)

References. Small claims rules promulgated in District Court Civ. R. 1978.
 Effect of amendments. — The 1978 amendments increased the maximum limit

for small claims from \$1,000 to \$2,000.
 Legislative history reports. — For report on 1961 amendment see 1961 House Journal, pp. 314, 315.

- NOTES TO DECISIONS -

Magistrates are "judges of other courts" within the meaning of Alaska Stat. § 4. Buckalew v. Holloway, 1979, 1988 (File No. 4058), 604 P.2d 1071 (1979).
 Notice to indigent bush defendants. — Greater tailoring of notice to the needs and circumstances of indigent defendants requires the communication of substantially more information about the methods by which such defendants can respond to a lawsuit than is presently imparted. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).
 Notice that fails to inform the indigent defendant of the right to file a motion for judgment is not reasonably calculated to afford the defendant an opportunity to be heard at a meaningful time and

in a meaningful manner. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).
 The summons served upon indigent bush defendants in a small claims action was constitutionally defective because it did not adequately convey the information necessary to their defense against a creditor's claim. The district court's assumption of personal jurisdiction over the debtors based on such a summons therefore violated the due process rights which inure to the debtors under Alaska Const., art. I, § 7. *Aguchak v. Montgomery Ward Co.*, Sup. Ct. Op. No. 1026 (File No. 1940), 520 P.2d 1352 (1974).

Counsel for collection suit defendants. — The bulk of collection suit defendants, due to indigency, cannot afford to engage counsel to advise them of their "venue" rights. *Aguchak v. Montgomery*

ALASKA COURT SYSTEM

SB77 - SMALL CLAIMS JURISDICTIONAL LIMITATION AND DUTIES OF MAGISTRATES

FISCAL IMPACT

It is anticipated that the increase in small claims jurisdiction from \$2,000 to \$5,000 will have a significant impact on court operations.

The Civil Division of the Anchorage Clerk's Office, which is the court location with the greatest number of small claims filings, anticipates that a jurisdictional increase would result in a 15-20% increase in small claims filings. Some of these cases would be matters previously handled in District Court. Others would be new to the system, representing legal problems with a relatively low dollar amount involved for which persons are reluctant to incur the costs entailed for an attorney, but which they wish to handle themselves in small claims court.

Additionally, some litigants would be willing to waive the amount of their claim over \$5,000 and proceed in small claims court, balancing the waiver of the claim amount against the savings in attorney fees in small claims.

Judicial resources should not be impacted by the increase since most of these types of cases are already in the system. However, additional clerical help will be required. The small claims procedures involve an extensive amount of clerical assistance, including mailing notices for litigants and substantial time expended in advising the public. General District Court matters require only simple filing and journaling of documents. This impact could be handled by the addition of three and one-half (3½) positions with costs calculated on the following page. One and one-half of these positions would be located in Anchorage. Fairbanks and Juneau would each receive one position.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQ'EST

Bill/Resolution No.: SB 77
 Title: Small Claims Jurisdiction
al Lmt. and Duties of Magistrates
 Sponsor: Senate Judiciary
 Requestor: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Alaska Court System
 Program Category Affected: Administration of Justice
 BRU, Program or Subprogram(s) Affected: Trial Courts

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		94.8	100.5	106.5	112.9	119.7
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES		2.0	2.1	2.2	2.3	2.4
500 EQUIPMENT		9.0				
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.8	102.6	108.7	115.2	122.1

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		105.8	102.6	108.7	115.2	122.1
FEDERAL FUNDS						
OTHER						
TOTAL		105.8	102.6	108.7	115.2	122.1

