ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4649 HJUD HB 52

1985 ALCOHOL RELATED TRAFFIC FATALITIES*

State	Fatalities	Population In Millions	Fatalities Per Million	State	Fatalities	Population In Millions	Fatalities Per Million
Alabama	214	3.9	55	Montana	118	.8	
Alaska	69	.4	173	Nebraska	91	1.6	
Arizona	335	2.8	120	Nevada	112	.9	
Arkansas	324	2.3	141	New Hampshire	102	.9	
California	2,412	23.7	102	New Jersey	246	7.4	
Colorado	242	2.9	83	New Mexico	293	1.3	
Connecticut	252	3.1	81	New York	695	17.6	
Delaware	73	.6	122	North Carolina	637	5.9	
Florida	1,294	9.7	133	North Dakota	50	.7	
Georgia	700	5.4	130	Ohio	746	10.8	
Hawaii	77	1.0	77	Oklahoma	279	3.0	
Idaho	118	.9	131	Oregon	285	2.6	
Illinois	554	11.4	49	Pennsylvania	767	11.9	
Indiana	232	5.5	42	Rhode Island	50	.9	
Iowa	234	2.9	81	South Carolina	385	3.1	
Kansas	152	2.4	63	South Dakota	69	.7	
Kentucky	168	3.6	47	Tennessee	318	4.6	
Louisiana	401	4.2	95	Texas	989	14.2	
Maine	56	1.1	51	Utah	110	1.5	
Maryland	741	4.2	176	Vermont	41	.5	
Massachusetts	222	5.8	38	Virginia	479	5.3	
Michigan	719	9.3	77	Washington	326	4.1	
Minnesota	261	4.1	64	West Virginia	257	2.0	
Mississippi	300	2.5	120	Wisconsin	187	4.7	
Missouri	486	4.9	99	Wyoming	70	.5	

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

forfeited under this section may be disposed of at the discretion of the department. (If sold at auction $ paid, in to victim fund

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without

REVIEW RESOURCES FOR PROSECUTORS

. most states, the public prosecutor has a great deal of discretionary power deciding what cases he wants to try and what charges will be filed. Some ates allow for the hiring of a private prosecutor if a victim is not satisfied ith the public prosecutor. In some of those states the public prosecutor must ant the private prosecutor permission to try the case. Victims should be aware f their state statutes regarding this procedure.

: most states, prosecutors are subject to review both by the bar association d by a state regulatory group usually referred to as a "Prosecutor's Council" : "Prosecutor Review Board." Call the switchboard of your state capitol o get the phone number and address of such a group. Usually they consist f other prosecutors, so the review is by peers.

few states have what is called a "John Doe Statute" or a "One Man Jury tatute" in which a person may go directly to a judge if he believes that a ime was committed and the prosecutor has not filed charges. Wisonsin's atute follows:

2.26 John Doe proceeding. If a person complains to a judge that he has ason to believe that a crime has been committed within his jurisdiction, the udge shall examine the complainant under oath and any witnesses produced y him and may, and at the request of the district attorney shall, subpoena nd examine other witnesses to ascertain whether a crime has been committed nd by whom committed. The extent to which the judge may proceed in such xamination is within his discretion. The examination may be adjourned and ay be secret. Any witness examined under this section may have counsel resent at the examination but such counsel shall not be allowed to examine is client, cross-examine other witnesses or argue before the judge. If it appears robable from the testimony given that a crime has been committed and who ommitted it, the complaint shall be reduced to writing and signed and verified; nd thereupon a warrant shall issue for the arrest of the accused. Subject to 971.23, the record of such proceeding and the testimony taken shall not e open to inspection by anyone except the district attorney unless it is used y the prosecution at the preliminary hearing or the trial of the accused and hen only to the extent that it is so used.

A defendant must be allowed to use testimony of witnesses at a secret John Doe proceeding to impeach the same witnesses at the trial, even if the prosecution does not use the John Doe testimony. Myers v. State, 60 W (2d) 248, 08 NW (2d) 311.

Immunity hearing must be in open court. State ex rel. Newspapers, Inc. v. Circuit Court, 65 W (2d) 66, 221 NW (2d) 894.

Person charged as result of John Doe proceeding has no recognized interest in the maintenance of secrecy in that proceeding. John Doe discussed. State v. O'Connor, 77W (2d) 261, 252 NW (2d) 671.

No restrictions of the 4th and 5th amendments preclude enforcement of an order for handwriting exemplars directed by presiding judge in John Doe proceeding. State v. Doe, 78 W (2d) 161, 254 NW (2d) 210.

See note to Art. I, sec. 8, citing Ryan v. State, 79 W (2d) 83, 255 NW (2d) 910.

This section does not violate constitutional separation of powers doctrine. John Doe discussed. State v. Washington, 83 W (2d) 808, 266 NW (2d) 597 (1978).

Balance between public's right to know and need for secrecy in John Doe proceedings discussed. In re Wis. Family Counseling Services v. State, 95 W (2d) 670, 291 NW (2d) 821 (Ct. App. 1980).

John Doe judge may no issue material witness warrant under 969.01 (3). State v. Brady, 118 W (2d) 154, 345 NW (2d) 533 (Ct. App. 1984).

REVIEW RESOURCES FOR JUDGES

In most states, there is a review procedure for the handling of complaints about judges. It is usually called a "Commission on Judicial Conduct," a "Judicial Review Board," or other similar title. Call your local bar association or State Capitol switchboard to learn what is available in your state.

If you file a complaint, grievance, or concern, *be sure you know the facts.*

[redacted]APTER TO FILE COMPLAINT [redacted]OCAL JUDGE, PRESIDENT SAYS

By Steve McGonigle
Staff Writer of TL[redacted] News

The president of the Dallas County chapter of Mothers Against Drunk Driving said Thursday that her group will file a complaint with the state Commission on Judicial Conduct against County Criminal Court Judge Harold Entz in connection with Entz's handling of a recent drunken driving case.

Milo Kirk said Entz acted without authority when he allowed Martin Vareas Rivera of Dallas to plead guilty on Jan. 16 to a misdemeanor charge that did not reflect the fact that Rivera had seriously injured four people in a car accident.

Entz initially granted Rivera probation but later re-sentenced Rivera to a maximum two-year jail term after Rivera's attorney requested that the guilty plea be voided and that Rivera be given a new trial.

Entz said he granted Rivera probation by mistake after reading an incomplete probation report and after the defendant assured him that there were no injuries in the accident. He has maintained he did nothing improper.

Mrs. [redacted] her group will file the complaint against Entz after a court hearing Thursday to determine whether Entz should be disqualified from hearing a request by Rivera's new attorney for a third trial.

Chief misdemeanor prosecutor Mike Gillett requested the disqualification because he contended that Entz has shown he cannot be fair to the prosecution.

Retired state District Judge R. C. Vaughan of Sherman ruled at the conclusion of the hearing that prosecutors had not proved Entz was biased, though Vaughan said he was bothered by the handling of the case.

ATTENTION CIVIL ATTORNEYS!!
EFFECT OF BANKRUPTCY ON DWI JUDGMENTS

The U.S. Constitution and Federal Statues allow liberal protection of debtors through relief in the Bankruptcy Courts. A debtor is allowed to have certain liabilities discharged by operation of law, rendering the creditor's claim valueless. In bankruptcy, the holder of a civil judgment obtained in a lawsuit against a drunk driver is considered a *Creditor*, and the drunk driver a *Debtor*.

CHAPTER 7

An individual debtor has two options in bankruptcy. The most commonly used is liquidation under Chapter 7 of the Bankruptcy Code. The debtor has most obligations forgiven and keeps a portion of his or her assets to facilitate a "fresh start" after Bankruptcy. The debtor keeps such things as a homestead, clothing, household furnishings, personal effects, tools of trade and, generally, an automobile.

These are typical of the assets exempted by law from execution to satisfy judgments. The rest of the assets are returned to secured creditors or liquidated (sold) to pay the creditors on a pro-rata basis. *Certain debts are not discharged and forgiven, such as taxes, child support, alimony, and DWI judgments.* The DWI judgment holder should carefully follow the bankruptcy case, and might consider retaining counsel to be sure the origin of the claim is brought to the attention of the Bankruptcy Court, and the non-dischargeable nature of the debt is noted and even confirmed.

It should be remembered that holding a non-dischargeable debt is still no guarantee of collecting any money since the debtor, immediately after bankruptcy, holds only property which cannot be taken to satisfy a judgment. The creditor holding the DWI judgment, unlike those creditors whose claims are discharged, will be able to wait and attempt to collect as the debtor rebuilds assets following bankruptcy.

CHAPTER 13

An individual debtor could seek relief under Chapter 13 of the Bankruptcy Code and effect an adjustment of his or her debts. The debtor typically pays a portion of the debts, and has a portion discharged through a court supervised plan of three to five years. Some debts that would be non-dischargeable in a Chapter 7 liquidation are dischargeable in a Chapter 13 Debt Adjustment plan. *A DWI judgment could be discharged after a partial payment under such a plan.* The DWI judgment holder should retain counsel if the debtor attempts a Chapter 13 plan. *The entire plan can be rejected if the Bankruptcy Court finds it has been proposed in "bad faith."* The timing of the bankruptcy, the amount of the DWI judgment compared to the entire amount of debt, the effect on the holder of the judgment compared to other creditors, and many other factors will be considered by the court in evaluating a plan with an objecting creditor.

Defeating the entire plan may be the only way to prevent the discharge of the DWI judgment. If unsuccessful, the holder of the DWI judgment should still follow the Chapter 13 plan very closely, because many debtors do not follow through with their plan to completion and the discharge of the debts. Some Chapter 13 plans are converted to Chapter 7 liquidations where the DWI judgment is not discharged.

It is not uncommon for attorneys representing defendants in lawsuits to threaten that their client will resort to bankruptcy relief if the suit is pursued to judgment. However, this threat has much less impact on victims of drunk drivers because of the preferential treatment of such judgments in the bankruptcy code.

Sec. 28.35.035. Administration of chemical tests without consent. (a) If a person is under arrest for an offense arising out of acts alleged to have been committed while the person was driving a motor vehicle while intoxicated, and that arrest results from an accident that causes death or physical injury to another person, a chemical test may be administered without the consent of the person arrested to determine the amount of alcohol in that person's breath or blood.

(b) A person who is unconscious or otherwise in a condition rendering that person incapable of refusal is considered not to have withdrawn the consent provided under AS 28.35.031(a) and a chemical test may be administered to determine the amount of alcohol in that person's breath or blood. A person who is unconscious or otherwise incapable of refusal need not be placed under arrest before a chemical test may be administered.

(c) If a chemical test is administered to a person under (a) or (b) of this section, that person is not subject to the penalties for refusal to submit to a chemical test provided by AS 28.35.032 and 28.35.034. (§ 21 ch 117 SLA 1982; am § 22 ch 77 SLA 1983)

Effect of amendments. - The 1983 amendment in subsection (a) substituted "an offense . . . driving a motor vehicle" for "the crime of driving" and in subsection (b) revised the internal reference in the present first sentence and added the present second sentence.

NOTES TO DECISIONS

Stated in Copelin v. State, Sup. Ct. Op. No. 2617 (File Nos. 5453, 5708), 259 P.2d 1206 (1983); Pena v. State, Ct. App. Op. No. 245 (File No. 6174), 664 P.2d 169 (1983).

Sec. 28.35.036. Forfeiture of motor vehicle. (a) After conviction of an offense under AS 28.35.030 or AS 28.35.032 involving a motor vehicle of a type for which a driver's license is required, the state may move the court to order the forfeiture of the motor vehicle involved in the commission of the offense if the convicted person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses:

(1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; or

(2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements.

