

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

455 HHS HB 348 - HB 361

(c) In determining a rate of payment to a health facility under this section, the department [COMMISSION] may consider whether the rate of utilization of the facility has been reduced because of improvident or careless development of the facility.

(d) In determining a rate of payment to a health facility under this section, the department [COMMISSION] shall consider the appropriation limit set by the legislature for the department's programs under this chapter and under AS 47.25.120-47.25.300, and available federal revenue.

* Sec. 3. AS 47.07.073 is amended to read:

Sec. 47.07.073 Uniform Accounting, Budgeting, and Financing Reporting.

(a) The department [COMMISSION] by regulation shall require a uniform system of accounting, budgeting, and financial reporting for health facilities receiving prospective payments under this chapter. The regulations shall provide for reporting revenues, expenses, assets, liabilities, and units of service. The department [COMMISSION] shall specify the date the system become effective for each health facility.

(b) In adopting regulations as under this section, the department [COMMISSION] shall consider

(1) accounting, budgeting, and financial reportings procedures used by health facilities;

(2) variations among health facilities in the types of health care services provided by health facilities;

(3) the size and organizational structure of health facilities;

(4) the methods used by health facilities to obtain payments; [AND]

(5) other factors the department [COMMISSION] considers relevant; and [.]

(6) the recommendations of the commission.

(c) The department [COMMISSION] may waive or modify a requirement for accounting, budgeting, or financial reporting for a health facility if waiver or modification is

(1) necessary to avoid excessive costs to the facility; and

(2) consistent with the policies of this chapter.

(d) Notwithstanding other provisions of this section, the department [COMMISSION] may, by regulation, modify the system of accounting, budgeting and financial reporting required under this section for a health facility having fewer than 25 acute care beds in order to reduce the operating costs of that facility.

Sec. 4. AS 47.07.075 is amended to read:

Sec. 47.07.075. Application of Administrative Procedure Act. Action of the department [COMMISSION] under AS 47.07 and AS 47.25.120-AS 25.300 are subject to the provisions of the Administrative Procedure Act (AS 44.62).

Sec. 5. AS 47.07.110 is amended to read:

Sec. 47.07.110. Medicaid Rate Advisory Commission established. The Medicaid Rate Advisory Commission is established in the Department of Health and Social Services.

Sec. 6. AS 47.07.180 is amended to read:

Sec. 47.07.180. Duties. (a) The commission shall review proposed payment rates [AND MAY REVIEW BUDGETS] of health facilities and advise the department on [ESTABLISH] payment rates for health facilities under this chapter and AS 47.25.120-47.25.300.

(b) The commission shall advise [CONSULT WITH] the department on the state plan as it relates to health facilities. [THE COMMISSION MAY NOT CHANGE THE UNIT OF PAYMENT WITHOUT THE WRITTEN CONSENT OF THE DEPARTMENT.]

(c) When the department enters into a substantially revised state plan under AS 47.07.040, and when, as part of the the revised state plan, the department [COMMISSION] adopts regulations which substantially change

the methods used or the factors considered in determining the prospective payment rates, the commission may, at its discretion, recommend the department redetermine the prospective payment rates for all facilities from the effective date of the new regulations forward. Each redetermined rate will be effective from the date of the department's [COMMISSION'S] new order as to each facility.

[(D) BY MARCH 1 OF EACH YEAR, THE COMMISSION SHALL DEVELOP FOR THE FISCAL YEAR STARTING THE NEXT JULY 1 AN ANNUAL ESTIMATE OF MEDICAL ASSISTANCE PROGRAM EXPENDITURES IN HEALTH FACILITIES UNDER THE JURISDICTION OF THE COMMISSION. THE ESTIMATE SHALL CONSIDER ANTICIPATED UTILIZATION AND PAYMENT RATES FOR EACH FACILITY. THE METHODOLOGY USED BY THE COMMISSION TO DEVELOP THE ESTIMATE SHALL BE CONSISTENT WITH THE REGULATIONS GOVERNING THE COMMISSION'S RATE-SETTING PROCESS.]

Sec. 7. AS 47.07.190 is amended to read:

Sec. 47.07.190. Employment of personnel. The department [COMMISSION] may employ and determine the salary of an executive director, who shall provide staff assistance to the commission. With the approval of the department [COMMISSION], the executive director may select and employ additional staff. The commission shall be assisted by the officers and personnel of the department as the commissioner of health and social services shall direct. The executive director of the commission is in the exempt service under AS 39.25.

Sec. 8. AS 47.07.900(4) is amended to read:

(4) "commission" means the Medicaid Rate Advisory Commission;

Sec. 9. Sections 1-7 of this Act take effect immediately under AS
01.10.070(c).

CS#2

Linking Medicaid Rate Commission Set Facility Rates to Approval of Federal State Plan to Ensure Continued Federal Funding

Purpose

This proposed amendment would require any rate set by the Medicaid Rate Commission to comply with federal Medicaid program requirements. The amendment links the effect dates of changes in regulations to the approval of the Medicaid state plan by federal funding authorities. If the rates do not meet with federal requirements and the state plan is not approved, federal funding for the Medicaid program is jeopardized. If the rates for hospitals and other facilities go into effect prior to the federal approval of the plan, the state Medicaid program is at risk whether the federal government will participate in federal funding for these facilities.

* Section 1. AS 47.07.070(a) is amended to read:

The commission shall determine prospectively the rate of payment to a health facility under this chapter and AS 47.25.120-47.25.300 based on a fair rate for reasonable costs incurred by the facility. The rates of payment must be in accordance with provisions of 42 U.S.C. 1396p(Title XIX, Social Security Act, Medical Assistance). The commission shall by regulation list the factors it considers in making its rate determinations under this section. Regulations that require modification of the state plan become effective only after federal approval of the state plan or the amended state plan, except with the prior written approval of the department.

* Sec. 2. AS 47.07.180(c) is amended to read:

When the department enters into a federally approved substantially revised state plan under AS 47.07.040, and when, as part of the federally approved revised state plan, the commission adopts regulations which substantially change the methods used or the factors considered in determining the prospective payment rates, the commission may, at its discretion, redetermine the prospective payment rates for all facilities from the beginning of the first quarter in which the federally approved revised state plan is in effect [THE EFFECTIVE DATE OF THE NEW REGULATIONS FORWARD]. Each redetermined rate will be effective from the date of the commission's new order as to each facility.

* Sec. 3. Sections 1 and 2 of this Act take effect immediately under AS 01.10.070(c).

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FACILITY RATE SETTING

ISSUE

Facility rate setting. Alaska's system for setting medicaid reimbursement rates for private health care facilities is unique. It is the only state that entrusts the rate setting process to a volunteer commission that is wholly outside the control of the executive or legislative branches. The Medicaid Rate Commission (MRC) thus has no legislative mandate to keep facility rates within amounts budgeted by the Department of Health and Social Services and appropriated by the legislature. Aspects of this issue include: mechanisms utilized for rate setting; policies that drive the rates; and potential sanctions by the federal government, which participates in funding through Title XIX of the Social Security Act (medicaid).

HISTORY

The Medicaid Rate Commission was established by the Alaska Legislature in 1984. AS 47.07.110. It consists of five members, including: the chief executive officer of an health facility licensed by the state but not owned or operated by the state or federal government; either the commissioner of administration or health and social services or a designee of either commissioner; a physician licensed to practice and actively practicing medicine in Alaska and not employed by the state; a certified public accountant with relevant experience; and a representative of health services consumers who does not have a direct or indirect interest in an entity providing health care services. *Id.* The members are appointed by the governor and serve at his or her pleasure for three-year terms, which are staggered. AS 47.07.130-140. The commission's duties are to "review proposed payment rates and budgets of health facilities and establish payment rates for health facilities...." AS 47.07.180. The commission is required by statute to "determine prospectively the rate of payment to a health facility...based on a fair rate for reasonable costs incurred by the facility." AS 47.07.070. The statutes detail various factors which must be considered in determining the rate. *Id.*

Since its inception, the Medicaid Rate Commission has set rates at ever-increasing levels. In FY 84, \$21.7632 million was expended by the Department of Health and Social Services in medicaid payments to long-term care facilities. In FY 88 the projected expenditure for long-term facilities medicaid payments is \$29.6313 million, which is 30.1% of the entire medicaid budget. Percentage increases in rates paid to long-term care facilities between FY 83 and FY 88 are provided in the attachment. The lowest percentage increase in that period is 12.93%; the highest is 131.05%. The average increase is 42.45% in that period. *Id.* The average daily rate paid to private long-term care facilities in FY 1988 is \$212.11. *Id.*

The dramatic increase in medicaid rates has not resulted in large numbers of seniors being served by medicaid-funded long-term care. In FY 86, the total general fund medicaid expenditures for seniors (age 65 or over) were \$14,823,000. Of that total, \$3,823,000 was expended for non-long term facilities, which served 2,123 seniors at an average expenditure of \$1,801 per recipient. A total of \$11,000,000 was expended for medicaid long term care, which served 539 seniors at an average expenditure of \$20,408 per recipient. *See Halterman Report, Table 1.*

The increased rates authorized by the MRC are due to a combination of factors. The prospective rate setting system is based on costs incurred by the facilities during

a base year, which in practice has meant their previous fiscal year plus an inflation factor. The statutes set out the costs to be considered in setting rates and the MRC has, at the legislature's direction, promulgated regulations enumerating the rate-setting factors. In formulating rates, the MRC evaluates various components of facility costs during their base year, including: costs of current operation, including salaries and wages, purchased services, supplies, insurance, leases, depreciation, taxes, interest expense, maintenance and other operating expenses; education; research; and appropriate capital development. AS 47.07.070; 7 AAC 43.685. In practice, the rate has been based on the actual historical costs of operating facilities. Alaska, unlike most states, does not impose an upper limit on reimbursement amounts to facilities.

The only statutorily-imposed standards require that the rate of payment be based on a fair rate for reasonable costs incurred by the facility. AS 47.07.070(a). Additionally, the MRC, in determining a rate, "may consider whether the rate of utilization of the facility has been reduced because of improvident or careless development of the facility." AS 47.07.070(c). Other than the generic cost items specified in the statute creating the MRC, the "fair rate for reasonable costs" language, and a statutory directive that the MRC "consider the appropriation limit set by the legislature for the department's programs under [portions of Title 47] and available federal revenue" (AS 47.07.070(d)), there are no statutorily-imposed restrictions on what rates the MRC sets. However, the purpose section of the statute authorizing the Department of Health and Social Services to participate in the medicaid program is instructive. It provides that: "It is declared as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." AS 47.07.010.

Ninety percent (90%) of residents in long-term care facilities received medicaid coverage in April 1987, which is a typical month. See *Halterman Report* at 6. Since medicaid is a system which reimburses providers directly, every dollar of the approved rate flows directly to the institutions rendering the long-term care services. The national average cost of long-term care is \$56 per day; the average daily rate in Alaska as of FY 88 is \$212. *Id.* at 13-14; attachment. Thus, Alaska's daily rate is almost 400% of the national average. The higher cost of living in Alaska has been alluded to numerous times by the health care industry. See *A Study of Factors Influencing Acute and Long Term Care Costs in Alaska*. However, the 400% differential in daily rates is well above the increased cost of living in Alaska. The justification that it costs more because it costs more is no justification at all.

The overriding factor identified in the exorbitant rates paid to facilities in Alaska is the rates set by the MRC, which reimburse for almost all costs, no matter how inefficient a facility may be. The current rate structure does not reward thrift and ingenuity in administering a facility nor does it consider the fact that many of the co-located and long-term facilities were originally constructed with state grants. The MRC's rates thus allow facilities to obtain reimbursement for capital costs and depreciation, both of which were originally funded from state dollars. In essence, the rates reward higher and higher expenditures and does not provide an offset for capital costs originally incurred by the state. The medical industry knows full well that whatever it spends, it will likely be reimbursed through the medicaid rate. The medical industry's response has been that there is a higher level of service in Alaska. One doubts that any level of service could justify such a cost differential in daily rates.

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Has the MRC, through its prospective rate setting process, in effect discriminated against non long-term medicaid eligible Alaskans by setting rates so high that funding for other needy Alaskans is greatly reduced? Have the high medicaid payment rates resulted in high rates being charged to people ineligible for medicaid, so that retired persons living on modest retirement incomes are unable to afford institutional care? It appears so. The next question is, why? If the true purpose of Alaska's participation in the medicaid program is to ensure all needy recipients of access to medical care, why does the legislature continue to permit the MRC to operate as an independent body with no external and only few internal controls? If, instead, Alaska's public policy is to use the medicaid program to subsidize long-term care facilities which have small occupancy rates and inversely high daily rates, it should be so stated.

The MRC, viewed in a historical context, has operated quite well to insure facility survival. However, such is not the purpose of the federal medicaid statute, which was enacted by Congress to ensure that all categories of eligible needy persons receive needed medical care. The effect of the MRC prospective rate setting system is becoming clear to not only Alaskans, but to the federal government, which currently matches Alaska's medicaid contribution. The federal government has recently advised the Division of Medical Assistance that although there is no upper limit on reimbursements in state law, there is an upper limit under federal criteria, which the state is exceeding. Thus, there very well may come a time, and soon, when the federal government refuses to match the State of Alaska's facility medicaid costs or matches only the 50% it deems reasonable. The state would then be liable to use general fund monies to make up the difference. Loss of federal dollars would be a heavy price to sustain an unstated policy of ensuring facility survival no matter how cost ineffective the facility may be.