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

Prepared By: Roger Lewis
 Division: Senate Judiciary Committee

Phone: 465-3717
 Date: 1/22/85

Approved by Commissioner: [Signature]
 Agency: Alaska Court System

Date: 1/22/85

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

7/1/84

ALASKA COURT SYSTEM
FISCAL NOTE ANALYSIS

SB77 - SMALL CLAIMS JURISDICTIONAL LIMIT
AND DUTIES OF MAGISTRATES

PERSONNEL:	SALARY	BENEFITS	TOTAL COST
1½ COURT CLERK I (Anchorage - 3B)	\$28,926	\$10,418	\$39,344
1 COURT CLERK I (Fairbanks - 8B)	21,744	7,496	29,240
1 COURT CLERK I (Juneau - 8B)	19,284	6,945	26,229

Total Personnel Costs			94,813
SUPPLIES			2,000
EQUIPMENT (one-time items)			8,996

TOTAL FY 86 COST			\$105,809
			=====

Subsequent fiscal years adjusted to reflect 6% inflation.



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.

James O. Smith
Signature of Camera Operator

11/7/89
Date

S B

g o

POSITION PAPER

SENATE BILL 80

"An Act relating to the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date."

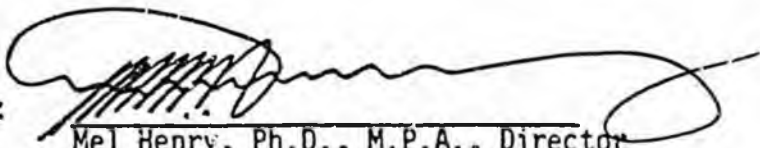
In October, 1982, Chapter 143, SLA 1982 became effective. That Act, among other things, revised Alaska's criminal laws relating to insanity and competency to stand trial. One revision that was contained in the Act requires that two psychiatrists or two forensic psychologists must be appointed to examine defendants under A.S. 12.47.070. Prior to the 1982 revision only one psychiatrist was required by statute to perform these examinations. The amendment proposed in Senate Bill 80 would give the court the option of appointing only one psychiatrist or forensic psychologist if the requirement under A.S. 12.47.070 that two psychiatrists or forensic psychologists examine the defendant is waived by both the defendant and the prosecuting attorney.

We believe that many, if not most, of these examinations can be adequately performed by utilizing only one psychiatrist or forensic psychologist. A large percentage of these exams are currently being done by the Forensic Services Team from Alaska Psychiatric Institute. The exams are performed in the Anchorage area correctional centers. If the court is required to routinely appoint two psychiatrists or forensic psychologists to examine these defendants, and Alaska Psychiatric Institute is ordered to perform the exam, a second psychiatrist that has in-hospital responsibilities must be detailed to the correctional center in order to perform the second psychiatric examination.

According to the staff at Alaska Psychiatric Institute, approximately 170 defendants per year are ordered by the courts to undergo psychiatric examinations by the Forensic Services Team. Of those that are referred to the Forensic Team, approximately 30 specifically require two psychiatrists to perform the same psychiatric examination. After completing the first psychiatric examination by the Forensic Team, if the second psychiatric examination is deemed to be unnecessary or would needlessly duplicate the findings of the first examination, the court is notified. In about half of these cases, the court agrees to limit the number of psychiatric examinations to one rather than two conducting the examinations as specified in A.S. 12.47.070. Basically, what is currently happening in practice is what is being proposed in Senate Bill 80. The amendment will simply codify the existing practice.

It is our position that this practice of routinely appointing two psychiatrists or forensic psychologists to examine criminal defendants oftentimes an unnecessary duplication of effort that can be avoided by passage of Senate Bill 80. Accordingly, the Department of Health and Social Services supports the passage of this bill.

Recommended by:

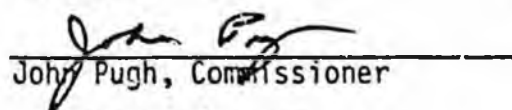


Mel Henry, Ph.D., M.P.A., Director

Date:

1-28-85

Approved by:



John Pugh, Commissioner

Date:

1/30/85

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 22, 1985

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
Pouch V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that allows a criminal defendant and prosecuting attorney to waive the requirement that the court appoint two qualified psychiatrists or forensic psychologists to examine certain criminal defendants. If that requirement is waived, the court would only have to appoint one such psychiatrist or psychologist.