(b) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

(c) Upon receipt of a motion for forfeiture, the court shall schedule a hearing on the matter and shall notify the state and the convicted

person of the time and
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purposes:

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person of the time and place set for the hearing. At the hearing, the court may order the forfeiture of the motor vehicle if the court, sitting without a jury, determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:

(1) deterrence of the convicted person from the commission of future offenses under AS 28.35.030;

(2) protection of the safety and welfare of the public;

(3) deterrence of other persons who are potential offenders under AS 28.35.030; or

(4) expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

(d) Upon forfeiture of a motor vehicle the court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(e) If not released under AS 28.35.037, a motor vehicle forfeited under this section may be disposed of at the discretion of the department. (§ 23 ch 77 SLA 1983)

Sec. 28.35.037. Remission of forfeitures. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without prejudice to the rights, and does not extinguish the claims of a creditor with an interest in the motor vehicle. (§ 25 ch 77 SLA 1983)

Sec. 28.35.038. Municipal impoundment and forfeiture. Notwithstanding other provisions in this title, a municipality may adopt an ordinance providing for the impoundment or forfeiture of a motor vehicle involved in the commission of an offense under AS 28.35.030, 28.35.032, or an ordinance with elements substantially similar to AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section is not required to be consistent with this title or regulations adopted under this title. (§ 25 ch 77 SLA 1983)

Article 3. Reckless and Negligent Driving.

Section

40 Reckless driving
45 Negligent driving

Sec. 28.35.040. Reckless driving. (a) A person who drives a motor vehicle in the state in a manner which creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving. A substantial and unjustifiable risk is a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) A person convicted of reckless driving is guilty of a misdemeanor and is punishable by a fine of not more than $1,000 or by imprisonment for not more than one year or by both.

(c) Lawfully conducted automobile, snowmobile, motorcycle or other motor vehicle racing or exhibition events are not subject to the provisions of this section. (§ 50-5-4 ACLA 1949; am § 1 ch 182 SLA 1955; am § 1 ch 70 SLA 1961; am § 2 ch 121 SLA 1967; am § 1 ch 13 SLA 1971; am § 46 ch 32 SLA 1971; am § 6 ch 74 SLA 1974)

NOTES TO DECISIONS

Codification of common-law standard of care. — This section and AS 28.35.045, defining reckless and negligent driving, do not set forth precise standards of care, but merely codify the usual common-law standard of care. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Specific conduct not proscribed. — This section and AS 28.35.045, defining reckless and negligent driving, do not proscribe specific conduct, but rather state that a person shall not drive a motor vehicle in a manner which creates an unjustifiable risk. Bailey v. Lenord, Sup. Ct. Op. No. 2308 (File No. 4696), 625 P.2d 849 (1981).

Risks to safety of general public. — Reckless driving involves risks to the safety of the public at large. Calder v. State, Sup. Ct. Op. No. 2224 (File No. 4293), 619 P.2d 1026 (1980).

A defendant was not placed in double jeopardy by his conviction of the lesser included offense of reckless driving on a felony charge of assault with a dan-

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Trooper arriving cannot arrest for without warrant. — ture has classified and operating or d under the influence as misdemeanors. who arrived at an ac arrest a driver wi either reckless driv since neither of committed or attem Layland v. State, S (File No. 2264), 535 Sup. Ct. Op. No. 1976), overruled on Anchorage v. Geber (File Nos. 3827, 40 P.2d 1192 (1979).

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Sec. 28.35.04
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BILL NO: HB 52

DATE: January 22, 1987

TITLE: An Act relating to motor vehicle forfeiture

CONTACT: T. Michael Lewis 465-4374

DEPARTMENT OF PUBLIC SAFETY

This bill would provide a stong deterrant to the act of drinking and driving in th it increases the possibility of forfeiture of the motor vehicle for repe offenses. As the public became more aware of this added sanction, the would be an increased inclination to seek alternative modes of transpo.tation when drinking. Although mandatory jail terms, fines and license revocation are effective for first time offenders, these sanctions do not seem to deter the multiple offender to any great extent.

It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid. In the case of the individual that continues to drink and drive in spite of several alcohol related offenses, the loss of the offenders vehicle would virtually remove this hazardous driver from our highways.

The department supports this bill.

William R. Nix
Acting Commissioner

RECEIVED JAN 2 6 1987

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : HB52
Publish Date :

REQUEST:

Revision Date:
Title : An Act relating to motor vehicle forfeiture
Sponsor : Kohonen
Requestor : House State Affairs

Agency Affected : Public Safety
BRU : AK Highway Safety Planning Agency
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JNR 1/23/87

Prepared by : T. Michael Lewis TML
Division : Alaska Highway Safety Planning Agency
Phone : 465-4374
Date : 1/22/87

Approved by Commissioner : [signature]
Agency :
Date : 1/23/87

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

page ____ of ____

ate referred: 1/28/87 FURTHER REFERRALS:

DATE: 3-23-87

he Judiciary Committee has considered HB 52

An Act relating to motor vehicle forfeiture."

ECOMMENDS:

[ ] replace with _____ [✓] 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

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published _____

[ ] same as previous zero fiscal note published _____

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

P.O. BOX N
JUNEAU, ALASKA 99811-1200
PHONE: 465-4322

March 11, 1987

The Honorable Niilo Koponen
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Koponen:

At the request of your staff, 24 convictions for driving while intoxicated (DWI) were randomly selected for analysis.

The results are as follows:

Four of the 24 vehicles involved, or 16.6 percent, were driven by the owners. There were no lien holders or other registered owners.

Eleven of the 24, or 45.8 percent, were not driven by the registered owners; however, two of the drivers had the same last name as the registered owner.

Of the 11 apparently loaned vehicles, eight, or 72.7 percent, had no lien holder.

Five of the 24, or 20.8 percent, were driven by the owner; no others were listed on the registration, but there was a lien holder.

One of the 24, or four percent, was driven by the registered owner; others were listed as registered owners, but there was no lien holder.

Three of the 24, or 12.5 percent, were driven by the registered owner; other persons were listed as registered owners, and there was a lien holder listed.

Thirteen of the 24, or 54 percent, had no lien holder.

One vehicle, or 4 percent, was a model year between 1960 and 1969.

Twelve vehicles, or 50 percent, were model years between 1970 and 1979.

Eleven vehicles, or 46 percent, were model years between 1980 and 1986.

Of the 11 loaned vehicles, eight, or 72.7 percent, were model years between 1970 and 1979.

I trust this information will be of service to you.

Sincerely,

James D. Vaden
Deputy Commissioner

Attachment

Year	Make	Driven by Registered Owner?	Others Listed on Registration? (more than 1)	Lien Holder
1978	Chevrolet P.U.	Yes	No	No
1981	Subaru	Yes	No	No
1969	Chevrolet	Yes	No	No
1976	Buick	Yes	No	No
1972	Volkswagen	No	Yes	No
1971	Toyota	No	No	No
1974	Pontiac	No	No	No
1975	Buick	No	No	No
1970	Chevrolet	No	No	No
1973	Chevrolet	No	No	No
974	Mercury	No	No	No
1976	Datsun	No	No	No
1985	Subaru	No (SLN)[1]	No	Yes
1984	Ford	No (SLN)[1]	Yes	Yes
1984	Chevrolet	No	Yes	Yes
1985	Dodge P.U.	Yes	No	Yes
1984	Chevrolet	Yes	No	Yes
1986	Chevrolet	Yes	No	Yes
1984	Chevrolet	Yes	No	Yes
1978	Chevrolet	Yes	No	Yes
1977	Plymouth	Yes	Yes[2]	No
1984	Dodge	Yes	Yes[2]	Yes
1982	Ford P.U.	Yes	Yes[2]	Yes
1986	Toyota	Yes	Yes	Yes

1 - (SLN) Driver's registered owner had same last name
2 - Appeared to be spouses

MEMORANDUM

TO: Representative Barnes

FROM: Julia Coster

SUBJECT: CSHB 52 (Judiciary), An Act relating to motor vehicle forfeiture

DATE: March 17, 1987

HB 52 as it was originally drafted amended AS 28.35.036 by requiring the prosecutor in a 3rd time DWI conviction to move for forfeiture of the motor vehicle. The problem with this approach, as pointed out by prosecutor Pat Conheady, is that under this proposal the judge in the case still has the option of denying the motion for forfeiture. Apparently in some jurisdictions the prosecutors have voluntarily moved for forfeiture of the vehicle after multiple convictions for DWI and the judges have refused to order the forfeiture. To address this situation and get at the heart of the problem a Judiciary CS has been drafted. This CS amends AS 28.35.030 and .032 by requiring the judge to order forfeiture of the vehicle upon conviction of a 3rd DWI offense or refusal to submit to a chemical breath test.

Sectional Analysis:

Section 1 - amends AS 28.35.030(c) - (a section prescribing the sentence for persons convicted of operating a vehicle while intoxicated) by providing that a court shall order forfeiture of the vehicle used in commission of the offense if it is the 3rd or more DWI conviction. The new language specifically mentions that the forfeiture is subject to remission of forfeiture under AS 28.35.037.

Section 2 - amends AS 28.35.032(g) - (a section prescribing the sentences for persons convicted of refusing to submit to a chemical test) with exactly the same language as in section 1.

Section 3 - repeals and reenacts AS 28.35.036 - Forfeiture of Motor Vehicle. Specifically, new .036 gets rid of the subsections in old .036 which outline the factors the judge should use when deciding whether to order forfeiture. Under the new CS the judge does not have the discretion to not order forfeiture, therefore these factors are not necessary. New .036 also gets rid of extra language which is incorporated in .030 and .032. Subsection (b) in section 3 is a new. This subsection was added to set out a specific time frame in which a 3rd party having an interest in the vehicle must assert that claim.

Section 4 - adds a new subsection to AS 28.35..037 - Remission of Forfeiture. This new subsection makes it clear that a person who has a 3rd party interest in the vehicle may request a hearing to establish that interest and move for remission of forfeiture of their interest.

MEMORANDUM

3/20/87

TO: Rep. Fran Ulmer, Vice-Chair,
House Judiciary Committee

FROM: J. Hartle, Committee Staff

RE: HB 52 Forfeiture of motor vehicles

Summary of testimony to date:

Rep. Niilo Koponen, Prime sponsor: "Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities... In Fairbanks, only one person in three years has been ordered to forfeit their car... The primary intent of HB 52 is to limit drunk driving fatalities... This legislation may act as a deterrent... It is routine practice of Alaska game wardens to immediately confiscate cars...prior to completion of the violator's due process proceedings."

Dean Guaneli, Assistant A.G., Criminal Division: "The present statute, which permits forfeiture to be pursued in the discretion of the prosecutor, is rarely used by the state because of the expense involved in litigating forfeiture cases (see fiscal note)...the criminal sentence and lengthy license revocation is usually sufficient to satisfy the state's interests. ...it is doubtful that additional forfeitures will be ordered, except in the most egregious cases. The department therefore believes that the added cost of filing mandatory forfeiture actions and litigating competing claims by joint owners and secured lienholders will provide little in the way of additional deterrence and public safety.

Bill Nix, Acting Commissioner, Dept. of Public Safety: "This bill would provide a strong deterrent to the act of drinking and driving in that it increases the possibility of forfeiture of the motor vehicle for repeat offenses... It is felt that the added loss of the vehicle to an offender is an expense and inconvenience that most people would wish to avoid... the loss of the offender's vehicle would virtually remove this hazardous driver from our highways... The department supports this bill."

Michael L. Wolverton, Assistant Public Defender: ...we believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming, and generally fruitless exercise for the criminal justice system as a whole. In our experience, the vast majority of defendants who would be subject to the provisions of this law do not

own the vehicles that they were driving at the time they were apprehended. ...it could very well devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency. In addition, these forfeiture proceedings would typically involve vehicles whose value would not warrant the exercise.

James Vaden, Deputy Commissioner, Public Safety ...24 convictions for DWI were randomly selected for analysis. 4 of 24 vehicles were driven by owners. (See memo attached)

Vehicle forfeiture procedures:
Vehicles are very rarely forfeited for DWI in Alaska. Karla Forsythe could only find one case in Fairbanks and none at all in Anchorage that any judge could recall.

AS 28.35.036 (a) provides that the D.A. may move the court to order the forfeiture of the motor vihicle involved in the commission of the offense if...[3rd offense].