POPULATION AFFECTED

All Alaskans are potentially affected by this issue. Eligible medicaid populations may not receive funding for their medical needs if facility reimbursements continue not only to soak up the largest share of the DMA's total budget, but to require large annual increases in that budget. The Legislature has already signaled its unwillingness to fund DMA at requested levels. Two years ago, the state was forced to eliminate many services previously funded through the general relief medical program, which is solely a state funded medical program for the truly needy. In addition, no funds have been appropriated for the catastrophic illness program for the past two fiscal years. The Department of Health and Social Services has recently submitted a supplemental request of \$18.3 million for the remainder of FY 88, basically to cover the ever-increasing costs of payments to facilities. Medical assistance for the needy cannot continue to depend on ever-increasing emergency requests to the Legislature.

Everyone is suffering during these times of fiscal austerity. As the economy continues to bottom out, many Alaskans are finding themselves in need of medical care. However, due to decreasing funding, those needs could go unmet. It is against this backdrop that the fundamental unfairness of the current medicaid reimbursement system must be viewed. Should the state, as a conscious or unconscious public policy decision, fund ever-increasing private facility costs while the medical needs of other deserving Alaskans go unmet?

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OPTIONS TO ADDRESS THE ISSUE

The following are three ^{recommendations} ~~options~~ to consider:

1. Abolish the MRC and authorize the DHSS to perform the rate setting function; the DHSS could therefore ensure that the total facility reimbursement rate does not drive its entire budget and could ensure that the rate paid is not a subsidy to the facilities at the expense of all other classes of medical consumers served by DHSS. Staff of the MRC should be left in place and become employees of the Department of Health and Social Services.
2. Continue the MRC within the Department of Health and Social Services in an advisory capacity to the Commissioner. The Department would enact regulations providing the policies under which the MRC would propose rate setting regulations.
3. If the MRC continues to exist in statute, there must be statutory criteria to limit facility reimbursement, including authority to impose a ceiling on reimbursement rates.

EXPLANATION OF COMMITTEE SUBSTITUTES FOR HB 348

CS #1 - Changes to the Medicaid Rate Commission to Advising the Department on Medicaid Facility Rates.

CS #2 - Links Medicaid Rate Commission Set Facility Rates to Approval of Federal State Plan to Ensure Continued Federal Funding.

CS #3 - Eliminates the Medicaid Rate Commission

Original sponsor: Rules/Governor

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 348 ()
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Medicaid Rate Commission and
7 prospective payments to health facilities for certain
8 medical services; and providing for an effective
9 date."

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

11 * Section 1. AS 39.25.120(c) is amended by adding a new paragraph to
12 read:

13 (21) executive director for prospective payments to health
14 facilities in the Department of Health and Social Services.

15 * Sec. 2. AS 47.07.040 is amended to read:

16 Sec. 47.07.040. STATE PLAN FOR PROVISION OF MEDICAL ASSISTANCE.
17 The department shall prepare a state plan under [IN ACCORDANCE WITH]
18 the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social Security
19 Act, Medical Assistance) and submit it for approval to the United
20 States Department of Health and Human Services. The plan shall desig-
21 nate [THAT] the Department of Health and Social Services as [IS] the
22 single state agency to administer this plan. The department shall act
23 for the state in [ANY] negotiations relative to the submission and
24 approval of the plan. The department [, INCLUDING THE MEDICAID RATE
25 COMMISSION,] may make those arrangements or regulatory changes, not
26 inconsistent with law, as may be required under federal law to obtain
27 and retain approval of the United States Department of Health and
28 Human Services to secure for the state the optimum federal payment
29 under the provisions of 42 U.S.C. 1396 - 1396p (Title XIX, Social

1 Security Act, Medical Assistance). In addition, the department shall
2 provide a report to the legislature by [NO LATER THAN] March 15 of
3 each year concerning the status of this program and recommendations,
4 with supporting fiscal data, as to [ANY] changes in the coverage of
5 eligible persons or services to be provided.

6 * Sec. 3. AS 47.07 is amended by adding a new section to read:

7 Sec. 47.07.065. PROSPECTIVE PAYMENT SYSTEM. The department
8 shall adopt regulations necessary to implement a system of prospective
9 payments to health facilities under this chapter.

10 * Sec. 4. AS 47.07.071 is amended to read:

11 Sec. 47.07.071. REPORTS BY HEALTH FACILITIES. Not later than
12 120 days after the end of the [EACH] fiscal year of a health facility,
13 the facility shall submit to the department [COMMISSION] a report on
14 the facility's financial performance during the fiscal year.

15 * Sec. 5. AS 47.07.072 is amended to read:

16 Sec. 47.07.072. REPORT BY THE DEPARTMENT [COMMISSION]. Not
17 later than September 30 of each year, the department [COMMISSION]
18 shall submit to the governor a report on the prospective payments made
19 under this chapter during the current fiscal year and an estimate of
20 the prospective payments that will be made during the remainder of the
21 current fiscal year and the next fiscal year. The report shall state
22 the assumptions that are used as a basis for the estimates.

23 * Sec. 6. AS 47.07.190 is amended to read:

24 Sec. 47.07.190. EMPLOYMENT OF PERSONNEL. The commissioner
25 [COMMISSION] may employ and determine the salary of an executive
26 director for prospective payments to health facilities. With the
27 approval of the commissioner [COMMISSION], the executive director may
28 select and employ additional staff. [THE COMMISSION SHALL BE ASSISTED
29 BY THE OFFICERS OR PERSONNEL OF THE DEPARTMENT AS THE COMMISSIONER OF

1 HEALTH AND SOCIAL SERVICES SHALL DIRECT.] The executive director [OF
2 THE COMMISSION] is in the partially exempt service under AS 39.25.120
3 [AS 39.25].

4 * Sec. 7. AS 47.07.900 is amended by adding a new paragraph to read:

5 (11) "commissioner" means the commissioner of health and
6 social services.

7 * Sec. 8. AS 47.25.195(b) is amended to read:

8 (b) A health facility receiving a payment under this chapter is
9 subject to the requirements of AS 47.07 [AS 47.07.070 - 47.07.075].

10 * Sec. 9. AS 47.25.195(d) is amended to read:

11 (d) If insufficient money is appropriated to fund medical assis-
12 tance under AS 47.25.120 - 47.25.300 when taking into consideration
13 projected use and the health facility payment rates established under
14 AS 47.07 [IN ACCORDANCE WITH (b) OF THIS SECTION], the department may,
15 by regulation, establish at any time in the fiscal year a prospective
16 pro rata reduction of the facilities' established payment rates that
17 will be paid by the department for services provided by facilities
18 under AS 47.25.120 - 47.25.300;

19 * Sec. 10. AS 47.25.195(e) is amended to read:

20 (e) Notwithstanding (a) - (d) of this section, the department
21 may enter into agreements with any facility to provide services at a
22 payment rate lower than the rate established under AS 47.07 [IN ACCOR-
23 DANCE WITH (b) OF THIS SECTION].

24 * Sec. 11. AS 39.25.110(23); AS 47.07.070, 47.07.073, 47.07.074, 47.-
25 07.075, 47.07.110, 47.07.120, 47.07.130, 47.07.140, 47.07.150, 47.07.160,
26 47.07.170, 47.07.180, and 47.07.900(4) are repealed.

27 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).
28
29



Alaska State Legislature

Please enter into the record my testimony to the HES (HOUSE HESS)
 committee name
 committee on HB 348, dated 15 MARCH 88
 bill/subject

MY APOLOGIES TO THE COMMITTEE, I MISUNDERSTOOD THE QUESTION OF ELIGIBLE PATIENTS REQUESTING CARE. SITKA COMMUNITY HOSPITAL HAS AN EXCELLENT RECORD AND TO THE BEST OF MY KNOWLEDGE SITKA COMMUNITY HOSPITAL HAS HAD NO DENIALS OF ELIGIBILITY FOR CARE, INDICATING AN EFFICIENT SCREENING PROCESS FOR BENEFICIARIES OF SPECIFIC PROGRAMS AND A NON ABUSE OF THE SYSTEM HERE IN SITKA.

Signed: Edward Malenski EDWARD MALENSKI
 Testifier

SITKA COMMUNITY HOSPITAL

Representing (Optional)

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H B

354

HOUSE COMMITTEE REPORT

(7)

Date referred: 1/12/88

FURTHER REFERRALS: Judiciary

DATE: April 13, 1988

The Health, Education and Social Services Committee has considered HB 354

"An Act relating to driving while intoxicated; and providing for an effective date."

RECOMMENDS:

- replace with CHB 354 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature] No Rec.

[Signature] - No Rec.

[Signature]

[Signature]
Co-Chairman's signature

[Signature]

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
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May, 1988

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

Mary Van Nimwegen

H HESS	4-13-88	8:30a.m.
H HESS	4-12-88	8:30a.m.,

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

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

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

8 (7) using a motor vehicle in unlawful flight to avoid
9 arrest by a peace officer;

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

3 * Sec. 5. AS 28.15.181 is amended by adding a new subsection to read:

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license,
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of (1) not less than 72 hours
23 if the person has not been previously convicted in this or another
24 jurisdiction under this or another law or ordinance with substantially
25 similar elements; (2) not less than 10 consecutive days if, within the
26 preceding 10 years, the person has been previously convicted once in
27 this or another jurisdiction under this or another law or ordinance
28 with substantially similar elements; and (3) not less than 20 consecu-
29 tive days if, within the preceding 10 years, the person has been

1 previously convicted more than once in this or another jurisdiction
2 under this or another law or ordinance with substantially similar
3 elements [10 DAYS]. The execution of sentence may not be suspended
4 nor may probation or parole be granted until the minimum imprisonment
5 provided in this section has been served; nor may imposition of sen-
6 tence be suspended. In addition, the person's license, [OR] privilege
7 to drive, or privilege to obtain a license shall be revoked, and the
8 person may not be issued a new license nor may the privilege to drive
9 be restored for an additional period of not less than 90 days [ONE
10 YEAR] after the date that the person would have been entitled to
11 restoration of driving privileges.

12 * Sec. 7. AS 28.15.291(c) is amended to read:

13 (c) The court shall impose a sentence of imprisonment of not
14 less than 20 [30] days and a fine of not less than \$500 upon con-
15 viction of a violation of this section if the person's driver's li-
16 cense, privilege to drive, or privilege to obtain a license was re-
17 voked under circumstances described in AS 28.15.181(c)(1). The court
18 shall impose a sentence of imprisonment of not less than 30 [90] days
19 and a fine of not less than \$1,000 upon conviction of a violation of
20 this section if the person's driver's license, privilege to drive, or
21 privilege to obtain a license was revoked under circumstances de-
22 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
23 not be suspended nor may probation or parole be granted until the
24 minimum imprisonment provided in this subsection has been served.
25 Imposition of sentence may not be suspended. In addition, the per-
26 son's privilege to drive shall be revoked for an additional period of
27 not less than 90 days [ONE YEAR] after the date that the person would
28 have been entitled to restoration of driving privileges if the person
29 had not been convicted under this section.

1 * Sec. 8. AS 28.35.030(b) is amended to read:

2 (b) Except as provided in (h) of this section, driving [DRIVING]
3 while intoxicated is a class A misdemeanor.

4 * Sec. 9. AS 28.35.030(c) is amended to read:

5 (c) Upon conviction under this section the court shall impose a
6 minimum sentence of imprisonment of not less than 72 consecutive hours
7 and a fine of not less than \$250 if the person has not been previously
8 convicted in this or another jurisdiction of driving while intoxicated
9 under this or another law or ordinance with substantially similar
10 elements or refusal to submit to a chemical test under AS 28.35.032 or
11 another law or ordinance with substantially similar elements. Upon
12 conviction under this section the court shall impose a minimum sen-
13 tence of imprisonment of not less than 20 consecutive days and a fine
14 of not less than \$500 if, within the preceding 10 years, the person
15 has been previously convicted once in this or another jurisdiction of
16 driving while intoxicated under this or another law or ordinance with
17 substantially similar elements or refusal to submit to a chemical test
18 under AS 28.35.032 or another law or ordinance with substantially
19 similar elements. Upon conviction under this section the court shall
20 impose a minimum sentence of imprisonment of not less than 90 [30]
21 consecutive days and a fine of not less than \$1,000 if, within the
22 preceding 10 years, the person has been previously convicted in this
23 or another jurisdiction of more than one of the following offenses or
24 has more than once been previously convicted of one of the following
25 offenses: (1) driving while intoxicated under this or another law or
26 ordinance with substantially similar elements; (2) refusal to submit
27 to a chemical test under AS 28.35.032 or another law or ordinance with
28 substantially similar elements. The execution of sentence may not be
29 suspended nor may probation be granted except on condition that the

1 minimum imprisonment provided in this section is served. Imposition of
2 sentence may not be suspended. In addition, if the offense involved
3 driving a motor vehicle for which a driver's license is required, the
4 person's driver's license shall be revoked in accordance with AS 28.-
5 15.181 and the vehicle used in commission of the offense may be for-
6 feited under AS 28.35.036. In addition, the court shall order, and a
7 person convicted under this section shall undertake, for a term spec-
8 ified by the court, that program of alcohol education or rehabilita-
9 tion that the court, after consideration of any information compiled
10 under (d) of this section, finds appropriate.

11 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person who, within the preceding 10 years, has been previ-
13 ously convicted three or more times in this or another jurisdiction of
14 the offense of driving while intoxicated or an offense under another
15 law or ordinance with substantially similar elements is guilty of a
16 class C felony. Upon conviction under this section the court shall
17 impose a minimum sentence of imprisonment of not less than six months.