Under present law (AS 12.47.070(a)), if a defendant has filed notice of intent to rely on the defense of insanity or notice of intent to rely on evidence tending to negate a culpable mental state; if there is reason to doubt the defendant's fitness to proceed; or if there is reason to believe that a mental disease or defect of the defendant will otherwise become an issue in the case, the court is required to appoint at least two psychiatrists or psychologists to examine the defendant. The waiver authorized by this bill would avoid unnecessary duplication in cases in which the prosecution is satisfied with the appointment of a single psychiatrist, and the defendant does not wish to undergo more than one court-ordered examination. This waiver will be especially helpful in cases in which two state psychiatrists from the Alaska Psychiatric Institute would be appointed to perform the examinations.

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: 24 ~~87~~ 80
 Title: "...the number of psychiatrists...to examine a crim. defendant."
 Sponsor: Senate Rules/Governor
 Requestor: Governor's Ofc./OMB
 Date of Request: 12/18/84

FISCAL DETAIL

Agency 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
OPERATING						
100 PERSONAL SERVICES		-				
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
500 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

- CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

This bill would allow a criminal defendant and the prosecuting attorney to waive the requirement that the court appoint two qualified psychiatrists or forensic psychologists to examine certain defendants. If that requirement is waived, the court would only have to appoint one psychiatrist or psychologist, saving considerable expense on the part of the Division of Mental Health and Developmental Disabilities. This bill will not have a fiscal impact on the Department of Law's Operations.

Prepared By: Richard I. Pegues, Director
 Division: Administrative Services

Phone: 465-3672
 Date: 12/19/84

Approved by Commissioner: Richard I. Pegues / FOR
Norman C. Gorsuch
 Agency: Department of Law

Date: 12/19/84

Distribution (by Agency preparing fiscal note):

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

Experience has shown that the requirement to appoint two psychiatrists is not always necessary, either to assist the court or to protect the public or the defendant. Experience has also shown that simply reducing this requirement to only one psychiatrist or psychologist would tend to weaken protection of the public since appointment of a prosecution expert would not be assured. This bill, based on that experience, seeks to achieve the most equitable result.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill Sheffield".

Bill Sheffield
Governor

POSITION PAPER

CS for Senate Bill No. 80 (HESS)

"An Act relating to the number of psychiatrists or psychologists appointed to examine a criminal defendant; and providing for an effective date."

The Committee Substitute for Senate Bill 80 does not alter the language or intent of Section 1 in the original version of Senate Bill 80. Thus our earlier Position Paper, dated January 30, 1985 (copy attached), accurately reflects our analysis and position with regard to Section 1 of the Committee Substitute.

The CS for SB 80 adds a new Section 2. This section, which amends A.S. 12.47.100, would tend to make this statute consistent with A.S. 12.47.070 by requiring the court to appoint two psychiatrists to examine a criminal defendant for competency to stand trial unless the defendant and the prosecuting attorney waive this requirement. In our opinion, it is indeed appropriate that these two statutes be consistent with respect to the number and types of examiners that are required to perform examinations on defendants undergoing criminal proceedings when mental disease or defect may become an issue.

Accordingly, we recommend that the same language that is in Section 1, line 16 through line 24 regarding the number and types of examiners under A.S. 12.47.070 should be repeated in Section 2 which refers to examinations under A.S. 12.47.100 and replace the language currently on line 15 through line 19. The existing language in Section 2 only requires that two qualified psychiatrists be appointed. This change will permit the court the option of appointing two qualified psychiatrists or two forensic psychologists to perform these exams. It will also authorize the psychiatrists that are appointed the opportunity to select psychologists to provide assistance in completing the examinations under A.S. 12.47.100.

The Department of Health and Social Services supports passage of the Committee Substitute for Senate Bill 80 with the recommended change that is noted above.

Recommended by: PPD for Mel Herry
 Mel Herry, Ph.D., M.P.A.