AS 28.35.036 (c) provides that upon receipt of a motion of forfeiture, the court shall schedule a hearing on the matter. At the hearing the judge (without a jury) determines by a preponderance of the evidence that the forfeiture of the motor vehicle will serve one or more of the following purposes:
-deterrence of the convicted person
-protection of the safety and welfare of the public
-deterrence of other personw who are potential offencers
-expression of public condemnation of the serious or aggravated nature of the convicted person's conduct.

The court shall require the surrender of the registration and title. If the vehicle is not released through remission, the vehicle may be disposed of at the discression of the department.

Examples:
If there is a lienholder, he is able to get his interest remitted. If a person is convicted for the third time of DWI, the D.A. may (shall under HB 52) move the court for forfeiture. If the court orders forfeiture, the state must notify anyone with an ownership interest in the vehicle. If there is a lien, under remission procedures the lienholder will be able to have his interest returned. If there is no lien, the state may dispose of the vehicle as it pleases (e.g. sell or use as undercover vehicle). So, if the vehicle is sold by the state for $8,000 and there is a $6,000 lien, the state gets the difference and the driver is out what he or she has put into it. If the vehicle is owned outright, the driver is out the total cost of the vehicle.

PUBLIC DEFENDER AGENCY and State of Alaska, Department of Law, Appellants,

v.

SUPERIOR COURT, THIRD JUDICIAL DISTRICT, Appellee.

No. 2071.

Supreme Court of Alaska.

April 9, 1975.

Because of divorced father's arrearage in child support, the court trustee moved for an order to show cause to issue against father. The Superior Court, Third Judicial District, James K. Singleton, J., ordered the public defender to represent father and the Attorney General's office to prosecute and public defender agency and department of law appealed. The Supreme Court, Connor, J., held that although the Attorney General has power to prosecute a civil contempt for nonsupport proceeding, court does not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases; that it would violate doctrine of separation of powers to charge the court trustee with the duty to prosecute contempt actions; and that the public defender is empowered to represent indigent father.

Reverse in part and affirmed in part.

Fitzgerald, J., did not participate.

1. Contempt ⇐41, 43

Civil contempt proceedings can normally only be initiated by the aggrieved party or by one who has an interest in the right to be protected.

2. Attorney General ⇐7

In light of the substantial state interest in the enforcement of child support orders, contempt of such an order is a violation of state law within meaning of statute providing that the Attorney General shall prosecute all cases involving violation of state law. AS 09.55.210, 11.35.010, 11.35.-010, 25.25.010 et seq., 44.23.020, 47.25.310 et seq.

3. Attorney General ⇐6

Generally, an Attorney General has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020.

4. Attorney General ⇐7

Under the common law, an Attorney General is empowered to bring any action which he thinks necessary to protect the public interest and possesses the corollary power to make any disposition of the state's litigation which he thinks best. AS 44.23.020.

5. Attorney General ⇐7

Attorney General's discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. AS 44.23.020.

6. Constitutional Law ⇐73

When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts.

7. Constitutional Law ⇐58

Alaska recognizes the separation of powers doctrine.

8. Constitutional Law ⇐73

Under the separation of powers doctrine, court does not have power to control the exercise of the Attorney General's discretion as to whether he will take any action in any particular cases of contempt for nonsupport of child. AS 44.23.020.

9. Courts ⇐73

Court may not combine prosecutorial and judicial functions.

10. Constitutional Law ⇐73

It would violate doctrine of separation of powers to charge court trustee with duty to prosecute a civil contempt for nonsupport proceeding. W.S.A. 247.29; M.C.L.A. § 552.251; AS 09.55.210; Rules of Civil Procedure, rule 67

Mark, I talk to Mike Reed. He agrees that the bill is OK, but he sees your point. He says that the AK Supreme Court has historically given the legislature broad powers to limit executive discretion. MTA

Mark-
I agree w/you this doesn't say the legislature could withdraw the DA to prosecute. Cf AS 44.23.020 (b)(7) cited at p. 950

Mop

file w/my HB53 bill file.

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

11. Parent and Child ⇐3.3(9)

Public defender is empowered to represent indigent father in a civil contempt for nonsupport proceeding. AS 18.85.100, 18.85.170(5)(A).

12. Statutes ⇐219(3)

Continuous, contemporaneous and practical interpretation of statute by executive officers and courts is a valuable aid in determining meaning.

13. Parent and Child ⇐3.3(9)

Fact that statute providing for legal services by the public defender agency to indigent persons charged with a serious crime antedated judicial decisions concerning right to counsel did not preclude determination that the agency was authorized to represent indigent father in a civil contempt for nonsupport proceeding. AS 18.85.100, 18.85.170(5)(A).

Lawrence J. Kulik, Asst. Public Defender, Herbert D. Soll, Public Defender, Anchorage, for appellant—Public Defender Agency.

Gerald W. Markham, Asst. Atty. Gen., Anchorage, Norman C. Gorsuch, Atty. Gen., Juneau, for appellant State.

Duncan Campbell Webb, Anchorage, for appellee.

Before RABINOWITZ, C. J., and CONNOR, ERWIN and BOOCHEVER, JJ.

CONNOR, Justice.

This case presents questions about the manner in which civil child support orders should be enforced. In particular, this case involves a determination of who should prosecute and defend in such proceedings.

The facts which give rise to the present controversy are as follows:

Upon divorce in 1968, Agnes Johnson was awarded custody of the six children of her marrigage to John Johnson. Mr. Johnson was ordered to pay monthly child support of $125 plus a 3% collection charge through the court trustee. Because of substantial arrearage, the court trustee moved on January 3 or 4, 1973, for an order to show cause to issue against Mr. Johnson. Superior Court Judge Singleton held a pretrial conference on the matter with a representative of the Department of Law and with Herbert Soll, the Public Defender. They discussed the possibility of the Department of Law prosecuting the action and the Public Defender Agency defending it. Judge Singleton then directed the two agencies to submit briefs on the legal and practical problems involved in such an arrangement. He also directed the court trustee to submit a brief on the factual issues and on the position of the court trustee with regard to the prosecution of contempt proceedings for non-support. After consideration of the materials submitted, Judge Singleton ordered the Public Defender, over objection, to represent Mr. Johnson and the Attorney General's office, again over objection, to prosecute. The parties seek review of this order.[1]

The issues presented for review are:

1. May the superior court order the Attorney General to prosecute a civil contempt for nonsupport proceeding?

2. Is the court trustee the proper party to prosecute such a proceeding?

3. Can the Alaska Public Defender, consistent with the Alaska Public Defender Act, be ordered to defend an alleged contemnor in a civil non-support action?

The Attorney General

Before the validity of the order to prosecute can be considered, it is first necessary to determine whether the Attorney General's office has any authority to proceed in the area of enforcement of support orders.

1. Judge Singleton found that issues regarding representation were separate and distinct from the problems facing Mr. Johnson, and that his order on the matter was final. Without determining whether this order was final within the meaning of Alaska Civ.R. 5(b), we find that this appeal meets the requirements of a petition for review set forth in App.R. 24(a).

PUBLIC DEFENDER A

[1] The type of contemp
has traditionally been consid
on the civil side of the cour
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criminal overtones. Otton v
P.2d 537 (Alaska 1974);
State, 491 P.2d 75) (Alaska
contempts are designed

"'to preserve and enforce
private parties to suits, a
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for enforcing the rights an
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v. Wood, 6 Alaska 255 (1920)

Such civil contempt proceedir
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United States, 236 F.2d 140
1956) cert. denied, 352 U.S. 9
150, 1 L.Ed.2d 119 (1956); Wil
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542, 545 (E.D.La.1967); Savel
213 Miss. 869, 58 So.2d 41, 43 (19

The relevant duties of the Att
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"(b) The attorney general sha

(2) represent the state in a
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2. The doctrine of parens patria
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to provide protection of the perso
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infants. Helton v. Crawley, 241
41 N.W.2d 60, 70-71 (1950). T
the state to exercise guardianship
does not depend on a statute ass

[1] The type of contempt involved here has traditionally been considered as falling on the civil side of the court, although we have recognized that it may have certain criminal overtones. Otton v. Zaborac, 525 P.2d 537 (Alaska 1974); Johansen v. State, 491 P.2d 759 (Alaska 1971). Civil contempts are designed

> "'to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made for enforcing the rights and administering the remedies to which the court has found them to be entitled. . . . [They] are civil, remedial and coercive in their nature, and the parties chiefly in interest as to their conduct and prosecution are the individuals whose private rights and remedies they were instituted to enforce'." United States ex rel. Noyes v. Wood, 6 Alaska 255 (1920).

Such civil contempt proceedings can normally only be initiated by the aggrieved party or by one who has an interest in the right to be protected. In re Paleais, 296 F. 403, 407 (2d Cir. 1924); "Civil and Criminal Contempt in the Federal Courts", 17 F.R.D. 167, 172 (1955). The interest necessary has often been characterized as "primary" or "pecuniary." MacNeil v. United States, 236 F.2d 149, 153 (1st Cir. 1956) cert. denied, 352 U.S. 912, 77 S.Ct. 150, 1 L.Ed.2d 119 (1956); Williams v. Iberville Parish School Board, 273 F.Supp. 542, 545 (E.D.La.1967); Savell v. Savell, 213 Miss. 869, 58 So.2d 41, 43 (1952).

The relevant duties of the Attorney General are found in AS 44.23.020:

> "(b) The attorney general shall . . .
>
> (2) represent the state in all civil actions in which the state is a party;
>
> (3) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;"

[2] In light of the substantial state interest in the enforcement of child support orders, we find that contempt of such an order is a violation of state law within the meaning of AS 44.23.020(b)(3). Traditionally, the states have been legitimately concerned with the area of family law, and, under the doctrine of *parens patriae*,[2] in particular, in the promotion of the welfare of children dwelling within their boundaries. This interest is prompted, at least in part, by the fact that the state is viewed as the ultimate source of a child's support in the event his parents should fail him. Johansen v. State, *supra*, at 765.

Alaska has manifested this interest by making wilful non-support a misdemeanor, AS 11.35.010, AS 11.35.090; by providing for support of a minor when he is removed from the home, AS 47.25.310 et seq.; by participation in a state-federal program to aid dependent children, AS 47.25.310 et seq.; and through its participation under the Uniform Reciprocal Enforcement of Support Act, AS 25.25.010 et seq. It has also set up a program whereby the court trustee monitors payments under support orders, and takes steps preliminary to formal contempt proceedings to encourage payment of any arrearage. AS 09.55.210; Alaska Civ.R. 67. The interest of the state is adequate to support the authority of the Attorney General to proceed under AS 44.23.020.[3]

2. The doctrine of parens patriae refers to the inherent power and authority of the state to provide protection of the person and property of a person non sui juris. Warner Bros. Pictures v. Brodel, 179 P.2d 57, 64 (Cal.App.1947). Under the doctrine the state has the sovereign power of guardianship over infants. Helton v. Crawley, 241 Iowa 296, 41 N.W.2d 69, 70-71 (1950). The right of the state to exercise guardianship over a child does not depend on a statute asserting that power. The state's protective power depends upon the presence of the infant within its territorial limits, and not upon the place of his domicil or his ownership of property within the state. Finlay v. Finlay, 240 N.Y. 429, 148 N.E. 624, 625 (1925); 42 Am.Jur.2d Infants § 14 (1969).

3. From materials submitted to the trial court, it is apparent that, as a practical matter, the Attorney General's office has neither the bud-

[3] The authority to proceed under AS 44.23.020 does not, however, empower the court to order the Attorney General to prosecute any particular contempt for non-support. Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. Pierce v. Superior Court, 1 Cal.2d 759, 37 P.2d 460 (1934); Van Riper v. Jenkins, 140 N.J.Eq. 99, 45 A.2d 844 (1946); People v. Debt Reducers, Inc., 5 Or.App. 322, 484 P.2d 869 (1971). AS 44.-23.020 indicates that the office of the Attorney General is to function with those powers and duties normally ascribed to it at common law:

"(b) The attorney general shall . . .