18 * Sec. 11. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction of a person under this section, the court
20 shall impose a minimum sentence of imprisonment of not less than 72
21 consecutive hours and a fine of not less than \$250 if the person has
22 not been previously convicted in this or another jurisdiction of
23 driving while intoxicated under AS 28.35.030 or another law or ordi-
24 nance with substantially similar elements or refusal to submit to a
25 chemical test under this section or another law or ordinance with
26 substantially similar elements. Upon conviction under this section the
27 court shall impose a minimum sentence of imprisonment of not less than
28 20 consecutive days and a fine of not less than \$500 if, within the
29 preceding 10 years, the person has been previously convicted once in

1 this or another jurisdiction of driving while intoxicated under
2 AS 28.35.030 or another law or ordinance with substantially similar
3 elements or refusal to submit to a chemical test under this section or
4 another law or ordinance with substantially similar elements. Upon
5 conviction under this section the court shall impose a minimum sen-
6 tence of imprisonment of not less than 90 [30] consecutive days and a
7 fine of not less than \$1,000 if, within the previous 10 years, the
8 person has been previously convicted in this or another jurisdiction
9 of more than one of the following offenses or has more than once been
10 previously convicted of one of the following offenses: (1) driving
11 while intoxicated under AS 28.35.030 or another law or ordinance with
12 substantially similar elements; (2) refusal to submit to a chemical
13 test under this section or another law or ordinance with substantially
14 similar elements. The execution of sentence may not be suspended nor
15 may probation be granted except on condition that the minimum impris-
16 onment provided in this section is served. Imposition of sentence may
17 not be suspended. If the offense involved driving a motor vehicle for
18 which a driver's license is required, the person's driver's license
19 shall be revoked under AS 28.15.181. In addition, the court shall
20 order, and a person convicted under this section shall undertake, for
21 a term specified by the court, that program of alcohol education or
22 rehabilitation that the court, after consideration of any information
23 compiled under (h) of this section, finds appropriate. The sentence
24 imposed by the court under this subsection shall run consecutively
25 with any other sentence of imprisonment imposed on the committed
26 person.

27 * Sec. 12. This Act takes effect January 1, 1989.
28
29

MEMORANDUM

State of Alaska

TO: Susan Humphrey-Barnett
Commissioner

DATE: April 13, 1988

FILE NO:

TELEPHONE NO: 465-3460

THRU:

SUBJECT: CSHB 354

FROM: Larry A. McKinstry *LAM*
Assistant Attorney General

You have asked whether the terms of CSHB 354 alters or restricts the ability of the Department to place persons convicted and sentenced under its provisions into alternative custodial settings (i.e., community restitution centers, halfway houses, etc) available under existing law.

It is our opinion that, except for the specific limitation upon placement of felons into private contract facilities contained in AS 33.30.031(b), the provisions of CSHB 354 would not alter the ability of the Commissioner to designate appropriate placements of persons committed to her custody.

Existing law requires that persons committed to the Commissioner's custody may be placed in any facility deemed appropriate by the Commissioner (AS 33.30.061). Such persons are further eligible for furlough or alternative custodial placement at the discretion of the Commissioner in accordance with criteria established by Regulation - Sec, AS 33.30.091 - .131 and AS 33.30.151.

However, imposition of a minimum period of imprisonment implies that the Commissioner would not be allowed to release a person from custody. In determining whether a person is in custody, the courts utilize the factors set out in the attached opinion of Nygren v. State 658 P.2d 141, 146 (Alaska App. 1983).

If you have further questions concerning this request, please let me know.

LAM:cc
Attachment

Alaska State Legislature

Committees:

Chair-State Affairs
V. Chair-Judiciary
Telecommunications
Special Ethics
Legislative Council
Finance Subcommittee
for the University of Alaska
Joint Committee
on Economic Recovery



P.O. Box 1
Juneau, Alaska 99811
(907) 465-4947

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

April 11, 1988

TO: Representative Niilo Koponen, Co-Chair
Representative Johnny Ellis, Co-Chair
House Health, Education and Social Services Committee

FROM: Representative Fran Ulmer

SUBJECT: House Bill 354, "An Act relating to the privilege to drive and obtain a license; to penalties for driving while that license or privilege is suspended, cancelled, or revoked, or driving in violation of a limitation; and increasing the penalties for certain persons convicted of driving while intoxicated or refusing to submit to a chemical test; and providing for an effective date"

The draft CS for HB 354 corrects several problems with Alaska's present driving laws. Specifically, HB 354:

- Makes the fourth DWI a felony and increases jail sentences for the worst drunk drivers.
- Allows all those convicted of DWI to earn back a limited license through their good conduct after their release from prison.
- Makes the penalties for someone who never gets a driver's license and then commits crimes the same as the penalties for someone who has a driver's license and commits crimes--this eliminates the incentive created by current law to never get a driver's license.
- Brings the penalties for the major driving crimes into balance by treating driving while intoxicated more seriously than driving while license suspended, which, I believe, is a proper allocation of our scarce jail space.

The major thrust of this proposed legislation is to target the worst drunk drivers. The draft CS for HB 354 increases the

penalties for third or subsequent DWI convictions within a 10-year period. Under current law, the mandatory minimum jail terms are three days for a first DWI and 20 days for a second DWI. The mandatory minimum penalty for a third or eleventh DWI is only 30 days. No matter how many DWI convictions a person stacks up, the crime is still a misdemeanor. This means that a judge cannot sentence anyone to more than one year in jail for DWI no matter how many convictions a drunk driver may have.

HB 354 increases penalties for repeat DWI offenses to reflect the seriousness of the crime. The proposal raises the mandatory minimum jail sentence for third DWI from 30 to 90 days. A fourth DWI within 10 years would be a Class C felony and carry a minimum jail term of 180 days. A fifth DWI would carry a two-year presumptive jail term and a sixth conviction within 10 years would carry a three-year presumptive jail term.

The treatment of repeat DWI offenders is presently far too lenient. Alaska law is inconsistent with the trend in other states, inconsistent with our own more severe treatment of less serious crimes and less dangerous offenders, and inconsistent with public protection from dangerous people. Several states have made repeat DWI convictions felonies. Texas and Oklahoma make the second DWI conviction a felony, while Nevada, South Dakota, West Virginia and South Carolina make the third conviction a felony. South Carolina has a three-year minimum sentence for the third offense and a five-year minimum for the fifth offense.

Alaska law already makes felonies out of conduct which is less dangerous than a fourth-time DWI.

- Unlicensed guiding is a felony which carries a one-year minimum jail sentence (AS 08.54.210)
- Joyriding in which the car is damaged to \$500 or more is a felony (AS 11.46.482)
- Possession of brass knuckles, a switchblade, or a gravity knife in plain sight is a felony (AS 11.61.200)
- Running a big-time gambling operation is a felony (AS 11.66.210)
- Soliciting a patron for a prostitute is a felony (AS 11.66.120)

A fourth-time drunk driver is a hard-core alcoholic who cannot stop driving and cannot be deterred by another misdemeanor conviction. Someone who has been convicted a fourth time for DWI has not been deterred by misdemeanor jail sentences or reformed by outpatient alcohol treatment. That person has instead continued to endanger the public over and over again. Such a

dangerous repeat offender needs the stiffer jail sentences, long-term in-patient treatment, and more intense probation available for felons.

This bill also raises the penalties for a third or subsequent refusal to take a breathalyzer to track DWI penalties. This follows the practice of current law and is necessary to eliminate any incentive for someone arrested for DWI to refuse the required breath test.

This proposal also affords to all those convicted of DWI the opportunity to earn back a limited driver's license that current law gives to first offenders. The person would have to "earn back" a limited license by maintaining good conduct. A person convicted of a second DWI could apply to the judge for a limited license for the last 60 days of a one-year revocation. A person convicted of a third or subsequent DWI could apply after five years of the mandatory minimum 10-year revocation.

Driving while license revoked/driving while license suspended (DWLR/DWLS).

Under current law, someone who never gets a driver's license can never have his or her license suspended or revoked. This person thus escapes the relatively heavy mandatory minimum penalties for DWLS (driving while license suspended) or DWLR (driving while license revoked). HB 354 corrects this anomaly and applies the penalties for DWLS and DWLR to those who never get driver's licenses. This eliminates the incentive to never get a driver's license.

Finally, this bill proposes to bring into proper perspective the penalties for DWI and DWLR/DWLS. Under current law there are three mandatory minimum penalties for DWLR/DWLS, depending on the basis for revocation or suspension when someone is caught driving.

1) If someone is caught driving after his or her license has been suspended for being caught driving without insurance, the mandatory minimum jail sentence is 10 days and the mandatory minimum license revocation is one year. HB 354 changes these mandatory minimum penalties to three days in jail and a 90-day license revocation (which would be the same as DWI penalty for first time offense).

2) If someone is caught driving while his or her license is suspended by a court for a first DWI conviction, the mandatory minimum is 30 days in jail and a one-year loss of license. HB 354 changes these mandatory minimum penalties to 10 days in jail and a 90-day loss of license.

3) If a person is caught driving while his or her license is suspended by a court for a second or subsequent DWI

conviction, the mandatory minimum penalty is 90 days in jail and a one-year loss of license. HB 354 proposes to change this to 30 days in jail and a 90-day loss of license.

Current law makes it more than three times as serious to drive after having your license suspended for lack of insurance than it does to drive while intoxicated. DWI is obviously a much more dangerous crime than DWLS--particularly insurance-based DWLS. Current law understates the severity of DWI and overstates the severity of DWLS; it needs to be changed to reflect the relative seriousness of the two offenses.

The proposed CS for HB 354 seeks to insure that Alaska's driving laws impose the most serious penalties on the most dangerous drivers. We need to get the less serious DWLS offenders out of jail and get the most dangerous drunk drivers off the road and into treatment in jail.

WHY A FOURTH DWI CONVICTION
SHOULD BE A FELONY

Under Alaska law, a person convicted of driving while intoxicated is guilty of a misdemeanor regardless of how many times he/she is convicted. A fourth-time offender faces a minimum sentence of only 30 days in jail, and no judge may impose a sentence of more than a year.

This treatment of repeat DWI offenders is far too lenient. Alaska law is inconsistent with the trend in other states, inconsistent with our own more severe treatment of less serious crimes and less dangerous offenders, and inconsistent with reality.

Several states have made repeat DWI convictions felonies. Texas and Oklahoma make the second DWI conviction a felony, while Nevada, South Dakota, West Virginia, and South Carolina make the third conviction a felony. (South Carolina has a three-year minimum sentence for the third offense and a five-year minimum for the fifth offense.)

Alaska law already makes felonies out of conduct which is less dangerous than a fourth-time DWI. Some examples of first-time conduct which is a felony include:

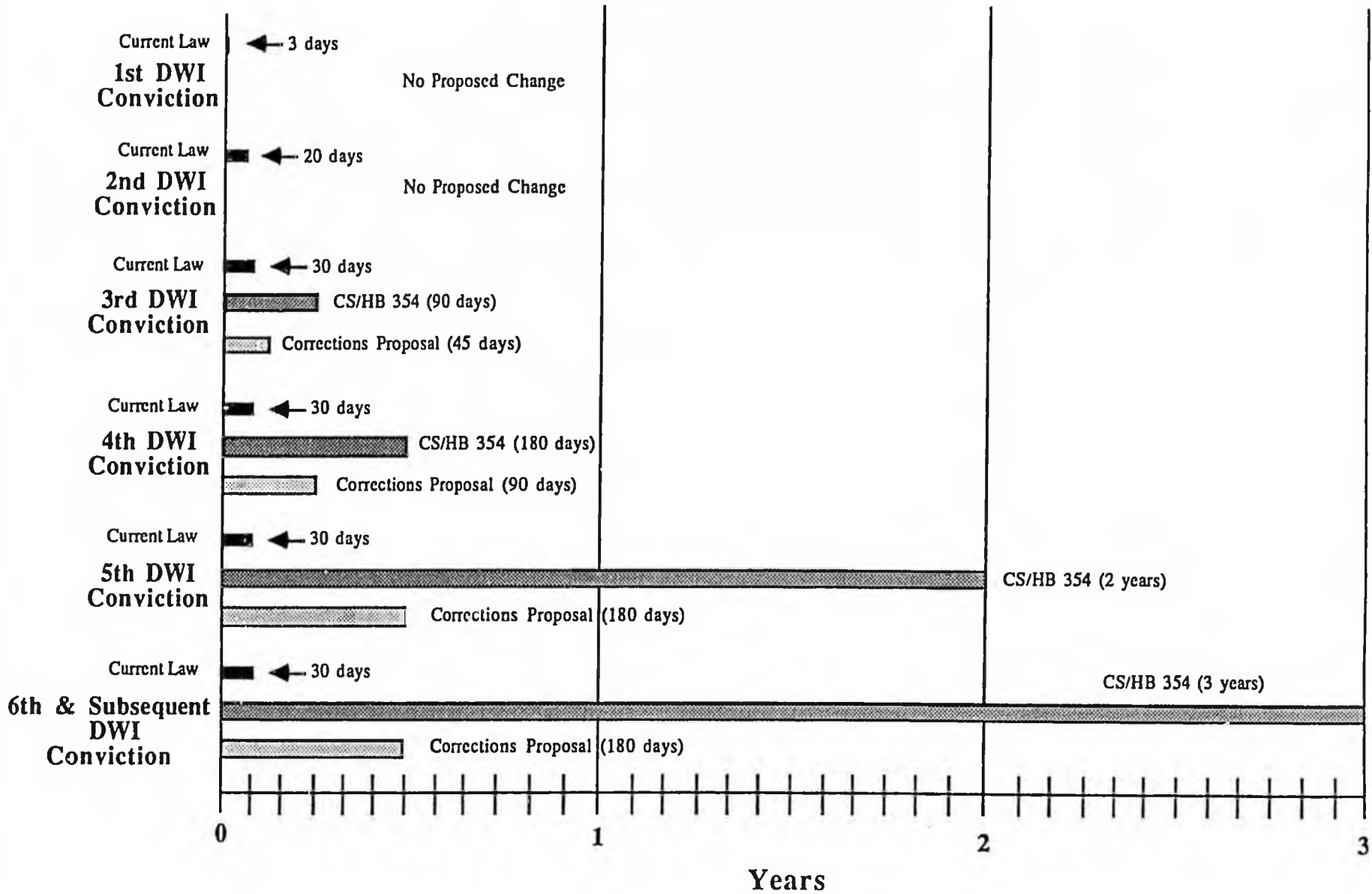
- Unlicensed guiding, which carries a one-year minimum jail sentence is a felony (AS 08.54.210)
- Joyriding in which the car is damaged to \$500 or more is a felony (AS 11.46.482)
- Possession of brass knuckles, a switchblade, or a gravity knife in plain sight is a felony (AS 11.61.200)
- Running a big-time gambling operation is a felony (AS 11.66.210)
- Soliciting a patron for a prostitute is a felony (AS 11.66.120)

A fourth-time drunk driver is a hard-core alcoholic who cannot stop driving and cannot be deterred by another misdemeanor conviction. Someone who has been convicted a fourth time for DWI has not been deterred by misdemeanor jail sentences or reformed by outpatient alcohol treatment. That person has instead continued to endanger the public over and over again. Such a dangerous repeat offender needs the stiffer jail sentences, long-term inpatient treatment, and more intense probation available for felons.