Date: 4/18/85

Approved by: John Pugh
 John Pugh, Commissioner

Date: 4/23/85

STATE OF ALASKA 1985 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: SB 80
 Title: An Act relating to the number of psychiatrists appointed
 Sponsor: Rules Committee
 Requestor: Governor
 Date of Request: January 28, 1985

FISCAL DETAIL

Department of Health
 Agency Affected: and Social Services
 Program Category Affected: Division of Mental Health and Developmental Disabilities & API
 BRU, Program or Subprogram(s) Affected: Mental Health Institutions and Administration

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

See Attached

Prepared By: James L. Scoles
 Division: Mental Health & Developmental Disabilities

Phone: 465-3370
 Date: 1-28-85

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

Date: 1/30/85 JCC

Distribution (by Agency preparing fiscal note):

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

The Division of Mental Health and Developmental Disabilities does not foresee any decrease in our personnel services expenditures as a result of the passage of Senate Bill 80. In those cases in which the defendant and the prosecuting attorney waive the requirement that two psychiatrists perform the examination, the second Alaska Psychiatric Institute psychiatrist will simply continue with his in-house treatment responsibilities for mentally ill patients at the hospital. It should, however, result in the addition of more direct treatment services being available inside Alaska Psychiatric Institute as a result of the reduction in staff time by the second psychiatrist that is currently necessary to perform these court-ordered exams in the correctional centers.

COMMITTEE REPORTS (Senate)(cont'd)

Alcoholic Beverages
(sale & distribution)

SENATE BILL NO. 69, (see page 94). Reported back to the Senate on April 9 by Community & Regional Affairs with the committee recommending it be replaced with a C&RA substitute and that it do pass. Concurring: DeVries (Chmn.), Coghill, Vic Fischer and Sturgulewski. To Judiciary.

The C&RA CS deletes Sec. 11 from the bill. That section amended AS 04.16.030 (Sale or Disposition of Alcoholic Beverages to Drunken Persons) to prohibit a licensee, his agent, or employee from allowing a drunken person to enter or (currently and) remain within licensed premises or to consume an alcoholic beverage within licensed premises.

CS also makes a drafting change to Sec. 9--no change to amendment contained therein.

Psychiatric Exam. of Criminal Defendants

SENATE BILL NO. 80, (see page 101). Reported back to the Senate on April 11 by Health, Education & Social Services with the committee recommending it be replaced with a HESS substitute and that it do pass. Concurring: Fahrenkamp (Chmn.), DeVries, Sturgulewski, Josephson and Paul Fischer. To Judiciary.

The HESS CS adds new Sec. 2 amending AS 12.47.100(b) (Incompetency to proceed). Amended to provide that after a motion has been filed for judicial determination of the mental competency of the accused, or on the motion of the court, the court shall "appoint at least two qualified psychiatrists to examine and report upon the mental condition of the defendant. However, if both the defendant and the prosecuting attorney waive the requirement for the appointment of at least two psychiatrists, the court shall appoint one psychiatrist." Presently reads that upon such a motion the court shall "have the accused, whether or not previously admitted to bail, examined by at least one qualified psychiatrist, who shall report to the court concerning the mental condition of the accused."

Motor Vehicle Laws
(amending)

SENATE BILL NO. 84, (see pages 106;303). Reported back to the Senate on April 10 by Judiciary with the committee recommending it be replaced with a Judiciary substitute and that it do pass. Concurring: Kelly (Vice-Chairman), Halford, Faiks and Ziegler. To Finance.

The Judiciary CS makes the following changes to the State Affairs version:

--Deletes Sec. 3 (see p. 106, summary of original).

--Deletes Sec. 5 (see p. 107, paragraph 2).

--Adds new Sec. 6 directing the Dept. of Community & Regional Affairs to reimburse a municipality for revenues lost due to the senior citizen exemption from payment of municipal auto registration tax. If appropriations to fund the reimbursements are less than the amount required to fully reimburse each municipality, the amount appropriated shall be distributed pro rata.