(7) perform all other duties required by law or which usually pertain to the office of the attorney general in a state."

[4, 5] Under the common law, an attorney general is empowered to bring any action which he thinks necessary to protect the public interest, and he possesses the corollary power to make any disposition of the state's litigation which he thinks best. State v. Finch, 128 Kan. 665, 280 P. 910 (1929). This discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. United States v. San Jacinto Tin Co., 125 U.S. 273, 279, 8 S.Ct. 850, 31 L.Ed. 747 (1888); Federal Trade Commission v. Claire Furnace Co., 274 U.S. 160, 174, 47 S.Ct. 553, 71, L.Ed. 978 (1927); Smith v. United States, 375 F.2d 243, 246–47 (5th Cir. 1967); United States v. Cox, 342 F.2d 167 (5th Cir. 1965); Boyne v. Ryan, 100 Cal. 265, 34 P. 707 (1893); Ames v. Attorney General, 332 Mass. 246, 124 N.E.2d 511 (1955).

[6, 7] When an act is committed to executive discretion, the exercise of that discretion within constitutional bounds is not subject to the control or review of the courts. To interfere with that discretion would be a violation of the doctrine of separation of powers. Although the Alaska Constitution does not expressly address itself to the doctrine of separation of powers, we have noted that often what is implied is as much a part of the constitution as what is expressed. Wade v. Nolan, 414 P.2d 689, 698 (Alaska 1966). The state constitution is divided into a number of separate articles. Since Article III concerns the executive branch, it can fairly be implied that this state does recognize the separation of powers doctrine.[4]

Both federal and state courts have consistently and carefully observed the line which divides their branch of government from that of the executive.[5] They have held that the Attorney General cannot be controlled in either his decision of whether to proceed, or in his disposition of the proceeding.

"In that field, the discretion of the Attorney General is plenary. He is a constitutional officer . . . and, as such, the head of the state's legal department. His discretion as to what litiga-

get nor the manpower to effectively prosecute all of the support orders which are presently in arrears. An effective resolution of the problems present in the area of child support can only be made by the legislature through the appropriation of additional funds to the Department of Law for prosecution of contempt proceedings or through the establishment of an independent office charged with the enforcement of support orders. All we do today is to find that the Attorney General, if he so chooses, has the legal authority to carry out his duty to prosecute.

4. *See* Lira v. Billings, 196 Kan. 726, 414 P.2d 13, 16 (1966), where the Kansas Supreme Court acknowledges that the doctrine is implied from the existence of the three separate constitutional provisions.

5. O'Donoghue v. United States, 289 U.S. 516, 530, 53 S.Ct. 740, 77 L.Ed. 1356 (1933); Nashville I–40 Steering Committee v. Ellington, 387 F.2d 179, 185 (6th Cir. 1967), cert. denied, 390 U.S. 921, 88 S.Ct. 857, 19 L.Ed. 2d 982 (1968); Californin State Employee Assoc. v. State, 32 Cal.App.3d 103, 108 Cal. Rptr. 60, 64 (1973); Marrone v. State, 458 P.2d 736, 739–40 (Alaska 1969). State v. Cubbage, 210 A.2d 555, 564 (Del.1965).

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191 Minn. 427, 254 N.W
(1934).[6]

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The Court Trustee

The Department of Law
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AS 09.55.210 provides:

"*Judgment.* In a judgment
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6. *See, e. g.*, United States v.
167 (5th Cir. 1965), cert. de
935, 87 S.Ct. 1767, 14 L.Ed.2
States v. Woody, 2 F.2d 262 (
In re Grand Jury January, 31
(D.Md.1970); Boyne v. Ryan,
34 P. 707 (1893); Hermann
298 Ky. 632, 183 S.W.2d 807
v. Attorney General, 332 Mass.
2d 511 (1955); State ex r
Young, 44 Wyo. 6, 7 P.2d 216
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tion shall or shall not be instituted by him is beyond the control of any other officer or department of the state." State ex rel Peterson v. City of Fraser, 191 Minn. 427, 254 N.W. 776, 778-79 (1934).[6]

The order to prosecute by the Superior Court overstepped this line and was an infringement upon the discretionary powers residing in the executive branch. Such an order is not within the province of the court.

[8] We conclude that, although we have jurisdiction to entertain this case and to find, as we have, the existence of legal authority, we do not have power to control the exercise of the Attorney General's discretion as to whether he will take action in any particular cases of contempt for non-support.

The Court Trustee

The Department of Law suggests that the court trustee would be a more appropriate party to institute the contempt action. In at least two states court appointees are empowered to institute contempt proceedings for violation of support orders. Wisconsin Stats.Anno. § 247.29 (West Supp.1974-75); Michigan Compiled Laws 552.251, M.S.A. § 25.171 (1967).

AS 09.55.210 provides:

"*Judgment.* In a judgment in an action for divorce or action declaring a marriage void or at any time after judgment, the court may provide . . . .

(5) for the appointment of one or more trustees to collect, receive, expend, manage, or invest, in the manner the court directs, any sum of money adjudged for the maintenance of the wife or the nurture and education of minor children committed to her care and custody;"

Civil Rule 67 provides:

"(b) In any action where payment of moneys for purposes of child support is ordered, payment shall be made to a court trustee appointed by the presiding superior court judge, unless another method is ordered by the court for cause."

Facially, this statute and rule do not appear to prohibit a court trustee from prosecuting contempt actions in non-support cases. However, the functions performed by court trustees are not uniform throughout this state. We take judicial notice that in some districts the court trustee works closely with family court judges and often serves as a master in divorce proceedings.

[9, 10] A well established principle of law is that the court may not combine prosecutorial and judicial functions. United States v. Jacquillon, 469 F.2d 380, 387 (5th Cir. 1972), cert. denied 410 U.S. 938, 93 S.Ct. 1400, 35 L.Ed.2d 604; State v. Browder, 486 P.2d 925, 939 (Alaska 1971). Although this precept most often arises in the criminal context, it is equally applicable in the civil area where the conflict of interest and the combination of functions is as readily apparent. For this reason, it would be unwise if not unconstitutional, as a violation of the doctrine of separation of

6. *See, e. g.*, United States v. Cox, 342 F.2d 167 (5th Cir. 1965), cert. denied, 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700; United States v. Woody, 2 F.2d 262 (D.Mont.1924); In re Grand Jury January, 315 F.Supp. 662 (D.Md.1970); Boyne v. Ryan, 100 Cal. 265, 34 P. 707 (1893); Hermann v. Morlidge, 298 Ky. 632, 181 S.W.2d 807 (1944); Ames v. Attorney General, 332 Mass. 246, 124 N.E. 2d 511 (1955); State ex rel Wilson v. Young, 44 Wyo. 6, 7 P.2d 216 (1932). The tenor of all of these decisions is that there are certain areas, which include the decision of whether to prosecute and how to proceed, in which the Attorney General has complete control, and the court will in no way interfere with that control, at least not by compelling the officer to perform an act entrusted to his discretion. Some courts have, however, indicated several of these cases are applicable to the situation at hand. *E. g.*, Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908); United States v. Cox, 342 F.2d 167 (5th Cir. 1965), cert. den., 381 U.S. 935, 85 S.Ct. 1767, 14 L.Ed.2d 700; United States ex rel. Schneider v. Esperdy, 108 F.Supp. 640 (S.D.N.Y.1952), writ dism., S.D.N.Y., 108 F.Supp. 916, aff'd 205 F.2d 212 (2d Cir. 1953); People v. Newcomer, 284 Ill. 315, 120 N.E. 244 (1918).

powers, to charge the court trustee with the duty to prosecute contempt actions.[7]

The Public Defender

The trial court found that the defendant in a contempt for non-support proceeding is entitled to court-appointed counsel if he is indigent, a finding which is in agreement with our recent decision in Otton v. Zaborac, *supra*. The Public Defender recognizes that the defendant has the right to counsel, but argues that the agency is not empowered to provide such representation.

The legislation creating the Public Defender Agency states that the services of an attorney and concomitant legal services are to be provided by the Public Defender Agency to

> "(a) An indigent person who is being detained by a law enforcement officer in connection with a serious crime, or is under formal charge of having committed, or is being detained under a conviction of a serious crime, or is on probation or parole, or is entitled to representation under the Supreme Court Rules of Children's Procedure, or against whom commitment proceedings for mental illness have been initiated . . . ." AS 18.85.100.

AS 18.85.170(5)(A) defines a "serious crime" as including "a criminal matter in which a person is entitled to representation by an attorney under the Constitution of the State of Alaska or the United States Constitution." This court has defined a "criminal prosecution" as any offense for which incarceration could be a direct penalty, and from this definition have flowed the rights to jury trial and court-appointed counsel in misdemeanor cases, based upon constitutional considerations. Baker v. City of Fairbanks, 471 P.2d 386 (Alaska 1970); Alexander v. City of Anchorage, 490 P.2d 910 (Alaska 1971).

[11] In Johansen v. State, 491 P.2d 759 (Alaska 1971), we went beyond traditional classifications and, in essence refused to classify contempt for non-support as either totally civil or totally criminal.[8] In Otton v. Zaborac, *supra*, we held that the indigent defendant in a non-support contempt proceeding is constitutionally entitled to court-appointed counsel. Thus, under AS 18.85.170(5)(A), the Public Defender is empowered to represent Mr. Johnson; the agency is to act in criminal matters, and a criminal matter under that statute is one in which a person is entitled to representation either under the state or federal constitutions.

[12] The agency's primary argument is that, since the passage of the empowering statutes antedates our judicial decisions concerning right to counsel,[9] the legislature could not possibly have intended this class of defendant to be represented by the Agency. This argument is at odds with general precepts of statutory interpretation. Legislation is most often prospective in nature and couched in terms broad enough to embrace future applications which are not and cannot be foreseen with precision at the time of enactment. Continuous, contemporaneous and practical interpretation by executive officers and the courts is a valuable aid in determining meaning, and judicial interpretation is conclusive. Legislative inaction can be evidence of intent, although it is not always a reliable guide.[10] In Alexander v. City of Anchorage, *supra*, our interpretation resulted in significantly expanded authority for the Public Defender Agency. That case reasoned that since an indigent de-

7. While the discretion of Alaska Legal Services in accepting clients is not unlimited (42 U.S.C. § 2809(a)(3), Pimmick v. Watts, 490 P.2d 483 (Alaska 1971)), no authority has been brought to our attention suggesting that an indigent is foreclosed from seeking the assistance of Alaska Legal Services in the prosecution of child non-support contempt actions.

8. *See also* Gwynn v. Gwynn, 530 P.2d 1011 (Alaska 1975).

9. The statutes were passed in 1969 (§ 1 Ch. 109 SLA 1969).

10. 2A J. Sutherland, Statutes & Statutory Construction § 49.01–49.10 (4th Ed. Sands 1973).

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As we have noted above, the
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fendant is entitled to representation by counsel when a direct penalty may be incarceration, it follows that any such offense is a serious matter and a "serious crime" within the meaning of the Public Defender Act. 490 P.2d at 916.

[13] Although the legislature, at the time of enactment of the act, may not have foreseen the development of the law in this area and, therefore, might not have foreseen this precise application of the act, there is also no indication that it intended to exclude this class of defendants from representation. To so include them does no violence to the rules of statutory construction.[11]

As we have noted above, the enforcement of child support orders is affected with the public interest. This is an area in which the legislature could fashion a new and more effective system to enforce the parental obligation to furnish child support. We recommend that the legislature consider the enactment of new legislation in this field. In particular, we note that, under the present scheme, the custodial parents and children are often unable to afford private counsel and are thus unable to enforce child support orders. We hope that the legislature will rectify this situation as soon as possible by providing a means of efficiently and effectively enforcing a child's right to support payments. Until such a system is created, a child's right to support will be unfairly burdened in that, unlike the non-custodial parent, the child and the custodial parent will have no guarantee that a publicly supported attorney will vindicate their rights under the child support order.

Reversed in Part and Affirmed in Part.