Jail Sentences for Drunk Drivers

(Mandatory Minimum)

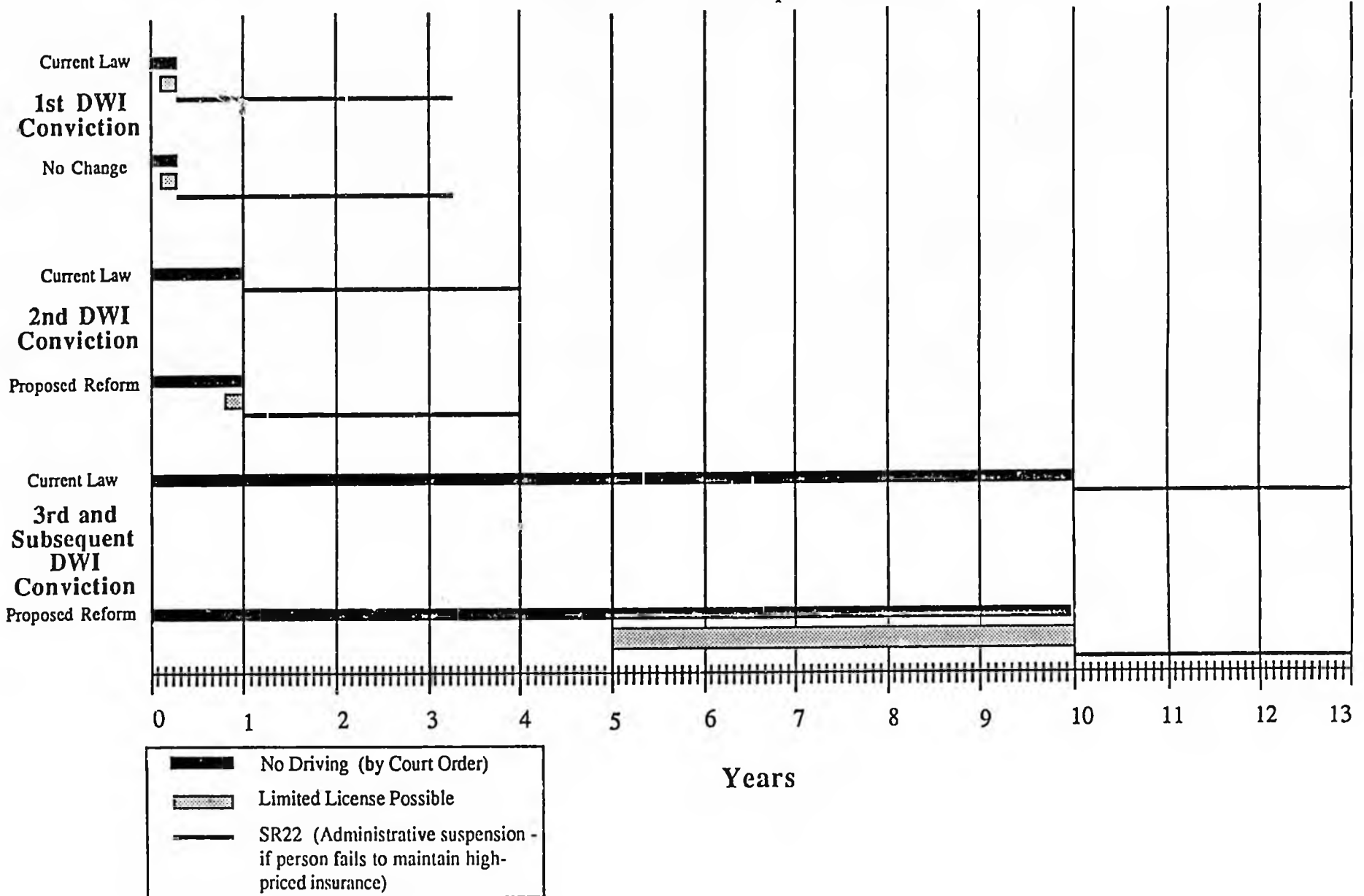
Current Law vs. Proposed Reform



Length of License Suspensions for Drunk Drivers

(Mandatory Minimum)

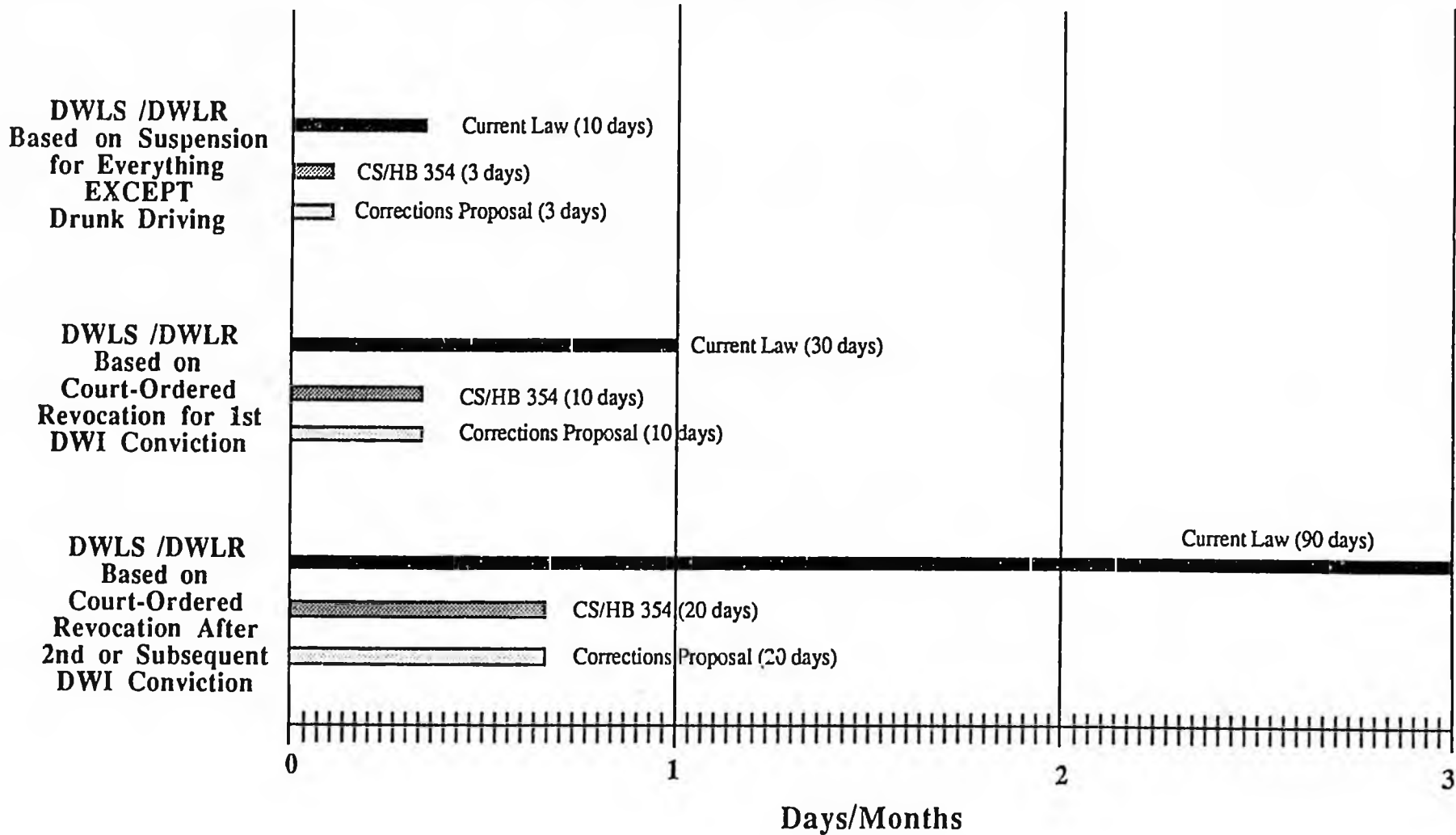
Current Law vs. Proposed Reform



Jail Sentences for People Convicted of Driving with a Suspended License

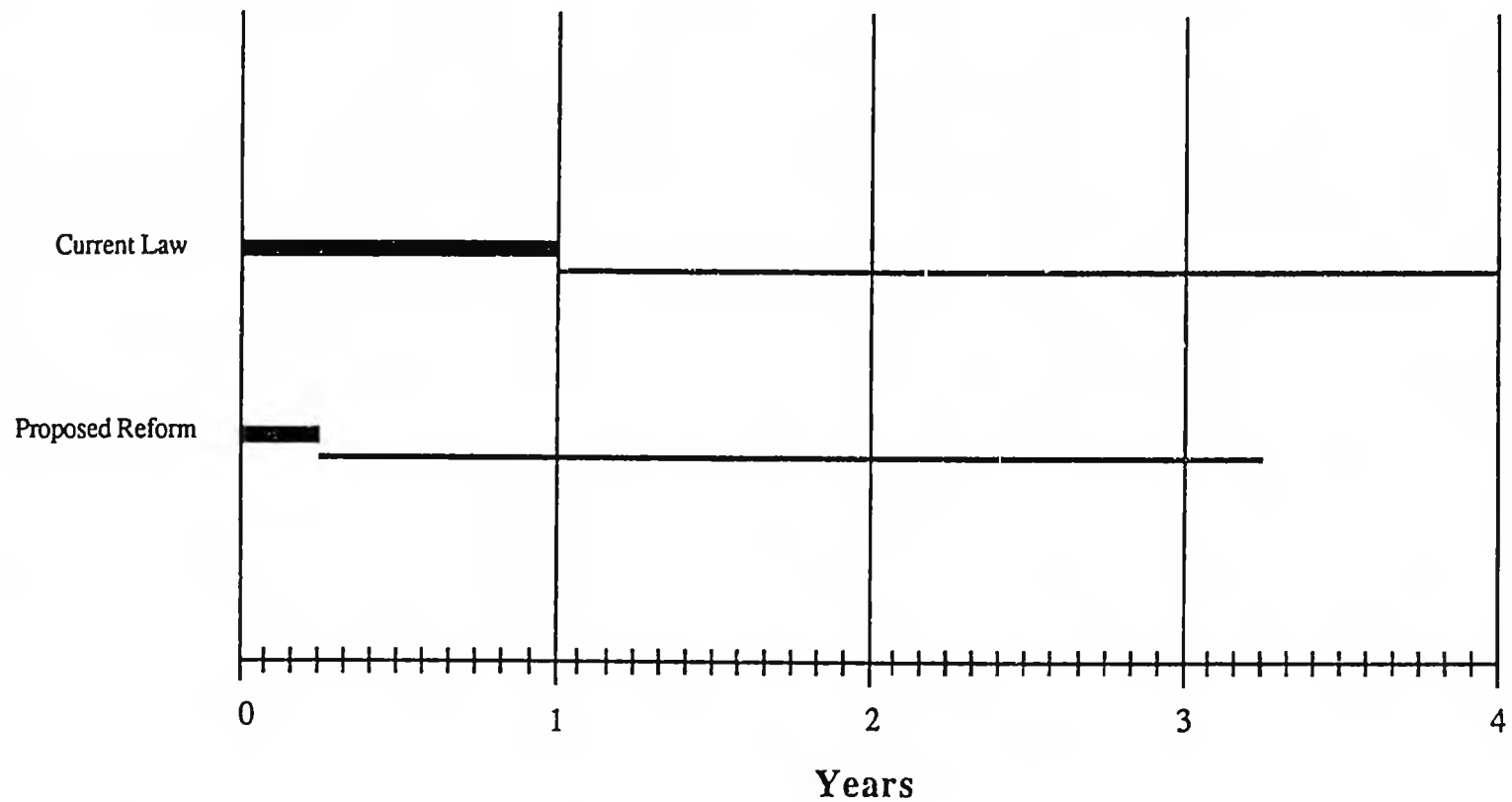
(Mandatory Minimum)

Current Law vs. Proposed Reform



Length of License Suspensions for Anyone Convicted of Driving with a Suspended License

(Mandatory Minimum)



█ No Driving (by Court Order)
— SR22 (Administrative)

**WHY WE NEED CS HB 354
EXAMPLE**

JAMES E. JOHNSON

	CRIME	YEAR	COMMENT
1.	DWI	1977	
2.	DWI	1985	
3.	DWI	1985	NON-INJURY ACCIDENT
4.	DWI	1985	2 ACCIDENTS; 3 PEOPLE INJURED
5.	DWI	1986	NON-INJURY ACCIDENT
6.	DWI	1987	

ADDITIONALLY, MR. JOHNSON REFUSED TO TAKE A BREATH-ALCOHOL TEST AND WAS CONVICTED OF REFUSAL IN 1984 AFTER AN ACCIDENT WHICH CAUSED INJURY.

THIS MAN HAS HAD FIVE ACCIDENTS AND HAS INJURED FOUR PEOPLE. FOR HIS LATEST DWI IN 1987, HE WAS SENTENCED TO SERVE TEN MONTHS FOR DWI. CURRENT LAW PROHIBITS A JUDGE FROM IMPOSING ANY SENTENCE OF MORE THAN 12 MONTHS FOR DWI, NO MATTER HOW MANY CONVICTIONS A PERSON HAS.

JAMES E. JOHNSON'S CONVICTIONS

DOB: 9/12/42; 9/16/41

SSN: 517-46-9517;

517-48-9513;

517-46-9515

(All cases in Anchorage District Court unless otherwise noted)

Crime	Conv. Date	Case #	Jail Time	Notes
DWI	10/19/77	77-7436	10/8	
DWLS	12/10/80	80-3146	90/80	
DWLS	10/05/81	81-3318	90/70	
Resisting Arrest	04/07/83	83-78	30/30	
Refusal	04/29/85	84-9319	90/70	DWI in same case dismissed; accident; \$3000 estimated damage; minor injury to other driver
DWI	7/26/85	85-3329	120/90	Offense: 5/21/85; .255 BA
DWLS	7/26/85	85-3329	180/90	Offense: 5/21/85
	[sentences on 85-3329 concurrent with 85-3592 and 85-3753]			
DWI	7/26/85	85-3592	360/300	Offense: 6/02/85; .250 BA; non-injury accident
DWLS	7/26/85	85-3592	360/300	Offense: 6/02/85
	[sentences on 85-3592 concurrent with sentences on 85-3329 and 85-3753]			
Reckless Driving	7/26/85	85-3753	360/360	Offense: 6/08/85; Leaving Scene of Accident dismissed
DWLS	7/26/85	85-3753	360/270	Offense: 6/08/85
DWI	7/26/85	85-3753	360/270	Offense: 6/08/85; 2 accidents; 4 cars damaged other than defendant's; .369 BA; 3 people injured; over \$10,000 in property damage estimated.
	[sentences on 85-3753 concurrent with sentences on 85-3329 and 85-3592]			

Crime	Conv. Date	Case #	Jail Time	Notes
DWI	1/20/86	85-6357	365/90	Offense: 9/16/85; .238 BA; non-injury accident
DWLS	1/20/86	85-6357	365/270	Offense: 9/16/85
DWI	7/28/87	3SW-S87-205	365/65	Refusal dismissed
DWLR	7/28/87	3SW-S87-206	365/165	

The defendant was sentenced on 85-3329, 85-3592, and 85-3753 on the same day, July 26, 1985. It was a specific condition of probation on all three cases that the defendant complete one year at a residential alcohol treatment program upon his release from custody.

The Department of Corrections released the defendant from custody on August 27, 1985. He bought a car (by his own admission at allocation at a probation revocation hearing on February 5, 1986). The defendant was arrested September 16, 1985 in another DWI accident (85-6357).

The defendant was released on September 11, 1986, and was arrested the same day in another DWI accident.

The defendant has 6 DWI convictions--10/19/77, 7/26/85, 7/26/85, 7/26/85, 1/20/86, 7/28/87; 1 Refusal conviction 4/29/85; 7 DWLS/DWLR convictions--12/10/80, 10/05/81, 7/26/85, 7/26/85, 7/26/85, 1/20/86, 7/28/87; and 1 Reckless Driving conviction--7/26/85. The defendant has been arrested or charged with DWI for nine different incidents: one was pending as of 8/27/87; one (79-89) was reduced to Negligent Driving on 5/16/79; and another was resolved and dismissed through a plea to Refusal (84-9319; 4/29/85 conviction).

RECEIVED

FEB 29 1983

IN THE DISTRICT COURT OF THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE, ALASKA

STATE OF ALASKA,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JAMES JOHNSON,)	
DOB: 9/12/42)	
)	
Defendant.	)	Court No. 3AN-S85-3592 Cr.
	)	3AN-S85-3329 Cr.

STATE'S MEMORANDUM IN AID OF SENTENCING
PROBATION VIOLATIONS

Standing before the court is possibly the worst drunk driver in Alaska. The defendant has six DWI convictions--five in the last two years. The defendant has seven DWLR convictions--five in the last two years. The defendant has been convicted of breath test refusal once and reckless driving once--all in the last two years.

The defendant's alcohol-related convictions have involved five accidents, and his conduct has injured four people.

In the five cases in which the defendant has submitted to a test for his breath for alcohol, his breath and alcohol concentrations have exceeded .20 percent four

DISTRICT ATTORNEY, STATE OF ALASKA
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DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
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(907) 277-8622

1
2 times. In three cases, the defendant's breath-alcohol
3 concentration was .25 or above.

4 The court has repeatedly offered the defendant
5 opportunities for rehabilitation through alcohol treatment,
6 but the defendant has consistently and flagrantly rejected
7 them. Three weeks after being released from jail in 1985
8 with strict orders to undergo residential alcohol treatment
9 immediately, the defendant drove drunk and caused an
10 accident. In 1986, the defendant again was released from
11 jail with a court order to begin alcohol treatment; instead,
12 the defendant began drinking and drove the same day.
13

14 Given the defendant's extensive criminal record,
15 his pattern of pathological alcohol abuse, and his propensity
16 to drive without a license, he is clearly a worst offender.
17 See Sandahl v. Anchorage, 670 P.2d 716, 718 (Alaska App.
18 1983). Given the large number of convictions in a short
19 time, the consistently high breath-alcohol concentrations,
20 the repeatedly bad driving leading to accidents, and the
21 repeated flagrant rejections of court ordered alcohol
22 treatment, the defendant is probably the worst offender.
23

24 This defendant has done almost everything a drunk
25 driver can do. He has repeatedly damaged the property of
26 others. He has more than once injured others. It is only
the sheerest fortuity that he has never killed anyone.

DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
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1
2 The defendant's record of repeated aggravated
3 crimes and consistent flouting of court orders shows that
4 rehabilitation must take a backseat to specific and general
5 deterrence, reaffirmation of societal norms, and isolation.
6

7 The court has repeatedly offered opportunities for
8 rehabilitation to this defendant. He not only rejects
9 treatment, but immediately re-offends upon release from
10 custody.

11 The attached record shows that courts have also
12 consistently sentenced the defendant to mostly suspended
13 time, rather than actual time to serve in jail. The
14 defendant has responded to these relatively lenient sentences
15 by re-offending again, again, and again. It is clear that if
16 any sentence will serve to deter him, that sentence is the
17 maximum.
18

19 The defendant's repeated decisions to endanger the
20 lives of so many Alaskans so seriously so many times requires
21 a heavy emphasis on deterrence of others and the
22 reaffirmation of societal condemnation for driving while
23 intoxicated. See Huckaby v. State, 632 P.2d 975, 977 (Alaska
24 App. 1981). Finally, isolation also takes on a special
25 importance unusual in misdemeanor cases. This defendant is a
26

1
2 manslaughter in the making. Every day the court keeps this
3 defendant off the streets and highways of Alaska makes
4 Alaskans safer.

5 DATED this 2nd day of September, 1987, at
6 Anchorage, Alaska.
7

8
9 GRACE BERG SCHAIBLE
ATTORNEY GENERAL

10 DWAYNE W. McCONNELL
11 DISTRICT ATTORNEY

12
13 By: CJ Groh
14 Clifford John Groh
Assistant District Attorney

15 CJG: lhr

16 (corrected 2-29-88)

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STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 10, 1988

SUBJECT: Draft CSHB 354, sectional analysis
TO: Representative Fran Ulmer
FROM: Jack Chenoweth
Legislative Counsel

The draft legislation to which this relates was transmitted late Friday.

In summary, this proposed committee substitute affects the following:

- the privilege to drive or to obtain a license (bill sections 1 - 3);
- the restoration of limited driving privileges to certain drivers convicted of DWI or refusal to submit to a chemical test (bill sections 4 and 5);
- the penalties for driving while a license is suspended, revoked, or cancelled, or for driving in violation of a license limitation (bill sections 6 and 7);
- the penalties imposable on certain persons convicted of DWI or refusing to submit to a chemical test (bill sections 7 - 11).

The last page of this memorandum outlines in table form a comparison of the DWI penalties.

Sections 1 - 3 of the bill are adapted from legislation introduced by the governor and are intended to correct a technical problem in the law regarding the state's ability to, under certain circumstances, charge a person with driving while the driver's license is suspended, cancelled, or revoked. These sections add to the body of applicable law the phrases "privilege to drive" and "privilege to obtain a license." The changes are intended to make clear that the privilege to drive or obtain a driver's license can be suspended, cancelled, or revoked if an individual does not have a valid driver's license at the time that person committed

an offense. They are also intended to make clear that, in the absence of a license, if a person does drive while his or her privilege to drive is suspended, cancelled, or revoked, he or she can be charged under AS 28.15.291 (driving while license is cancelled, suspended, revoked, or in violation of limitation).

Bill sections 4 and 5, making changes in AS 28.15.181, amend provisions of law authorizing restoration of limited driving privileges for certain drivers. Current law authorizes restoration of the driving privilege only during the last 60 days of the period of a first driver's license revocation (i.e., no previous conviction in the preceding 10 years).

The specific change requested appears at (e)(2) of bill section 4 (page 3, line 23 through page 4, line 2): this change authorizes restoration of the driving privilege for those facing a ten-year suspension (i.e. for those who have been previously convicted at least once in the preceding ten years). That restoration may be made in the final five years of the ten year suspension specifically conditioned on satisfactory completion of the alcoholism education and rehabilitation program.

A change made at page 3, lines 19 and 20 ("has not been previously convicted more than once . . .") has the effect of allowing restoration of the limited license privilege to persons who have been previously convicted once and who face a second conviction. This change authorizes restoration of the driving privilege for those facing a one year suspension. The restoration may be made in the final 60 days of the one year suspension. [NOTE: This restoration of limited license privilege is not now the law, and what is proposed here is a change from current law. If the committee does not want to make this change, the words "more than once" need to be deleted from line 20.]

Bill sections 6 and 7, amending portions of AS 28.15.291, address the penalties applicable for driving while a license has been suspended, cancelled, or revoked, or while driving in violation of a license limitation. In both sections, note that the "privilege to drive" and "privilege to obtain a license" (explained with respect to bill sections 1 - 3) is carried into these provisions.

Current law distinguishes those who so drive based upon whether or not the suspension, cancellation, revocation, or

limitation arose out of a conviction for DWI or refusal to submit to a chemical test.

The first class of persons, those addressed in bill section 6, are those whose convictions were for reasons other than DWI or refusal to submit to a chemical test. For persons in this class, the "mandatory minimum" imprisonment penalty is reduced from 10 days to 72 hours and the "mandatory minimum" suspension of license or privilege to drive is reduced from one year to 90 days.

The second class of persons, those addressed in bill section 7, are those whose convictions were for reasons relating to DWI or refusal to submit to a chemical test. For an individual who subsequently drives a motor vehicle without a valid license after a first conviction for DWI or refusal to take a chemical test, the "mandatory minimum" imprisonment penalty is reduced from 30 to 20 days. For an individual who subsequently drives a motor vehicle without a valid license after a second or third conviction for DWI or refusal to take a chemical test, the "mandatory minimum" imprisonment penalty is reduced from 90 days to 30 days, and the period extending the "mandatory minimum" suspension of license or privilege to drive is reduced from one year to 90 days.

Bill sections 9 and 11 are parallel provisions addressed to third convictions. The first section amends AS 28.35.030(c), the subsection defining the mandatory minimum sentences for DWI; the second amends AS 28.35.032(g), the subsection defining the mandatory minimum sentences for refusal to submit to a chemical test. Both make like changes: for a third conviction within the preceding ten years, the minimum period of imprisonment is increased from 30 to 90 days.

Under current law, driving while intoxicated is a class A misdemeanor. Bill sections 8 and 10, taken together, make the fourth DWI conviction within a ten year period a class C felony. The general penalties for a class C felony permit imposition of a fine of not more than \$50,000 and a term of imprisonment of not more than five years. Bill section 10 imposes a mandatory six month minimum sentence of imprisonment for conviction.

Bill section 12 makes the changes effective January 1, 1989.

Current law:

# of DWI's within previous 10 years	Minimum sentence	Minimum revocation
First	3 days	90 days*
Second	20 days	1 year
Third	30 days	10 years
Fourth	30 days	10 years

CSHB 354 (HESS):

# of DWI's within previous 10 years	Minimum sentence	Minimum revocation
First	3 days	90 days*
Second	20 days	1 year**
Third	90 days	10 years***
Fourth	6 months	10 years***

* Current law allows a limited license privilege in the last 60 days.