FITZGERALD, J., not participating.

11. Again, budgetary limitations may effectively preclude the agency from performing an adequate job on this type of case. However, until there is an appropriation for the prosecution of these cases, the increase in the agency's caseload will be minimal. This is within the area of the legislature's discretion. Nothing we have said forecloses the indigent defendant in a child non-support contempt proceeding from seeking the aid of Alaska Legal Services.

ARREST DATA — STATEWIDE — 1985

Month	Number of Licenses Revoked 1st	2nd	3rd	Ref.	Total	30 Hard 60 Soft Limit	Number of Revocat. Recinded 1st	2nd	3rd	Ref.	Total	Arrest
Nov84	455	109	30	72	594	141	15	4	0	1	20	61
Dec	629	124	23	94	776	152	7	3	1	1	12	78
Total	1084	233	53	166	1370	293	22	7	1	2	32	140

ARREST DATA — STATEWIDE — 1985

Month	Number of Licenses Revoked 1st	2nd	3rd	Ref.	Total	30 Hard 60 Soft Limit	Number of Revocat. Recinded 1st	2nd	3rd	Ref.	Total	Arrest
Jan85	506	117	37	81	660	238	20	1	0	0	21	68
Feb	338	87	21	53	446	151	13	4	0	0	17	46
Mar	494	110	24	65	628	125	17	6	0	5	28	65
Apl	580	89	21	65	690	188	11	2	1	2	16	70
May	410	113	20	78	555	111	12	3	3	1	19	57
Jun	439	110	31	59	580	121	24	7	2	4	37	61
Jul	390	97	21	81	508	143	8	2	1	1	12	52
Aug	386	121	43	73	550	109	8	3	1	0	12	56
Sep	384	92	40	58	516	111	11	6	0	2	19	53
Oct	388	91	36	53	515	101	12	2	0	2	16	53
Nov	296	94	28	60	418	93	5	4	0	1	10	42
Dec	343	121	40	72	504	56	3	1	0	1	5	50
Total	4963	1242	365	798	6570	1547	144	41	8	19	212	678

REVOCATION DATA — STATEWIDE — 1986

Month	Number of Licenses Revoked 1st	2nd	3rd	Ref.	Total	30 Hard 60 Soft Limit	Number of Revocat. Recinded 1st	2nd	3rd	Ref.	Total	Arrests
Jan86	358	116	42	65	516	113	10	2	0	1	13	529
Feb	292	105	46	49	443	114	5	2	3	3	13	456
Mar	171	90	27	55	288	93	3	0	0	0	3	291
Apl	255	73	30	65	358	95	2	1	1	1	5	363
May	269	82	36	62	381	95	5	1	0	1	7	388
Jun	313	103	41	54	457	125	3	1	0	0	4	461
Jul	286	70	49	64	405	70	3	0	0	0	3	408
Aug	329	38	34	56	451	55	3	4	2	1	10	461
Sep	315	74	43	62	432	69	4	1	0	1	6	438
Oct	311	102	40	92	453	88	5	0	1	0	6	459
Nov	264	97	30	56	381	95	5	2	0	1	8	389
Dec	382	107	59	63	548	93	4	1	1	0	6	554
Total	3545	1097	477	703	5113	1032	52	15	8	9	84	5197

03-Feb-87

MADD

MOTHERS AGAINST DRUNK DRIVERS
Fairbanks Northern Lights Chapter
P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

February 19, 1987

House Judiciary
P.O. Box V
Juneau, Ak 99811

To: House Judiciary Committee

Re: HB 52, Department of Law Fiscal Note

The Fairbanks Northern Lights Chapter of MADD supports HB 52, motor vehicle confiscation as a prevention mechanism to decrease the number of alcohol-related traffic fatalities and injuries in the state of Alaska.

The State Office on Alcoholism and Drug Abuse (SOADA) 1985 statistics show that traffic fatalities are the second cause of death in the state of Alaska, half of those traffic fatalities were alcohol-related. Alaska ranks third highest nationwide for alcohol-related traffic fatalities per capita, see attached. The National Highway Traffic Safety Administration (NHTSA) estimates traffic accidents cost society - taxpayers, insurance rate payers and employers , $40 billion each year. Costs include emergency services, public assistance programs, insurance, and legal costs. NHTSA estimates the total public cost of highway deaths and injuries translates to $300 for every man, woman, and child in America, each and every year. Each employee fatality is estimated to cost an employer $120,0 ?. The cost of lifetime care for a person who sustains a serious head injury in an accident could total between $4 million and $9 million, according to the National Head Injury Foundation, see attached. All these costs are borne by society.

Conclusion: Alaska has a seriously high incidence of alcohol-related traffic fatalities and injuries, and that we all pay the price economically and emotionally! If we can agree that these tragedies need not occur and that measures to prevent further tragedies are cost effective, we will recognize that even if the Department of Law's fiscal note were accurate and HB52 became law, and even one individual were saved from the victimization of an impaired driver: the state of Alaska will have saved money!

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According to AS 28.35.037 Remission of Forfeitures, attached, the state shall provide written notice to include:

1. Description of the vehicle
2. Time & place of forfeiture.
3. Legal authority for forfeiture.

Legal notice would need to be publiched in a local paper four times within 30 days notifying the public on the above three points.

The Fairbanks Daily News-Miner charges .74¢ a line (3 to 5 words per line) for the first issue and .68¢ a line for every issue thereafter. The three points listed above should fit into 10 lines. The total cost for the four ads required for each confiscation would then total $28.20. Multiply that by the 400 annual forfeitures estimated by the Department of Law and your total annual cost for legal notice publication is $11,280. rather than the $25,000. estimated by the Department of Laws Fiscal Note!

Notification by registered mail to lien-holders and co-owners would also need to be done 30 days prior to the forfeiture hearing. That information can be gotten with one phone call to the Department of Motor Vehicles.

As stated in our original Postion Paper, see attached, both the record search cost at DMV and the public notification cost for newspaper ads, as well as other related costs should be backcharged to the defendant.

Fish and Game statues in Title 16 (16OF 19) are streamlined to such an extent that forfeitures handled by that department are 90% to 95% paperwork complete by the time the field officer submits the charges to the District Attorney. That is as it should be.

Rather than hire a full-time Attorney III, the Department of Law should look at providing appropriate law enforcement officials with <u>short & concise</u> forms the arresting officer could complete at the same time he/she is completing the DWI paperwork. The DA could then process the paperwork on both charges simultaneously.

Yes, HB 52 would necessitate additional administrative support work hours to accomplish notification to lienholders and co-owners, and public

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notification. Still if affidavits and motions were shortened and processed simulataneously with the original charge the request for a full-time Attorney and Typist III for an annual estimated caseload of 400 seems suspect!

The Department of Law's Fiscal Note increases to $205,000. in 1992. We submit that the number of forfeitures will decrease annually once the population recognizes that a second DWI conviction jeopardies their automobile. Administrative support to secure vehicles would also decline.

The Department of Law also states that the Municipality of Anchorage reports that 90% to 95% of their forfeitures do not hold clear title to the vehicle being confiscated. Caveat emptor applies to the lending institution who would choose to extend a line of credit to an individual with a previous DWI conviction. In our position paper we suggested that once creditors and insurers are made aware of this law they will seek to protect themselves from financial loss by requiring that applicants with DWI records purchase lienholders insurance at the time they purchase the vehicle. Financial institutions receive pay-off from the insurers, while the insurance company may still hold the defendent liable for the original note. The burden of proof during the forfeiture hearing would fall on the insurer to convince the judge that they did not have "reasonable cause" to believe that the vehicle would be used in the commission of an offense. Not having "clear title" would not then preclude the court from forfeiting the vehicle. Bear in mind the insurers protection lies with the Federal Bankruptcy Code which prohibits protection to debtors whose claims arise from DWI charges.

If, as suggested in our position paper, legislators wanted to pursue the protection of lienholders, insurers, co-owners, rental agencies, etc., further it could require that the reinstated licenses of DWI offenders be given a distinct color-code. It would then be difficult for petitioners to argue during forfeiture proceedings that they didn't know the vehicle mights be used in the commission of an offense. An individual before loaning a car, renting a car, etc., need only ask to see the driver's license first.

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House Judiciary Committee
Re: HB 52, Department of Law Fiscal Note
page 4

While we find the Department of Law's Fiscal Note on HB 52 to be questionably high; we believe that if HB 52 were passed it would act as a deterrent to impaired driving and would save the state of Alaska money in the final analysis if only one person were saved from death or serious injury each year as a result of its enactment.

On behalf of all the Fairbanks Northern Lights Chapter of MADD members we urge your committee to pass this bill in recognition of its preventative capabilities. Money spent now will reduce the cost to Alaskans in human suffering and economic dependency.

Respectfully,

Roberta Bitters
President, Northern Lights Chapter of MADD.

Attachments:

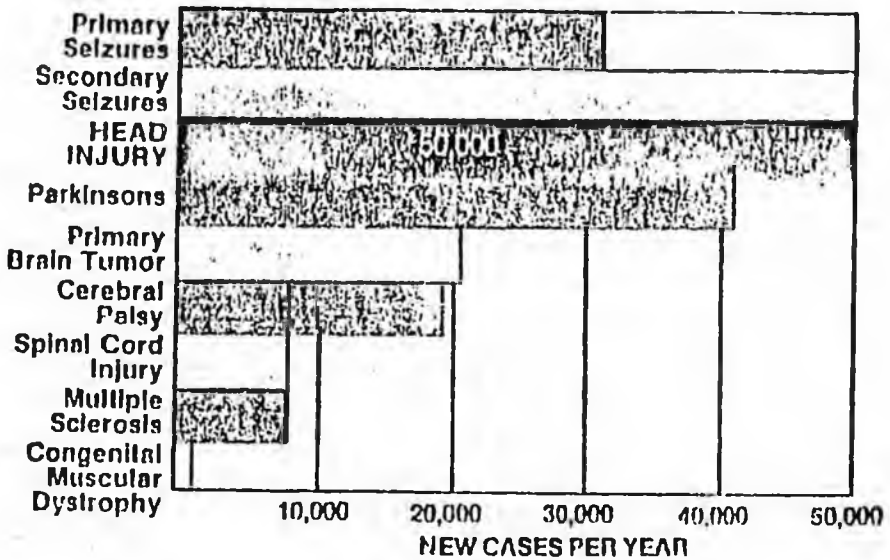
1985 Alcohol-related Traffic Fatalities
National Head Injury Foundation
MADD Position Paper on HB 52

1985 ALCOHOL RELATED TRAFFIC FATALITIES*

State	Fatalities	Population In Millions	Fatalities Per Million	State	Fatalities	Population In Million	Fatalities Per Million
Alabama	214	3.9	55	Montana	118	.8	148
Alaska	69	.4	173	Nebraska	91	1.6	57
Arizona	335	2.8	120	Nevada	112	.8	140
Arkansas	324	2.3	141	New Hampshire	102	.9	113
California	2,412	23.7	102	New Jersey	246	7.4	33
Colorado	242	2.9	83	New Mexico	293	1.3	225
Connecticut	252	3.1	81	New York	695	17.6	40
Delaware	73	.6	122	North Carolina	637	5.9	108
Florida	1,294	9.7	133	North Dakota	50	.7	71
Georgia	700	5.4	130	Ohio	746	10.8	69
Hawaii	77	1.0	77	Oklahoma	279	3.0	93
Idaho	118	.9	131	Oregon	285	2.6	110
Illinois	554	11.4	49	Pennsylvania	767	11.9	64
Indiana	232	5.5	42	Rhode Island	50	.9	56
Iowa	234	2.9	81	South Carolina	385	3.1	124
Kansas	152	2.4	63	South Dakota	69	.7	99
Kentucky	168	3.6	47	Tennessee	318	4.6	69
Louisiana	401	4.2	95	Texas	989	14.2	70
Maine	56	1.1	51	Utah	110	1.5	73
Maryland	741	4.2	176	Vermont	41	.5	82
Massachusetts	222	5.8	38	Virginia	479	5.3	90
Michigan	719	9.3	77	Washington	326	4.1	80
Minnesota	261	4.1	64	West Virginia	257	2.0	129
Mississippi	300	2.5	120	Wisconsin	187	4.7	40
Missouri	486	4.9	99	Wyoming	70	.5	140

*Fatality totals were determined by State Departments of Highway and are official numbers, but probably less than actual numbers because of under-reporting of intoxicated injured drivers. Population totals are from Statistical Abstract of the United States, 1982-1983, and are, therefore, an estimate of 1985 population.