** Under proposed (e)(1) in bill section 4, a limited license privilege would be obtainable for the final 60 days.

*** Under proposed (e)(2) in bill section 4, a limited license privilege would be obtainable for the final five years.

JBC:bb
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How To Increase Penalties For The Worst Drunk Drivers

<u>Crime</u>	<u>Current Law</u> Jail Time/Driver's License Revocation (Mandatory Minimum or Presumptive)	<u>Draft CS. for HB-354</u> Jail time/Driver's License Revocation (Mandatory Minimum or Presumptive)
1st DWI	3 days in jail/90-day loss of license	3 days in jail/90-day loss of license (possible to earn back limited license for last 60 days)
2nd DWI	20 days in jail/1-year loss of license	20 days in jail/1-year loss of license (possible to earn back limited license for last 60 days)
3rd DWI	30 days in jail/10-year loss of license	90 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
4th DWI	30 days in jail/10-year loss of license	180 days in jail/10-year loss of license (possible to earn back limited license for last 5 years)
5th DWI	30 days in jail/10-year loss of license	2 years in jail/10-year loss of license (possible to earn back limited license after 5 years)
6th and subsequent DWI	30 days in jail/10-year loss of license	3 years in jail/10-year loss of license (possible to earn back limited license after 5 years)
DWLR/DWLS based on insurance suspension	10 days in jail/1-year loss of license	3 days in jail/90-day loss of license
DWLR/DWLS based on court ordered revocation for 1st DWI	30 days in jail/1-year loss of license	10 days in jail/90-day loss of license
DWLR/DWLS based on court ordered revocation after 2nd or subsequent DWI	90 days in jail/1-year loss of license	20 days in jail/90-day loss of license

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 354 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

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

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

8 (7) using a motor vehicle in unlawful flight to avoid
9 arrest by a peace officer;

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

3 * Sec. 5. AS 28.15.181 is amended by adding a new subsection to read:

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license.
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of not less than 72 hours [10
23 DAYS]. The execution of sentence may not be suspended nor may pro-
24 bation or parole be granted until the minimum imprisonment provided in
25 this section has been served; nor may imposition of sentence be sus-
26 pended. In addition, the person's license, [OR] privilege to drive,
27 or privilege to obtain a license shall be revoked, and the person may
28 not be issued a new license nor may the privilege to drive be restored
29 for an additional period of not less than 90 days [ONE YEAR] after the

1 date that the person would have been entitled to restoration of driv-
2 ing privileges.

3 * Sec. 7. AS 28.15.291(c) is amended to read:

4 (c) The court shall impose a sentence of imprisonment of not
5 less than 20 [30] days and a fine of not less than \$500 upon con-
6 viction of a violation of this section if the person's driver's li-
7 cense, privilege to drive, or privilege to obtain a license was re-
8 voked under circumstances described in AS 28.15.181(c)(1). The court
9 shall impose a sentence of imprisonment c. not less than 30 [90] days
10 and a fine of not less than \$1,000 upon conviction of a violation of
11 this section if the person's driver's license, privilege to drive, or
12 privilege to obtain a license was revoked under circumstances de-
13 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
14 not be suspended nor may probation or parole be granted until the
15 minimum imprisonment provided in this subsection has been served.
16 Imposition of sentence may not be suspended. In addition, the per-
17 son's privilege to drive shall be revoked for an additional period of
18 not less than 90 days [ONE YEAR] after the date that the person would
19 have been entitled to restoration of driving privileges if the person
20 had not been convicted under this section.

21 * Sec. 8. AS 28.35.030(b) is amended to read:

22 (b) Except as provided in (h) of this section, driving [DRIVING]
23 while intoxicated is a class A misdemeanor.

24 * Sec. 9. AS 28.35.030(c) is amended to read:

25 (c) Upon conviction under this section the court shall impose a
26 minimum sentence of imprisonment of not less than 72 consecutive hours
27 and a fine of not less than \$250 if the person has not been previously
28 convicted in this or another jurisdiction of driving while intoxicated
29 under this or another law or ordinance with substantially similar

1 elements or refusal to submit to a chemical test under AS 28.35.032 or
2 another law or ordinance with substantially similar elements. Upon
3 conviction under this section the court shall impose a minimum sen-
4 tence of imprisonment of not less than 20 consecutive days and a fine
5 of not less than \$500 if, within the preceding 10 years, the person
6 has been previously convicted once in this or another jurisdiction of
7 driving while intoxicated under this or another law or ordinance with
8 substantially similar elements or refusal to submit to a chemical test
9 under AS 28.35.032 or another law or ordinance with substantially
10 similar elements. Upon conviction under this section the court shall
11 impose a minimum sentence of imprisonment of not less than 90 [30]
12 consecutive days and a fine of not less than \$1,000 if, within the
13 preceding 10 years, the person has been previously convicted in this
14 or another jurisdiction of more than one of the following offenses or
15 has more than once been previously convicted of one of the following
16 offenses: (1) driving while intoxicated under this or another law or
17 ordinance with substantially similar elements; (2) refusal to submit
18 to a chemical test under AS 28.35.032 or another law or ordinance with
19 substantially similar elements. The execution of sentence may not be
20 suspended nor may probation be granted except on condition that the
21 minimum imprisonment provided in this section is served. Imposition of
22 sentence may not be suspended. In addition, if the offense involved
23 driving a motor vehicle for which a driver's license is required, the
24 person's driver's license shall be revoked in accordance with AS 28.-
25 15.181 and the vehicle used in commission of the offense may be for-
26 feited under AS 28.35.036. In addition, the court shall order, and a
27 person convicted under this section shall undertake, for a term spec-
28 ified by the court, that program of alcohol education or rehabilita-
29 tion that the court, after consideration of any information compiled

1 under (d) of this section, finds appropriate.

2 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

3 (h) A person who, within the preceding 10 years, has been previ-
4 ously convicted three or more times in this or another jurisdiction of
5 the offense of driving while intoxicated or an offense under another
6 law or ordinance with substantially similar elements is guilty of a
7 class C felony. Upon conviction under this section the court shall
8 impose a minimum sentence of imprisonment of not less than six months.

9 * Sec. 11. AS 28.35.032(g) is amended to read:

10 (g) Upon conviction of a person under this section, the court
11 shall impose a minimum sentence of imprisonment of not less than 72
12 consecutive hours and a fine of not less than \$250 if the person has
13 not been previously convicted in this or another jurisdiction of
14 driving while intoxicated under AS 28.35.030 or another law or ordi-
15 nance with substantially similar elements or refusal to submit to a
16 chemical test under this section or another law or ordinance with
17 substantially similar elements. Upon conviction under this section the
18 court shall impose a minimum sentence of imprisonment of not less than
19 20 consecutive days and a fine of not less than \$500 if, within the
20 preceding 10 years, the person has been previously convicted once in
21 this or another jurisdiction of driving while intoxicated under
22 AS 28.35.030 or another law or ordinance with substantially similar
23 elements or refusal to submit to a chemical test under this section or
24 another law or ordinance with substantially similar elements. Upon
25 conviction under this section the court shall impose a minimum sen-
26 tence of imprisonment of not less than 90 [30] consecutive days and a
27 fine of not less than \$1,000 if, within the previous 10 years, the
28 person has been previously convicted in this or another jurisdiction
29 of more than one of the following offenses or has more than once been

1 previously convicted of one of the following offenses: (1) driving
2 while intoxicated under AS 28.35.030 or another law or ordinance with
3 substantially similar elements; (2) refusal to submit to a chemical
4 test under this section or another law or ordinance with substantially
5 similar elements. The execution of sentence may not be suspended nor
6 may probation be granted except on condition that the minimum impris-
7 onment provided in this section is served. Imposition of sentence may
8 not be suspended. If the offense involved driving a motor vehicle for
9 which a driver's license is required, the person's driver's license
10 shall be revoked under AS 28.15.181. In addition, the court shall
11 order, and a person convicted under this section shall undertake, for
12 a term specified by the court, that program of alcohol education or
13 rehabilitation that the court, after consideration of any information
14 compiled under (h) of this section, finds appropriate. The sentence
15 imposed by the court under this subsection shall run consecutively
16 with any other sentence of imprisonment imposed on the committed
17 person.

18 * Sec. 12. This Act takes effect January 1, 1989.
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ALASKA LAW REVIEW



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Duke University School of Law

PEARS V. STATE: AN IMPROPER APPLICATION OF ALASKA'S CURRENT LAW TO INTOXICATED DRIVERS

I. INTRODUCTION

On the night of October 5, 1981, nineteen-year old Richard Pears, while under the influence of alcohol, drove his truck through a red light, striking an automobile, killing two people, and injuring a third. A jury convicted Pears of second degree murder, the trial judge sentenced him to twenty years in prison, and Alaska's Third Circuit Court of Appeals unanimously affirmed the verdict.¹ The Alaska Supreme Court, reviewing only the length of Pears's sentence, found the twenty-year sentence excessive and remanded for resentencing.² After a hearing, the trial court sentenced Pears to twenty years in prison with ten years suspended.³ As the first Alaska appellate court decision involving a murder conviction for an intoxicated driver,⁴ *Pears v. State* represents a significant development in Alaska criminal law.

In 1978, the Alaska legislature revised the state's Criminal Code. The new Code took effect on January 1, 1980. Under the new Criminal Code a court theoretically could return a murder conviction against an intoxicated driver under one of three provisions:⁵ (1) first degree murder, if the defendant intentionally causes death;⁶ (2) second degree murder, if the defendant causes death "knowing that [his] con-

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1. *Pears v. State*, 672 P.2d 903, 905 (Alaska Ct. App. 1983).

2. *Pears v. State*, 698 P.2d 1198 (Alaska 1985). The supreme court's opinion dealt only with the sentencing issue and did not address the propriety of applying Alaska's second degree murder statute to Pears. Accordingly, this note will analyze the rationale of the court of appeals' *Pears* decision.

3. *Pears v. State*, No. 4FA-S81-2429 (Alaska Super. Ct. Aug. 26, 1985).

4. *Id.* at 911.

5. There are actually five murder provisions in the new Alaska Criminal Code. Two of these provisions, however, cannot apply to an intoxicated driver. See ALASKA STAT. §§ 11.41.100(a)(2) - 11.41.110(a)(3) (1983) (these provisions concern inducing suicide, and causing death during the commission of one of six felonies, none of which involve intoxicated driving).

6. *Id.* § 11.41.100. The Alaska Criminal Code defines the term "intentionally" in the following manner:

A person acts "intentionally" with respect to a result described by a provision of law defining an offense when the person's conscious objective is to cause that result;

Alaska has, however, expressly rejected the common law definition of murder.⁹²

A comparison of Alaska's DWI statute with those of other states offers another indication that the Alaska legislature did not intend for Intoxicated Motorists to receive murder convictions. In several other states, either the second⁹³ or third⁹⁴ DWI conviction is a felony. In Alaska, to the contrary, DWI remains a misdemeanor regardless of the number of prior convictions.⁹⁵ Furthermore, among the states that will convict an intoxicated driver of murder, Alaska has the shortest period of incarceration for repeat DWI offenders.⁹⁶ The Alaska DWI statute provides for a minimum sentence of only twenty days in jail for someone with one prior DWI conviction, and a minimum punishment of thirty days in prison for someone with two or more prior DWI convictions.⁹⁷ In comparison, Tennessee has a 45-day minimum sentence for the second offense and a 120-day minimum for the third offense,⁹⁸ and South Carolina has a 3-year minimum for the third offense and a five-year minimum for the fifth offense.⁹⁹ In light of the Alaska legislature's lenient treatment of DWI offenders,

Taylor, 461 Pa. 557, 337 A.2d 545 (1975), the defendant was convicted of murder, but he had been speeding in an area where children generally play, had killed a boy who was riding on a bicycle, and then had failed to stop after the accident. *Foster v. State*, 239 Ga. 302, 236 S.E.2d 644 (1977), involved a person who was under the influence of liquor and drugs and was driving at 90 miles per hour across the center line when he collided with another car, killing the other driver. The court held that an intoxicated driver could conceivably be convicted of murder but that the reckless disregard for the safety of others that this defendant showed should not serve as the implied malice aforethought necessary for a murder conviction. *Id.* at 302, 236 S.E.2d at 645-46.

92. ALASKA CRIM. CODE REV. § 11.41.110 (Tent. Draft 1977).

93. *See, e.g.*, OKLA. STAT. ANN. tit. 47 § 11-902(c) (1962 & Cum. Supp. 1984-85); TEX. TRAF. REG. CODE ANN. § 6701e-1 (Vernon Cum. Supp. 1983).

94. *See* NEV. REV. STAT. § 484.3792(1)(c) (1983); S.C. CODE ANN. § 56-5-2940 (Law. Co-op. 1977 & Cum. Supp. 1984); S.D. CODIFIED LAWS ANN. § 32-23-4 (1984); W. VA. CODE § 17C-5-2 (Cum. Supp. 1984).

95. ALASKA STAT. § 28.35.030(b) (1984).

96. Until 1980, California's penalties for repeat offenders were more lenient than Alaska's penalties, *see* CAL. VEH. CODE § 23102(a) (West 1971) (repealed 1980), but now the California minimum sentence for repeat DWI offenders is much longer than that of Alaska. *Compare* CAL. VEH. CODE § 23165 (West Cum. Supp. 1985) (90-day minimum for second offense) with ALASKA STAT. § 28.35.030(b) (1984). Four years after the Criminal Code revision, the Alaska legislature added some harsh penalties not involving incarceration for repeat DWI offenders. These involve revoking defendants' licenses for long periods of time. *See* ALASKA STAT. § 28.15.181(c) (1984). Nevertheless, a legislature's willingness to impose harsh non-jail penalties on DWI offenders does not prove that it is willing to impose severe jail sentences on Intoxicated Motorists.

97. ALASKA STAT. § 28.35.030(c) (1984).

98. TENN. CODE ANN. § 55-1-3(a)(1) (Supp. 1984).

99. S.C. CODE ANN. § 55-1-3(3), (5) (Law. Co-op. Cum. Supp. 1984).

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therefore, it is unlikely that the legislature wanted Alaska to join the minority of states that convict Intoxicated Motorists of murder.

E. Summary .

The foregoing comparison of the relevant homicide statutes and case law in other states with those of Alaska provides strong evidence that the *Pears* court misinterpreted the legislature's intent in enacting the new Criminal Code when the court upheld Pears's murder conviction. Most states have never sustained a murder conviction for an Intoxicated Motorist. Those few states that have convicted an intoxicated driver of murder either have murder statutes that expressly provide such a penalty for an Intoxicated Motorist or they have homicide statutes that not only differ from the Alaska murder statutes, but contain language similar to language the Alaska legislature considered and then rejected.¹⁰⁰ Of those states with murder statutes that strongly resemble the Alaska murder statutes, only Oklahoma has ever convicted an Intoxicated Motorist of murder, and the last murder conviction under the relevant Oklahoma statutory provision occurred more than forty years ago. There is no trend toward greater use of second degree murder statutes to punish intoxicated drivers. In fact, there may be the beginnings of a trend in the opposite direction.

According to the Alaska legislature, the culpability underlying DWI offenses does not warrant a felony conviction — not even in the case of persistent offenders. Unlike the legislatures of several other states, the Alaska legislature gave no indication that deaths caused by Intoxicated Motorists would constitute murder. Furthermore, Alaska's murder statutes, as illuminated by their legislative history, do not support such a reading. In light of all these factors, the Alaska Court of Appeals should have concluded that the legislature did not intend a second degree murder conviction for Pears or any other Intoxicated Motorist.

IV. THE PEARS CASE

A. The Facts

On October 5, 1981, an intoxicated driver, Richard Pears, ran a red light and crashed into a car that was in the intersection, killing the driver and one passenger of the other car and severely injuring another passenger.¹⁰¹ Pears's own passenger, whom he dropped off before the accident, had told him that his driving scared her. As Pears walked to his truck, two policemen had warned him that he should not drive.

100. See *supra* notes 51, 52, 90, 92, and accompanying text.

101. *Pears v. State*, 672 P.2d 903, 909-10 (Alaska Ct. App. 1983).

Stiff DWI laws do save lives

I personally think that the stronger the penalty for drunk driving, the better for our community. I speak from experience when I say a lesser penalty only hurts the drunk driver.

I have been arrested for driving while intoxicated three times. The first two times the court system slapped my hand, ordered me to pay a fine and sent me on my way. I continued to drink abusively and thought nothing of driving my car when I was drunk.

On Oct. 22, 1983, I was arrested for my third DWI. The penalties were much stronger at this point. I was immediately sent to jail. When sobering up enough after several hours to realize where I was and why I was there, I was horrified! I had reached the lowest of low spots in my life. Today I have been sober for over four years.

The officer who arrested me was off duty and on his way home with two other off-duty officers in his car. Because those three off-duty Anchorage police officers were willing to take their own time to get a drunk driver off the streets and send her to jail Anchorage streets are a little safer today.

I can't stress enough how important the stiffer drunk driving laws have been to my life and our community. The statistics prove that harsher laws save lives.

— Veoletta Hayward

2/16/88 News

My Friend

Brett is intensely curious about the rapidly enlarging world about him. His probing curiosity about life stimulates the adults around him to inquire more actively about their own lives. He is like most other 3-year-olds, I think: full of delightful mischief, granting smiles without hesitation and rapidly retreating to tears at those times when life is just too much bigger than he is. And, like many children, he cannot conceal a certain charming, if smug, satisfaction as he masters each new developmental task. Those tasks often come hard for Brett.

Brett has many other friends. Some, such as I, are new friends. Others, such as Grandma, Grandpa, and Daddy, go way back to before the accident that he now pretends not to remember. The accident? Brett's mother and baby brother, Matthew, were killed by a drunk driver in a violent accident on a softly beautiful starlit evening last summer. I did not know the driver, but I know he had spent the day enjoying a party with friends and relatives. It was a day of happiness and sharing, of warmth and comradeship. It was also a day of drinking.

I grew up in a home in which the consumption of alcohol was uncommon, but not condemned. Nevertheless, the importance of responsibility and the possible adverse consequences of drinking and driving were emphasized. I can still easily recite a litany of facts about alcohol consumption and driving: a quarter of a million Americans have died in alcohol-related accidents in the last decade; one American life is lost every 20 minutes in an alcohol-related accident; half of all Americans will be involved in an alcohol-related accident during their lifetimes; alcohol-related crashes are the leading cause of death among Americans between the ages of 16 and 24 years; 2000 persons are injured each day in alcohol-related accidents; 2 million drunk-driving collisions occur each year; 80% of Americans drive after drinking; drunk drivers cost US taxpayers in excess of \$20 billion annually; only about one in 1000 drunk drivers on the road is arrested. I knew all this, but I really did not know anything about the human cost of drunk driving until I met my new friend Brett.

At least one person told the drunk driver he ought not drive, but the warning was waved off. No one stopped him and no one tried to save his life by preventing him from driving while he was so obviously drunk. He also died in the fiery crash, burned alive in the first few minutes after he wove repeatedly across the center line and crashed at 60 mph into the car carrying Brett.

Some might say that Brett is lucky: he suffered no brain damage. Intellectually he is quite alive—I believe he will go to college one day. But Brett is paralyzed below the level of his second cervical vertebra. His arms and legs will never move. He cannot breathe at all on his own, nor will he—ever.

As a specialist in pediatric intensive care medicine, I see and care for many very severely ill and injured children. The jarring horror of my first moments with Brett ripped a still-unrepaired hole in the wall of objectivity that usually protects me from the pain of seeing a seriously injured child.

"He's not breathing," shouted the flight nurse over the scream of the engine as we unloaded the child from the helicopter and rushed into the emergency department. The neurosurgeon and I examined the form below us. The cherub was motionless, save for a grimace when we ventilated him by

mask. "Can you open your eyes?" urged my colleague. When he did promptly open his eyes we both gasped, staring almost incomprehensibly at one another, then back to the figure on the table. The frightened young eyes reached out so powerfully in their panic that we felt ourselves pulled to the child. The reality of the nearly unimaginable injury was upon us.

"Oh, God, it's his C-spine—this kid's a quad." The words were whispered. They would have been wholly unbearable if spoken any louder. Even gently whispered, those words conveyed a sentence of harsh finality known to all in the room, save one. A few slow, deep breaths and physicians and nurses resumed control and function: "We're sorry, Brett. You've been in a car accident. This is the hospital. We're doctors and nurses—we're going to help you, honey. Don't you have the most handsome blonde hair we've seen today? This is Tickle, our stuffed bear. Can he snuggle close by you? He loves little boys." Later, Brett and his father would cry together, as one generation struggled to be brave for the next, unable to soften the story that had to be shared.

A portable ventilator now breathes for Brett. The annual cost of providing his necessary medical and nursing care exceeds \$180 000. The man who caused the accident was uninsured. The cost in anguish and emotional pain for Brett's family and for the family of the drunk driver cannot be guessed. The lives of all involved will never be the same.

Although the police report assigned the responsibility for the accident to only one man, we are all to blame. Why do we share this burden? Because we have driven after drinking. Because we have welcomed friends into our homes, entertained them with alcohol, then waved them warmly into the night. Because we have laughed at and accepted public intoxication. Because we have tolerated weak and inconsistent enforcement of drunk driving laws. Because we have accepted lenient sentences for drunk drivers. Because we have conveniently ignored signs of alcoholism in our patients.

Perhaps we can only truly know that which we have experienced. My friendship with Brett has added much to my understanding of the realities of drunk driving and of life. Few intend to hurt or kill others, yet it happens, and the consequences fill our forevers.

I grieve with Brett for the mommy who can no longer kiss and hug away the hurts of childhood, and for the little brother who will not play with him. I share with him the emptiness of a football lying unthrown by the fireplace, of the unopened bag of marbles on the table beside his bed, of the laughing horseshoe and the flirtations of young manhood that may never come.

Yet life goes on. I will not demean the resilience of man or child by ascribing to Brett extraordinary bravery or superhuman determination. He is, after all, a little boy. He still laughs and he still cries. He manipulates people and he likes french fries with lots of ketchup. He uses a computer masterfully with a mouth control that also enables him to drive his own wheelchair. Such is our nature, about which Brett has taught me so much: given the slightest toehold, we dig in and we grow and survive. That is our nature. Yet with the joy remains the sadness and a certain loss of innocence—even for the physicians who thought they already had the big picture. We survive, but the shocking ease with which beautiful things can be broken haunts us. Twenty-five thousand Americans die each year in auto accidents involving alcohol. Two of them are missed a great deal by my little friend Brett, et al.

Thomas J. Poulton, MD
Omaha

Drunken driving arrests up 220 percent since 1970: Arrests for driving under the influence of alcohol rose more than 220 percent from 1970 to 1986, while the number of licensed drivers increased by just 42 percent in that period, a government report says.

In 1986, some 1.8 million people were arrested for driving under the influence, compared to 556,000 in 1970, said a report issued Sunday by the Bureau of Justice Statistics. In 1983, the peak year, there were 1.9 million such arrests, one for every 80 drivers.

The study also found that rates for driving under the influence were highest among 21-year-olds, reaching a peak in 1983 with a rate of one arrest for every 39 licensed drivers of that age.

Original sponsors: Ulmer, Koponen,
Pearce, et al.

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive and to
7 obtain a license; to penalties for driving while that
8 license or privilege is suspended, canceled, or
9 revoked, or driving in violation of a limitation; and
10 increasing the penalties for certain persons con-
11 victed of driving while intoxicated or refusing to
12 submit to a chemical test; and providing for an
13 effective date."

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

15 * Section 1. AS 28.15.165(a) is amended to read:

16 (a) If a chemical test administered under AS 28.35.031(a) to a
17 person driving a motor vehicle for which a driver's license is re-
18 quired produces a result described in AS 28.35.030(a)(2) or if a
19 person under arrest for driving a motor vehicle for which a driver's
20 license is required refuses to submit to a chemical test under AS 28.-
21 35.031(a), a law enforcement officer shall read a notice and deliver a
22 copy to the person. The notice must [SHALL] advise that

23 (1) the department intends to revoke the person's driver's
24 license, privilege to drive, privilege to obtain a license, or nonres-
25 ident privilege to drive, or refuse to issue an original license to
26 the person;

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

29 (3) the notice itself is a temporary driver's license that

1 expires seven days after it is delivered to the person;

2 (4) revocation of the person's driver's license, privilege
3 to drive, privilege to obtain a license, or nonresident privilege to
4 drive, or a determination not to issue an original license takes
5 [SHALL TAKE] effect upon expiration of the temporary driver's license
6 unless the person within seven days requests an administrative review.

7 * Sec. 2. AS 28.15.165(c) is repealed and reenacted to read:

8 (c) The department shall revoke the person's license, privilege
9 to drive, privilege to obtain a license, or nonresident privilege to
10 drive a motor vehicle in the state, or refuse to issue an original
11 license effective upon expiration of the temporary driver's license
12 issued under (a) of this section upon receipt of a sworn report of a
13 law enforcement officer that states

14 (1) that a chemical test under AS 28.35.031(a) produced a
15 result described in AS 28.35.030(a)(2) or that a person refused to
16 submit to a chemical test under AS 28.35.031(a);

17 (2) that notice under (a) of this section was provided to
18 the person; and

19 (3) the circumstances surrounding the arrest and the
20 grounds for the officer's belief that the person was driving, while
21 intoxicated, a motor vehicle for which a driver's license is required.

22 * Sec. 3. AS 28.15.181(a) is amended to read:

23 (a) Conviction of any of the following offenses is grounds for
24 the immediate revocation of a driver's license, privilege to drive, or
25 privilege to obtain a license:

26 (1) manslaughter or negligent homicide resulting from
27 driving a motor vehicle;

28 (2) a felony in the commission of which a motor vehicle is
29 used;

1 (3) failure to stop and give aid as required by law when a
2 motor vehicle accident results in the death or personal injury of
3 another;

4 (4) perjury or making a false affidavit or statement under
5 oath to the department under a law relating to motor vehicles;

6 (5) driving a motor vehicle while intoxicated;

7 (6) reckless driving;

8 (7) using a motor vehicle in unlawful flight to avoid
9 arrest by a peace officer;

10 (8) refusal to submit to a chemical test under AS 28.35.-
11 032;

12 (9) driving while license canceled, suspended, revoked or
13 in violation of a limitation.

14 * Sec. 4. AS 28.15.181(e) is repealed and reenacted to read:

15 (e) A court revoking a driver's license under (c) of this sec-
16 tion, or sustaining the action of the department under AS 28.15.-
17 165(c), may grant limited license privileges

18 (1) for the final 60 days during which the license was
19 revoked if the person, during the preceding 10 years, has not been
20 previously convicted more than once of an offense described in (a)(5)
21 or (8) of this section or under another law or ordinance with substan-
22 tially similar elements;

23 (2) for the final five years during which the license was
24 revoked if

25 (A) the person, during the preceding 10 years, has
26 been previously convicted more than once of an offense described
27 in (a)(5) or (8) of this section or under another law or ordi-
28 nance with substantially similar elements; and

29 (B) the court determines that the person has

1 successfully completed an alcoholism education and rehabilitation
2 treatment program.

3 * Sec. 5. AS 28.15.181 is amended by adding a new subsection to read:

4 (g) The court may order the grant of a limited license privilege
5 under (e) of this section only if the

6 (1) revocation was for driving while intoxicated or for
7 refusal to submit to a chemical test for breath under AS 28.35.032;

8 (2) court determines that the person's ability to earn a
9 livelihood would be severely impaired; and

10 (3) court determines that a limitation under AS 28.15.201
11 can be placed on the license that will enable the person to earn a
12 livelihood without excessive danger to the public.