ESTIMATED YEARLY INCIDENCE OF PERSONS LEFT WITH DISABILITY AFTER HEAD INJURY COMPARED TO OTHER IMPORTANT NEUROLOGIC DISEASES



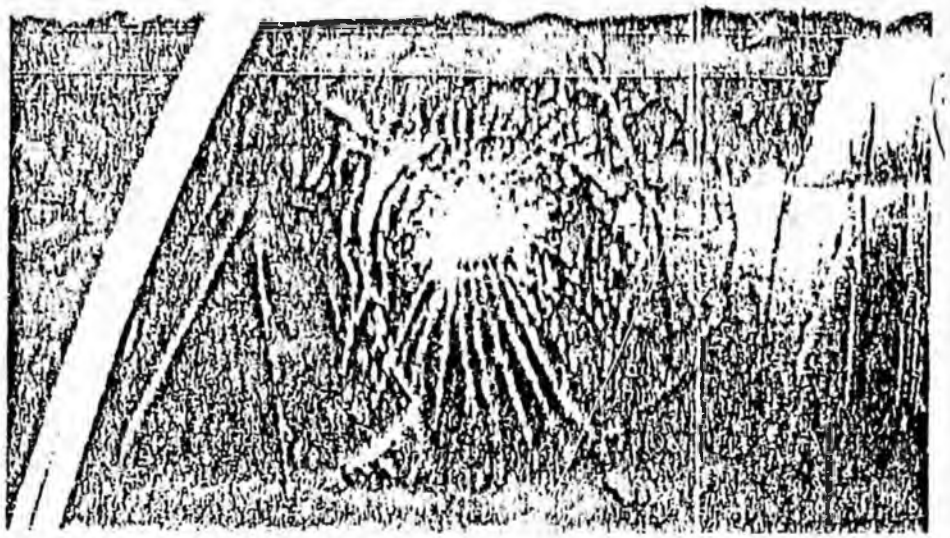
Cerebrovascular disease is the commonest neurological dysfunction accounting for 450,000 cases yearly.

Compared to other neurological diseases the incidence of head injuries is much greater.

TRAUMA IS THE LEADING CAUSE OF DEATH IN THE UNITED STATES FOR PERSONS UNDER THE AGE OF 34, ACCORDING TO THE SURGEON GENERAL'S REPORT, HEALTH UNITED STATES, 1980.

The number of deaths each year, resulting from trauma of the head is estimated at over 100,000. The estimated prevalence of head injuries in the U.S. is 1,000,000 - 1,800,000.

Even more staggering is the fact that 50,000 people a year who survive with a serious head injury, are left with intellectual impairment of such a degree as to preclude their return to a normal life. These figures clearly reflect a problem of epidemic proportions.



50,000 people a year are permanently disabled. Most people who sustain head injury are under the age of 30, and most are injured as the result of tragic motor vehicle or sports accidents. Accidents that physically disable and intellectually impair for a lifetime.

Until the establishment of NHIF in 1980, no single existing federal, state, or private agency concerned itself exclusively with the unique problems faced by the head injured and their families. Until NHIF, this "lost population" was silently and shamefully closeted away, and inappropriately placed in psychiatric institutions, schools for the retarded, or nursing homes.

Today, the National Head Injury Foundation proudly serves as the only advocacy organization working to improve the quality of life for those persons confronted by *"The Silent Epidemic"*.

The NHIF and its State Associations are a membership organization composed of those families, friends, medical, and social service professionals concerned with the physical and emotional well-being of the head injured.

The NHIF is a non-profit agency supported by membership dues, fund raising events, contributions and grants.

Dedicated to the restoration and maintenance of the dignity of life for the victims of this "Silent Epidemic", the National Head Injury Foundation looks to our friends in public and private business and industry to help us in our cause.

For information on the NHIF and your State Association, write or call:

National Head Injury Foundation, Inc.
18A Vernon Street
Framingham, Massachusetts 01701
(617) 879-7473

forfeited under this section may be disposed of at the discretion of the department. (If sold at auction proceeds to victim fund)

Sec. 28.35.037. REMISSION OF FORFEITURES. (a) Upon receiving notice from the court of the time and place set for a hearing under AS 28.35.036, the state shall provide to every person who has an ascertainable ownership or security interest in the motor vehicle written notice that includes

(1) a description of the motor vehicle;

(2) the time and place of the forfeiture hearing;

(3) the legal authority under which the motor vehicle may be forfeited;

(4) notice of the right to intervene to protect the interest in the motor vehicle.

(b) At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

(c) If a person satisfies the requirements of (b) of this section, the court shall order that an amount equal to the value of the petitioner's interest in the motor vehicle be paid to the petitioner or the court shall order that the motor vehicle be released to the petitioner together with title to the motor vehicle.

(d) Forfeiture of a motor vehicle under AS 28.35.036 is without

MADD

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February 20, 1987

MEMO TO: Niilo Koponen

FROM : Barbara Gaston, Chairman Legislative Affairs Committee

As I read over the testimony given by this Judiciary Committee regarding HB-52, requesting confiscation of vehicles on the SECOND offense, several matters jumped out at me, and I feel they need addressed.

One was, "What was the point in forfeiture, as third time offenders cannot legally drive for ten years anyway?" The other, was, "Who are we really hurting?" An additional issue, was cost.

Although, over the past 10 years, the Alaska Legislative Body has passed some of the most stringent drunk driving laws in the nation, we have still not gotten and held the "drunk driver's" attention.

There are still too many "outs" for them in our laws, and even taking their drivers licenses has not stopped them from continuing to drive. They simply drive with a suspended, revoked or cancelled drivers license. To take a license is not enough.

Since the enactment of legislation three years ago, granting the courts permission to confiscate vehicles on the THIRD offense, the number of vehicles seized in the State of Alaska has been less than five. The number of second and third time offenders arrested has more than doubled. Taking the license, and even the threat of serving jail time, has not seemed to phase our multiple offenders. Part of this reason, of course, is how these matters are handled in the court system. The majority are still getting off with a slap of the wrist,

and only the presumptive and mandatory sentences are being given by the courts.

Do you think for one minute that if we did not have strong game laws wherein forfeiture of the vehicles and firearms used in commission of the offense were mandated, that we would not have thousands of game violations? We do not give game violators "outs", why should drunk drivers and their families be any different? Just how many chances do we need to give them to kill or injure?

The truth is our American Society has to wake up to the reality that drunk driving is serious, and the law has to have teeth in it in order to save lives and the public has to be made more aware that too many people are being killed and injured on our highways. We must get and keep their attention. Drunk drivers need to learn never to make the same mistake again. All of society needs to learn not to drink and drive, or to drive under the influence of any drugs.

The slapping of the wrist that goes on in our court system, is not going to bring this about. There have been two cases in the entire state of individuals being charged with second degree murder in connection with alcohol related traffic fatalities; yet the rest are getting off with criminally negligent homocide; manslaughter or even less -- making examples of two individuals will do nothing to get or keep the drunk drivers attention, neither will the taking of less than five vehicles in three years. It must be consistent, and "yes" in the beginning, we may well have to confiscate 300 - 400 vehicles each year; but don't you suppose that will get people to stop and think? It would certainly get my attention.

3.

We must state, we are inclined to agree with Jim Vaden, in that the remission portion of this bill should be revised to make it as tough as possible (every bit as tough as the game laws) to get the vehicle back. Part of the problem in making stiffer laws, is that we have always given these people an "out".

Not wanting to seem calloused, but when we in MADD originally gave consideration to having this bill put before you, we gave a lot of thought, to who would we really be hurting?

We came to the conclusion, that the families of the habitual offender, already are hurt by this individual's alcohol and/or drug abuse.. Why should some innocent victim's family be made to suffer as well. Why not force them as a family to met and deal with their particular problem first hand?

There are many programs where they can reach out and get help, if it is identified that they need help, many of those are state supported programs....these same programs are not available to the victims. There is even talk of cutting the victim compensation fund.

Yes, there will undoubtedly be some families forced to use public transportation, because that family car was seized, yes, it will be an inconvenience - but think of the cost to the innocent victims family./ to society as a whole. These people have a choice - they do not have to drink and drive, and no matter how hard it will be, that family can reach out for help. More often than not, the victims of drunk drivers, have no choice in the matter.

4.

We should make it as difficult as possible for that vehicle NOT to be returned. Please do not continue to give them an "out". If it works no hardship on the offenders, it will serve no purpose, but to be another unenforcable piece of legislation, abused by the discretion of the courts. We must have a bill with "teeth" in it. We can no longer afford to "baby" the offenders - members of their families can be killed or injured just as easily as other innocent members of society transversing on our highways.

Are we going to be hurting their families or helping them? The real test will be TIME.

There is no question, that substantial cost will be involved in the beginning. However, I see no reason why there would need to be a special hearing - why couldn't this issue be addressed at the initial arraignment? Thereby, eliminating that cost almost entirely.

I believe a portion of the other cost would be there anyhow, should these 300 - 400 repeat offenders kill or injure themselves, their families, or most often some innocent victim's family.

What is the price of taking vehicles and having them sold at public auctions that the state already holds to get rid of its excess equipment versus, the cost of having these same people come through the courts anywhere from two - seven or more times? You have pre-trial motions, omnibus hearings, pre-trial hearings, plea negotiation conferences; trial and appeals, and if convicted, the cost of imprisonment.

(4)

5.

Is there a need for HB-52? In view of all the concerns addressed, all the arguments, the undeniable answer is YES! We must have a bill mandating the courts to take the vehicle on the SECOND OFFENSE, we must have a bill with "teeth" in it. We must continue to do everything in our power to continue to get and hold the drunk drivers attention, and to stop as much of the killing and injuring of our citizens as possible.

We must keep up the pressure for reform, and the ultimate goal will be achieved -- reducing drunk driving deaths and injuries down to a bare minimum .

465-4322

August 20, 1986

The Honorable George P. Kiester
Senior Judge
Fiftieth Judicial
District of Pennsylvania
Butler, PA 16001

Dear Judge Kiester:

Thank you for your response to my correspondence.

I sat on a Governor's Task Force on drunk driving last year. If my recollection serves me correctly, all members of the Task Force who were with criminal justice agencies supported your concept.

We were woefully outvoted, and this change in legislation did not even get listed as one of the lesser priorities.

We will, however, continue to support vehicle forfeiture legislation.

Sincerely,

James D. Vaden
Deputy Commissioner

cc: Sandra J. Borbridge
Special Staff Assistant
Office of the Governor

xc w/attachments: The Honorable Niilo Koponen
Alaska State Legislature

2/10/87 - jlm

T M. Lewis

JUDGE'S CHAMBERS
FIFTIETH JUDICIAL DISTRICT OF PENNSYLVANIA
BUTLER, PENNSYLVANIA

GEORGE P. KIESTER
Senior Judge

August 14, 1986

James D. Vaden
Deputy Commissioner
Department of Public Safety
Pouch N
Juneau, Alaska 99811

Re: Forfeiture of a motor vehicle operated in violation of a DUI law

Dear Mr. Vaden,

Your response of August 7 to my letter of July 21 addressed to Governor Sheffield is acknowledged. I am not surprised by the "non-use" of Alaska's vehicle forfeiture law. An effective law must provide for the elemination of all interests in the vehicle unless the vehicle was stolen. The responsibility must be placed on parents, lessors, employers, lenders and all those with an interest in the vehicle that no-one operates it while intoxicated. The "Remission of forfeitures" provision renders the Alaska law impractical and ineffective. That is my opinion.