13 * Sec. 6. AS 28.15.291(a) is amended to read:

14 (a) A person may not drive a motor vehicle on a highway or
15 vehicular way or area at a time when that person's driver's license,
16 [OR] privilege to drive, or privilege to obtain a license has been
17 canceled, suspended, or revoked in this or another jurisdiction, or
18 when driving in violation of a limitation placed upon that person's
19 license, [OR] privilege to drive, or privilege to obtain a license in
20 this or another jurisdiction. Except as provided in (c) of this
21 section, upon conviction of a violation of this section, the court
22 shall impose a sentence of imprisonment of (1) not less than 72 hours
23 if the person has not been previously convicted in this or another
24 jurisdiction under this or another law or ordinance with substantially
25 similar elements; (2) not less than 10 consecutive days if, within the
26 preceding 10 years, the person has been previously convicted once in
27 this or another jurisdiction under this or another law or ordinance
28 with substantially similar elements; and (3) not less than 20 consecu-
29 tive days if, within the preceding 10 years, the person has been

1 previously convicted more than once in this or another jurisdiction
2 under this or another law or ordinance with substantially similar
3 elements [10 DAYS]. The execution of sentence may not be suspended
4 nor may probation or parole be granted until the minimum imprisonment
5 provided in this section has been served; nor may imposition of sen-
6 tence be suspended. In addition, the person's license, [OR] privilege
7 to drive, or privilege to obtain a license shall be revoked, and the
8 person may not be issued a new license nor may the privilege to drive
9 be restored for an additional period of not less than 90 days [ONE
10 YEAR] after the date that the person would have been entitled to
11 restoration of driving privileges.

12 * Sec. 7. AS 28.15.291(c) is amended to read:

13 (c) The court shall impose a sentence of imprisonment of not
14 less than 20 [30] days and a fine of not less than \$500 upon con-
15 viction of a violation of this section if the person's driver's li-
16 cense, privilege to drive, or privilege to obtain a license was re-
17 voked under circumstances described in AS 28.15.181(c)(1). The court
18 shall impose a sentence of imprisonment of not less than 30 [90] days
19 and a fine of not less than \$1,000 upon conviction of a violation of
20 this section if the person's driver's license, privilege to drive, or
21 privilege to obtain a license was revoked under circumstances de-
22 scribed in AS 28.15.181(c)(2) or (3). The execution of sentence may
23 not be suspended nor may probation or parole be granted until the
24 minimum imprisonment provided in this subsection has been served.
25 Imposition of sentence may not be suspended. In addition, the per-
26 son's privilege to drive shall be revoked for an additional period of
27 not less than 90 days [ONE YEAR] after the date that the person would
28 have been entitled to restoration of driving privileges if the person
29 had not been convicted under this section.

1 * Sec. 8. AS 28.35.030(b) is amended to read:

2 (b) Except as provided in (h) of this section, driving [DRIVING]
3 while intoxicated is a class A misdemeanor.

4 * Sec. 9. AS 28.35.030(c) is amended to read:

5 (c) Upon conviction under this section the court shall impose a
6 minimum sentence of imprisonment of not less than 72 consecutive hours
7 and a fine of not less than \$250 if the person has not been previously
8 convicted in this or another jurisdiction of driving while intoxicated
9 under this or another law or ordinance with substantially similar
10 elements or refusal to submit to a chemical test under AS 28.35.032 or
11 another law or ordinance with substantially similar elements. Upon
12 conviction under this section the court shall impose a minimum sen-
13 tence of imprisonment of not less than 20 consecutive days and a fine
14 of not less than \$500 if, within the preceding 10 years, the person
15 has been previously convicted once in this or another jurisdiction of
16 driving while intoxicated under this or another law or ordinance with
17 substantially similar elements or refusal to submit to a chemical test
18 under AS 28.35.032 or another law or ordinance with substantially
19 similar elements. Upon conviction under this section the court shall
20 impose a minimum sentence of imprisonment of not less than 90 [30]
21 consecutive days and a fine of not less than \$1,000 if, within the
22 preceding 10 years, the person has been previously convicted in this
23 or another jurisdiction of more than one of the following offenses or
24 has more than once been previously convicted of one of the following
25 offenses: (1) driving while intoxicated under this or another law or
26 ordinance with substantially similar elements; (2) refusal to submit
27 to a chemical test under AS 28.35.032 or another law or ordinance with
28 substantially similar elements. The execution of sentence may not be
29 suspended nor may probation be granted except on condition that the

1 minimum imprisonment provided in this section is served. Imposition of
2 sentence may not be suspended. In addition, if the offense involved
3 driving a motor vehicle for which a driver's license is required, the
4 person's driver's license shall be revoked in accordance with AS 28.-
5 15.181 and the vehicle used in commission of the offense may be for-
6 feited under AS 28.35.036. In addition, the court shall order, and a
7 person convicted under this section shall undertake, for a term spec-
8 ified by the court, that program of alcohol education or rehabilita-
9 tion that the court, after consideration of any information compiled
10 under (d) of this section, finds appropriate.

11 * Sec. 10. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person who, within the preceding 10 years, has been previ-
13 ously convicted three or more times in this or another jurisdiction of
14 the offense of driving while intoxicated or an offense under another
15 law or ordinance with substantially similar elements is guilty of a
16 class C felony. Upon conviction under this section the court shall
17 impose a minimum sentence of imprisonment of not less than six months.

18 * Sec. 11. AS 28.35.032(g) is amended to read:

19 (g) Upon conviction of a person under this section, the court
20 shall impose a minimum sentence of imprisonment of not less than 72
21 consecutive hours and a fine of not less than \$250 if the person has
22 not been previously convicted in this or another jurisdiction of
23 driving while intoxicated under AS 28.35.030 or another law or ordi-
24 nance with substantially similar elements or refusal to submit to a
25 chemical test under this section or another law or ordinance with
26 substantially similar elements. Upon conviction under this section the
27 court shall impose a minimum sentence of imprisonment of not less than
28 20 consecutive days and a fine of not less than \$500 if, within the
29 preceding 10 years, the person has been previously convicted once in

1 this or another jurisdiction of driving while intoxicated under
2 AS 28.35.030 or another law or ordinance with substantially similar
3 elements or refusal to submit to a chemical test under this section or
4 another law or ordinance with substantially similar elements. Upon
5 conviction under this section the court shall impose a minimum sen-
6 tence of imprisonment of not less than 90 [30] consecutive days and a
7 fine of not less than \$1,000 if, within the previous 10 years, the
8 person has been previously convicted in this or another jurisdiction
9 of more than one of the following offenses or has more than once been
10 previously convicted of one of the following offenses: (1) driving
11 while intoxicated under AS 28.35.030 or another law or ordinance with
12 substantially similar elements; (2) refusal to submit to a chemical
13 test under this section or another law or ordinance with substantially
14 similar elements. The execution of sentence may not be suspended nor
15 may probation be granted except on condition that the minimum impris-
16 onment provided in this section is served. Imposition of sentence may
17 not be suspended. If the offense involved driving a motor vehicle for
18 which a driver's license is required, the person's driver's license
19 shall be revoked under AS 28.15.181. In addition, the court shall
20 order, and a person convicted under this section shall undertake, for
21 a term specified by the court, that program of alcohol education or
22 rehabilitation that the court, after consideration of any information
23 compiled under (h) of this section, finds appropriate. The sentence
24 imposed by the court under this subsection shall run consecutively
25 with any other sentence of imprisonment imposed on the committed
26 person.

27 * Sec. 12. This Act takes effect January 1, 1989.
28
29

H B

361

STATE OF ALASKA THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

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

Mary Van Nimwegen

H HESS	4-15-88	8:30 a.m.
H HESS	4-19-88	8:30 a.m.
H HESS	4-20-88	8:30 a.m.
H HESS	4-21-88	8:30 a.m.

5-1494B
Ford
4/20/88

Original sponsor: Health, Education and
Social Services Committee

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 361 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to revocation of a minor's license
7 to drive, traffic offenses by minors, and the defini-
8 tion of driver's license."

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

10 * Section 1. AS 28.15 is amended by adding a new section to read:

11 Sec. 28.15.185. COURT REVOCATION OF A MINOR'S LICENSE TO DRIVE.

12 (a) A person who is at least 12 years of age but not older than 17
13 years of age who is adjudicated by a juvenile court of misconduct
14 involving a controlled substance under AS 11.71 or possession or
15 consumption of alcohol under AS 04.16.050 shall have the person's
16 driver's license revoked under (b) of this section.

17 (b) The court shall impose the revocation required under (a) of
18 this section as follows:

19 (1) for a first conviction or adjudication, the revocation
20 shall be for six months or until the person reaches 16 and one-half
21 years of age, whichever is longer;

22 (2) for a second or subsequent conviction or adjudication,
23 the revocation shall be for one year or until the person reaches 17
24 years of age, whichever is longer.

25 (c) Upon conviction or adjudication of an offense listed in (a)
26 of this section the court may, upon petition of the person, review the
27 revocation and may restore the driver's license, except a court may
28 not restore the driver's license

29 (1) for a period of 90 days for the first conviction or

1 adjudication, or 180 days for second or subsequent convictions or
2 adjudications; and

3 (2) until the person has taken and successfully completed a
4 state approved program of drug rehabilitation if convicted of miscon-
5 duct involving a controlled substance under AS 11.71, or alcohol
6 rehabilitation if convicted of possession or consumption of alcohol
7 under AS 04.16.050; this paragraph does not apply to a person who
8 resides in an area that does not offer a state approved drug or alco-
9 hol rehabilitation program.

10 (d) Notwithstanding the provisions of AS 28.20.240 and 28.20.-
11 250, upon conviction of an offense specified in (a) of this section,
12 the department may not require proof of financial responsibility
13 before restoring or issuing the person's driver's license.

14 * Sec. 2. AS 28.40.100(a)(5) is amended to read:

15 (5) "driver's license" or "license" when used in relation
16 to driver licensing, means a license, permit, or privilege to obtain a
17 driver's license, whether or not a person holds a valid license issued
18 in this or another jurisdiction, to drive a motor vehicle under the
19 laws of this state;

20 * Sec. 3. AS 47.10.010 is amended by adding a new subsection to read:

21 (d) The provisions of AS 47.10.020 - 47.10.085 do not apply to
22 driver's license proceedings under AS 28.15.185. The court shall
23 impose a driver's license revocation under AS 28.15.185 in the same
24 manner as adult driver's license revocations, except that a parent or
25 legal guardian shall be present at all proceedings.

26 * Sec. 4. AS 47.10.070 is amended by adding a new subsection to read:

27 (b) If the petition states facts that indicate the minor has
28 committed misconduct involving a controlled substance prohibited by
29 AS 11.71, or has possessed or consumed alcohol in violation of

1 AS 04.16.050, the court shall at the beginning of the hearing advise
2 the minor of the mandatory period of driver's license revocation that
3 may be imposed under AS 28.15.185. Failure to advise the minor as re-
4 quired by this subsection constitutes harmless error and does not
5 affect authority of the court under AS 28.15.185 or AS 47.10.080.

6 * Sec. 5. AS 47.10.090(a) is amended to read:

7 (a) The court shall make and keep records of all cases brought
8 before it. The court's official records may be inspected only with
9 the court's permission and only by persons having a legitimate inter-
10 est in them. All information and social records pertaining to a minor
11 and prepared by an employee of the court or by a federal, state or
12 city agency in the discharge of the employee's or agency's official
13 duty, are privileged and may not be disclosed directly or indirectly
14 to anyone without the court's permission, except for traffic offenses
15 and driver's license action taken under AS 28.15.185. Traffic of-
16 fenses and driver's license action under AS 28.15.185 may not be
17 disclosed without the court's permission, except as specified in
18 AS 28.15.151. However, a state or city law-enforcement agency shall
19 disclose information regarding a case which is needed by the person or
20 agency charged with making a preliminary investigation for the infor-
21 mation of the court. The court shall forward a record of adjudication
22 of a violation of an offense listed in AS 28.15.185(a) to the Depart-
23 ment of Public Safety. Within 30 days of the date of a minor's 18th
24 birthday or, if the court retains jurisdiction of a minor past the
25 minor's 18th birthday, within 30 days of the date on which the court
26 relinquishes jurisdiction over the minor, the court shall order sealed
27 all the court's official records, information and social records
28 pertaining to that minor, as well as records of all driver's license
29 proceedings under AS 28.15.185, criminal proceedings against the minor

1 and punishments assessed against the minor except for traffic of-
2 fenses. A person may not use these sealed records for any purpose
3 except that the court may order their use for good cause shown or may
4 order their use by an officer of the court in making a presentencing
5 report for the court.
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HOUSE COMMITTEE REPORT

(7)

Date referred: 1/14/88

FURTHER REFERRALS: Judiciary

DATE: 4-26-88

The Health, Education and Social Services Committee has considered HB 361

"An Act relating to suspension and revocation of a minor's license to drive and the definition of driver's license; and providing for an effective date

RECOMMENDS:

- replace with CSHB 361 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

[Handwritten signatures: John Ellis, Nild Koppena, Bill Huns, M. J. ...]

SIGNING OTHER RECOMMENDATIONS:

[Handwritten signature: Nild E. Koppena]

 CO-Chairman's signature
[Handwritten signature: John Ellis]

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: Bill Version: CS HB 361
Publish Date: 04/20/88

Revision Date: Agency Affected: Alaska Court System
Title: An act relating to suspension BRU: Trial Courts
& revocation of a minor's license
Sponsor: House HESS Components:
Requestor: House HESS

EXPENDITURES/REVENUES:	(Thousands of Dollars)					
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services
Travel
Contractual
Supplies
Equipment
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL

REVENUE

FUNDING:	(Thousands of Dollars)					
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: *Jan Strandberg* Jan Strandberg, General Counsel Phone: 264-8225
Division: Alaska Court System Date: 04/20/88

Approved by: *Arthur H. Snowden, II* Arthur H. Snowden, II, Administrative Director Date: 04/20/88
Agency: Alaska Court System

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management & Budget
 - Impacted Agency(ies)
 - Senate Secretary

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "... revocation of a minor's license to drive.."
Sponsor: HE
Requestor: _____

Agency Affected: Health & Social Services
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
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)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

N/A

Prepared by: Yvonne M. Chase, ACSW, Director Phone: 465-3170

Division: Family & Youth Services Date: 4/20/85

Approved by Commissioner: Myra M. Munson Date: 4/24/85

Agency: Dept. of Health & Social Services

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