If there have been any studies/reports made of the Alaska law I would welcome a reference to the same. Until proven wrong I will continue to believe that the forfeiture I espouse would substantially end the DUI offense.

I enclose copies of several "papers" I have prepared on the DUI subject. Also enclosed is an editorial published August 10, 1986 in the Pittsburgh Press.

Pennsylvania adopted "tough" laws with mandatory sentences. They have aggravated serious congestion problems in the judicial and prison systems. There is no evidence that there has been any reduction in highway deaths and destruction that can be credited to the tough laws.

Sincerely,

George P. Kiester

George P. Kiester
Senior Judge

GPK/ram

cc: Ms. Sandra Borbridge

Enclosures:

1. MADD Luncheon - April 15, 1982
2. A Practical Way to End a Non-Crime Problem - June 3, 1982
3. Some Objections to Imprisonment and A Practical Alternative August 10, 1982
4. An Alternative To Costly And Ineffective DUI Laws July 27, 1983
5. Letter "To The Editor" - July 10, 1984
6. "Crack buyers lose wheels" - Pittsburgh Press, August 10, 198

YOU COULD SAVE YOUR LIFE

BY HELPING TO

PREVENT DRUNK DRIVING

MADD LUNCHEON

April 15, 1982

57th Annual Safety Conference
Expo Center
Monroeville, PA

George P. Kiester
Senior Judge
Butler County

At this 57th. Annual Conference sponsored by the Western Pennsylvania Safety Council and American Society of Safety Engineers, the subject of the panel discussion is "The Effect of the Drunken Driver on Society." I have been assigned to address the legal point of view.

The effect of the drunken driver on society is devastating. Since the year 1900 a total of 426,105 Americans have died in battle. During the past 20 years alone approximately one million Americans have been killed on public highways. At least 1/2 of those deaths involved a drinking driver. We are killing Americans on the highways at the rate of 8 times faster than our enemies killed Americans in two World Wars plus the Korean and Viet Nam conflicts. People hate war and support efforts to avoid war. On the other hand Americans depend on the motor vehicle to transport goods and people. They love the automobile and the highways. There is no effective, organized campaign to end death and destruction on the highways. One of the reasons is that no acceptable solution to the driving under the influence (DUI) problem has been proposed.

DUI is a misdemeanor of the third degree under the Pa Vehicle Code, effective July 1, 1977. There is a mandatory, auto-

matic 12 month license suspension. The maximum sentence is imprisonment for not more than one year and a fine of $2500.00. The license suspension is a severe penalty for most. If it was not for the ARD program, an overloaded judicial system would experience a substantial increase in DUI trials.

A repeat offender may receive up to a maximum fine and prison sentence by some judges. The alcoholic may be sent to a rehabilitation center. There is no evidence that the application of the most severe penalty as a matter of policy by a court has been a deterrent to others.

In recent years the practice has been to process the first offender through the ARD program. The defendant is placed on probation and ordered to attend a drug and alcohol school. In large measure the cost of the program is borne by the offender. This program was initiated to relieve congestion in the courts but quickly became a rehabilitative device.

Considering the huge volume of DUI offenders that are processed through the system it is my guess that a relatively small percentage become repeaters. In my opinion the drug and alcohol schools, the rehabilitation programs and the probation services do an excellent job in educating and treating the individual offender. I believe that the programs have a high rate of success on an individual basis. On the other hand, I doubt that the many programs, the penalties mandated by statute, the sentences imposed by judges have been markedly successful in keeping a sig-

nificant number of persons from drinking while driving. One reason is that comparatively few DUI offenders are ever apprehended.

If I were confident that a mandatory jail sentence and/or fine would substantially reduce drunk driving, I would support such legislation.

It is my opinion that the principal result of such legislation would be the building and maintaining of prison cells for the 90%, more or less, of first offenders. These are persons who would never repeat the offense under the existing law.

I am not convinced that a mandated sentence of fine and imprisonment will deter those who should be deterred. This includes ones who drive regardless of license suspension, the juvenile and the many who are not arrested and who continue to believe that their ability to drive is unaffected by drugs and alcohol.

There may be three effective ways to prevent drunk driving:

(1) Prohibition

(2) Road blocks with drug & alcohol tests.

(3) Vehicle confiscation.

The first is impractical. The second is cost prohibitive and of questionable legality. Vehicle confiscation might work and should not add to the tax burden.

The confiscation of the vehicle would end the problem authorities have with those who drive w/o a license. They would have no vehicle to drive, and no sensible person would loan his vehicle to the violator. A confiscation law would ground most of these violators who are a continuing problem to police and courts.

By confiscating the vehicle every violator, rich or poor, employed or unemployed, juvenile or adult, would be treated alike. In addition, the owner of the vehicle, the security interest and the insurer would forfeit the vehicle and any interest therein to the state upon conviction of the driver for DUI.

The law would be based on the fact that an automobile like a gun becomes a dangerous weapon and should be contraband when used in violation of the criminal laws of the state. Unless it has been stolen, the vehicle would be confiscated by the state when operated by a drunken driver. The owner, whether employer, lessor, a family member or friend as well as the security interest and insurer would assume the risk that the vehicle might be used in an unlawful manner. The fact that a motor vehicle is much more dangerous to human life and property than a gun should make confiscation for unlawful use an acceptable principle of law.

It is the involvement of one or several financial or property interests in the vehicle that could supply the pressure to make confiscation a successful deterrent to DUI. Both the driver and the owner would be constantly reminded of the penalty.

The publicity attendant to regular public sales of confiscated vehicles can only be a constant warning to everyone of the risk of driving while under the influence.

I recommend that the only change in DUI legislation be one mandating the confiscation of the vehicle in all convictions for DUI combined with the elimination of the penalty of license

suspension for the driver of the vehicle that is confiscated. License suspension is a harsh penalty for those who generally obey the law. If the legality of confiscation including the divestiture of all interests in the vehicle is upheld, then license suspension becomes an unnecessary penalty. I believe that our objective must be deterrence and prevention - - - not punishment.

A key to the success of vehicle confiscation as a deterrent probably requires that a person charged with DUI become ineligible for ARD unless the vehicle is first confiscated. This condition could be made by statute or rule.

If mandated imprisonment were the deterrent of choice, ARD for the DUI offender would have to be abandoned. Otherwise, the threat of imprisonment would have minimal impact on the statistics.

Responsible citizens must recognize that if there is failure to significantly reduce highway death and destruction through measures such as herein proposed, eventually much more stringent and less acceptable laws affecting all drivers must be enacted.

Industry, business, unions, safety and public service organizations should be encouraged to support constructive and effective DUI proposals. The liquor industry should be the leader in the common cause to save lives and property. The intoxicants it sells creates most of the problem for society.

A PRACTICAL WAY TO END

A NON-CRIME PROBLEM
(Intoxicated Driving)

Before

Liquor Control Committee
House of Representatives
Stanford I "Bud" Lehr, Chairman

Hearing:

Sheraton Inn
Greensburg, Pennsylvania
June 3, 1982
11:15 A.M.

Presented by

George P. Kiester, Senior Judge
50th Judicial District
Butler County

The motor vehicle is a dangerous machine. It is killing Americans on the highways at a rate of eight times faster than enemies killed Americans in two World Wars plus the Korean and Viet Nam conflicts. The motor vehicle is the highest cause of death among teenagers. They are responsible for approximately 25% of the alcohol related deaths on the highways. A civilized society can and should take the action necessary to stop this senseless destruction of life and property.

When operated by a negligent, careless, reckless, incompetent or intoxicated driver the motorized vehicle becomes a lethal weapon. The elimination of the intoxicated driver from the highways could reduce the toll of death and destruction by 50%. An intoxicated driver is easily identified but only one out of 2,000 such offenders are arrested and prosecuted. Undoubtedly this is the reason that penalties of imprisonment, fine and license suspension have had little or no impact as a deterrent. It is questionable that mandating more severe penalties of the same kind will have greater impact on the 99.9% of intoxicated drivers that will not be apprehended. Harsh punishment for driving under the influence cannot be justified unless it succeeds in deterring others from committing the same offense. Whatever new deterrent is enacted into law it will require only a few months to a year to measure its effectiveness. The statistics will prove or disprove the value of a particular punishment as a deterrent.

One result of more severe penalties for driving under the influence than are now imposed is likely to be an increase in jury trials and possibly more not guilty verdicts. In driving under the influence cases the attitude of many jurors is often that "There but for the grace of God might be me."

Another result of stiffer mandated penalties such as imprisonment could be fewer arrests. Fewer arrests as well as not guilty verdicts if this occurred would be counter-productive.

For the person who is required to drive a vehicle in his employment the suspension of operating privileges is a very severe penalty. Probably the General Assembly reduced the period of suspension from one year to six months because of the economic impact on the offender. There was also the lack of solid evidence that either a twelve month or a six month period of license suspension deterred people from drinking and driving.

A realistic program to persuade persons indulging in drugs or alcohol not to drive should be fair, certain and very different as to punishment from existing laws as well as the current proposals for change.

Drinking is not a crime. Many do not consider the illegal use of drugs as a crime. The approach to the problem of driving under the influence should recognize these facts.

I submit that the changes in the law that I propose meet the stated criteria. For reasons I will explain the result of the proposed changes in the law should be a substantial reduction in highway fatalities, injuries and property damages. The test would be in the statistics that followed the enactment into law of the proposed changes.

CONFISCATION OF THE VEHICLE

It must be recognized by the public and their representatives that a motor vehicle when operated by an intoxicated driver is transformed from a dangerous machine into a lethal weapon. (Statistics should be sufficient to prove this basic proposition). The machine should be confiscated by law like any other weapon that is used to violate the law. This would be fair, uniform and the most reasonable of all penalties for driving under the influence because every offender would receive the identical minimum punishment.

Declaring the vehicle contraband would be a new and radical change from punishment that has been imposed in the past. It is very different from the type of penalties that are being proposed in Pennsylvania and other states.

I believe that it is reasonable to assume that very few of the 99.9% of the offenders who take a chance and drive while intoxicated would continue to do so and risk the loss of a prized possession. However, I would not rely on the validity of this assumption.

OTHER PROPOSED REVISIONS OF THE LAW

Mandated confiscation of the vehicle to be fully effective as a deterrent must be joined with a number of other important changes in existing law. I will mention several of them:

FIRST: A person arrested for the first time on a charge of drugged or drunk driving should be declared by legislative enactment ineligible for A.R.D. until the vehicle has been forfeited. The advantages to the defendant who accepts this punishment without trial are (a) an avoidance of trial expense, (b) the defendant would not risk the loss of operating privileges if found guilty and the imposition of other penalties such as mandatory imprisonment should the law so provide.

SECOND: A.R.D. for a driving under the influence arrest would be available once to a defendant. A repeat offender would be ineligible for A.R.D.

THIRD: The practice in some districts of reducing driving under the influence charges to public drunkenness would be prohibited without prior written approval of the District Attorney. The District Attorney would be required to state on the record the legal or factual reason for a reduced charge.

FOURTH: Confiscation of the vehicle would be mandatory and excluded from the plea bargaining process.

FIFTH: Driving under the influence would be reduced from a criminal to a summary offense. Other than declaring the vehicle contraband, the current penalties could remain unchanged or even made more severe.

SIXTH: The juvenile offender would be subjected to the same punishment as the adult, imprisonment only excepted.

SEVENTH: Sophisticated on the spot drug and alcohol testing devices should be legalized and made available to state and local police authorities with appropriate penalties mandated for refusal by the accused to take the test.

Training programs should be offered to aid officers in identifying and describing the drugged and drunken conditions of those who refuse the breatholizer, blood or other test.

REASONS THAT VEHICLE CONFISCATION AND OTHER CHANGES WILL SUBSTANTIALLY END INTOXICATED DRIVING

The success of the confiscation plan combined with other changes would be attributable to a number of factors:

(a) Juveniles who are responsible for a large percentage of traffic deaths attributable to alcohol are included. Their punishment would be comparable to that of adults. It is the only proposal to attack the serious problem of punishing the juvenile offender. The parents and the juvenile could be expected to avoid risking a loss of the vehicle.

(b) Police would be vigilant in a strict enforcement of the law. Initially the program should generate considerable revenue for municipalities. The net proceeds of vehicle sales would be paid to the municipality of the place of the offense. An illustration of what could happen is Butler County. In 1981 there were 612 arrests for driving under the influence. Assuming an average vehicle value of $2,000 and that there were 500 successful prosecutions, the gross revenue would total $1,000,000. Few police would jeopardize their jobs on behalf of a friend, out of sympathy for an offender or for any other reason.

NOTE: Upon seizure as contraband the vehicle would be stored unless cash or an approved security bond covering the value of the vehicle was posted with the district magistrate. The bond would be forfeited if the defendant was convicted. If the vehicle had been damaged in an accident connected with the offense, the accused would assign or be required to arrange for the assignment of the proceeds of the insurance policy. Otherwise, upon conviction the operator would become liable to the municipality for the value of the vehicle based on its condition prior to the occurrence of the damage.

(c) A legal duty would be placed on all those having an investment in the vehicle to insure that it is not used to break the law. This would include the owner whether a parent, friend or employer, The security interest could be expected to investigate the borrower and family users as to drinking habits. Pledges would be obtained that the owner-borrower would neither drive the encumbered vehicle while drinking nor permit any other person to do the same.

(d) Business and industry including distillers, bankers and insurers would be encouraged to embark on a permanent campaign to keep motorists off the highway when drinking.

(e) The Sheriff of each county would conduct at least monthly sales of confiscated vehicles. The sales would be advertised. The law would require the advertisement to contain

(1) an identification of the owner

(2) a description of the vehicle

(3) the condition of the vehicle and the range of blue book values

(4) an evaluation by a qualified appraiser

NOTE: Sheriff sales combined with the publicity attendant upon the seizure of each vehicle would be a constant reminder of the cost of driving under the influence. Furthermore, it could be expected that the media would report each driving under the influence case before a district magistrate as well as the disposition before a judge on any appeal.

OTHER INCIDENTAL BENEFITS TO SOCIETY, TAXPAYERS & MOTORISTS

An effective driving under the influence deterrent could result in a reduction in crime. A substantial volume of crime is committed by persons high on drugs or alcohol traveling by motor vehicle at night.

The benefit to the taxpayers of the confiscation plan could be considerable. New jail cells would not be required. If driving under the influence violations are ended, police could be released from highway patrol to neglected criminal investigations.

The elimination of license suspension as a mandated penalty would constitute an economic boon to some families and society could benefit from a reduced demand on welfare.

The savings to insurance companies from a substantial reduction in deaths, injuries and property damages arising from alcohol related accidents would be considerable. Much of the savings should benefit the policy holder. The prospect of such savings should encourage the insurance industry to support an effective driving under the influence deterrent.

RECOMMENDATION

If the Liquor Control Committee concludes that there is merit in the confiscation proposal, the bill to carry out its objectives should be carefully prepared. Drafting of the bill should be assigned to experienced and skilled personnell who are in complete accord with the bill's objectives. Possibly a task force comprised of members of the legal profession, law schools, banking, insurance, social, civic as well as others might be formed for purposes of consultation and advice.

Few laws are enacted that are perfect. A confiscation law of this nature may be the first of its kind but it could mean life or death to many people.

If confiscation of the vehicle operated by the driving under the influence offender becomes law and is effective, it is predictable that the law in Pennsylvania will become a model for every state.

CONCLUSION

The intoxicated person is not considered either by himself or by society as a criminal. Only the law that legalizes the use of alcohol classifies the intoxicated driver as a criminal. Punishment that confiscates the vehicle may more nearly fit the offense than imprisonment of the offender with common criminals.

PUBLIC HEARING

on D U I : S B 1548 P N 2080
H B 2533 P N 3403

Joint Senate / House Judicial Committee
Commonwealth of Pennsylvania

SOME OBJECTIONS TO IMPRISONMENT

AND A PRACTICAL ALTERNATIVE

George P. Kiester
Senior Judge
Butler County

9:30 A. M.
August 10, 1982
House Annex Hearing Room
Harrisburg, Pa.

H B 2533 (p.n. 3403) and S B 1548 (p.n. 2080) (driving under the influence) contain several provisions which deserve strong public support. I refer to the law enforcement provisions. They are excellent and will aid the authorities in the enforcement of the law.

I question the severe punishment rationale of mandatory imprisonment for a DUI violator other than the penalty relating to vehicular homicide. There are several reasons for my position:

1. A person convicted of DUI is not considered by society as a criminal. It is unnecessary for the law to treat a DUI violator as a criminal.

2. In my opinion mandatory imprisonment in these cases if enacted into law will probably save few lives and possibly none. Such a law may cause more problems than it solves. Time does not permit a discussion of all the problems.

The odds against arrest are 2000 to 1 according to statistics published by the National Highway Safety Administration. Mandatory imprisonment may not substantially change these statistics. Driving is an adventure. It gives most a sense of power and confidence which is frequently abused even by the sober driver. The fact is that the drinking driver seldom realizes that he has handicapped himself and that he may be violating the law.

Under the proposed law there would be some social drinkers

who would understandingly and intelligently take the small risk of being caught and placed on ARD.

It must be recognized that it is the social drinker, youth, the first offender as well as the DUI repeater and alcoholic who cause death and destruction on the highway. To these persons the remote threat of imprisonment may be little if any deterrent.

The objective of these bills is to deter DUI. I doubt that the deterrent effect will even be measurable if mandated imprisonment is enacted. I hope my prediction is wrong.

3. Juveniles cause a relatively high percentage of death and destruction on the highways. The bills before the Judiciary Committee fail to address this serious problem. This past week a U.S. Justice Department report stated that 40% of the serious crime is committed by juveniles, those under 18. With children involved in drugs and alcohol at 8 or 9 years of age and the involvementof children in serious crime, the proposed changes in DUI law fails to address the problem.

4. County jails and state prisons are over-crowded. Prison population grew at a record rate in 1981. There is no space in them for DUI offenders when there is a better alternative. With mandatory imprisonment for the DUI violator more cells would have to be provided by the state and most counties.

Death and destruction caused on the highways by the drunken/drugged driver must be stopped. This can be done. There is a plan that I believe is practical and one that would substantially accomplish that which we all seek. By adopting the plan it would be possible for Pennsylvania to lead the nation in reducing DUI statistics. Mandatory imprisonment will be no more successful in reducing DUI statistics than similar laws in other states.

Simply stated the plan is to confiscate the vehicle operated by the DUI violator whether it be his first, second, third or fourth offense. There are several sound reasons that confiscation of the vehicle would be the most effective DUI deterrent.

First. Although the odds would remain at 2000 to 1 against arrest, I am convinced that few youngsters, social drinkers, alcoholics or other prospective offenders would take the chance of losing the automobile by drinking and driving. I submit that there are few persons who will wager $500.00 to $10,000.00 (the value of a prized automobile) that they can drink and drive and not get caught. Most DUI violators are responsible citizens. With a confiscation law on the statute books, they would take care to avoid drinking and driving. For the public and the offender justice is better served by confiscating the vehicle rather than imposing imprisonment.

Second. In avoiding the risk of confiscation the prospective offender will be supported and encouraged by family, friends, the tavern keeper, the finance company and the insurance company. A

threat of the loss of the automobile would affect the offenders and others much more than a license suspension or a weekend or thirty days in prison.

Third. The Sheriff would constantly remind the prospective offender of the penalty and the risk by the monthly public sales of confiscated vehicles. Based on 1981 arrests there could be 612 public sales of vehicles in Butler County.

Fourth. The prospective offender will learn that police authorities are extra vigilant in enforcing the law. Under a confiscation law prosecutions would probably increase for a period of time. The income toa municipality could be considerable. Should arrests continue at the 1981 rate, municipalities in Butler County could receive more than a million dollars in contraband income. No officer would overlook a violation. It could mean his job.

Fifth. Of the greatest importance to society is the fact that a confiscation law would punish the juvenile offender. The juvenile cannot be imprisoned. The juvenile would not be deterred by the proposed law. Certainly a juvenile would not risk losing his own automobile, nor would the family risk a juvenile member drinking and driving the family vehicle.

Sixth. Many of the youths who speed through the countryside and the city streets at night indulging in drugs and alcohol while driving would be off the highways. There would be fewer accidents as well as less vandalism and crime.

Seventh. A confiscation law will keep non-criminals out of prison.

Jail cells will not be necessary to house the DUI offender. Compared to a mandatory imprisonment statute a confiscation law will save a considerable amount of tax dollars.

Eighth. Compared to mandatory imprisonment a confiscation law would not increase and might even decrease the case load of the judicial system.

DUI would be a summary violation.

Under a confiscation law neither the police authorities nor the judicial system would be burdened with an increasing volume of suspensions and revocation violations. The DUI offender, or at least most DUI offenders, would have no vehicle to drive.

Conclusion

In my opinion death and destruction on the highways caused by DUI may be nearly totally eliminated through the enactment of a confiscation statute. Confiscation is one law that would benefit everyone including the prospective offender at no cost to the taxpayer. Since there is no cost it is worth a trial. Within a few months statistics would prove its success or failure.

AN ALTERNATIVE TO COSTLY AND INEFFECTIVE DUI LAWS

George P. Kiester
Senior Judge

July 27, 1983

States have been enacting tough laws on intoxicated driving. One of the reasons is to be eligible for a share of the federal highway safety funds. Another reason is the demand by members of MADD and other such organizations that the death and destruction on the highways caused by the intoxicated driver be ended.

The principal result of mandatory jail sentences is predictably an increase in the number of jury trials and the need for more jail cells.

Studies show that harsh penalties may temporarily reduce drug/alcohol related accidents by ten to fifteen percent. They have no permanent deterrent effect. Such a small reduction should be unacceptable to all responsible citizens.

What is a reasonable solution to a problem that is a threat to every person using the public highways? Road blocks would be the most effective DUI deterrent. This kind of enforcement would be expensive, subject to abuse and constitutionally suspect.

The motor vehicle is a dangerous machine. It becomes a lethal weapon when operated by an intoxicated person. If so operated there is no good reason that it should not be confiscated.

The threat of confiscation may be the only effective and practical deterrent to intoxicated driving. Few persons will risk losing what for most is a highly prized possession. Persons with an interest in the

vehicle would become involved in insuring that no intoxicated person operated the vehicle. These would include the owner, lessor, employer, lien-holder and family. The vehicle used in a DUI violation would be declared contraband in an in rem proceeding. The sole exception would be a stolen vehicle.

The juvenile offender not subject to the penalties of the tough laws would be a loser for the first time. Without a vehicle there would be few repeaters, either juvenile or adult. License suspensions are largely ignored and are practically unenforceable. Confiscation would either keep the violator off the highway or deter that person from risking the loss of another vehicle by operating it during a period of DUI suspension.

Constituting DUI a summary offense, eliminating jury trials and prison for most offenders would benefit society. The problem of congested courts and over-populated prisons would be alleviated.

There would be strict local enforcement of a confiscation law. Based on the current arrest rate substantial income would be generated for municipalities.

Highway accidents related to drug and alcohol use can be eliminated. The threat of vehicle confiscation could be the much needed deterrent. Doesn't it make sense? Many prosecutors and judges believe it does.

Judge's Chambers
Fiftieth Judicial District of Pennsylvania
Butler, Pennsylvania

GEORGE P. KIESTER
Senior JUDGE

July 10, 1984

TO THE EDITOR:

The wars in which America has engaged do not begin to equal in death, injuries and destruction that which is caused by drunk drivers. The automobile operated by the drunk driver is the most dangerous and deadly force in America.

No legislation would benefit more people in greater measure than laws that would end drunk driving. Highways would be safer and automobile insurance premiums could be substantially reduced.

It should now be evident that mandatory imprisonment, license suspension and heavy fines cause congestion in both the courts and prison system with little or no effect on highway accident statistics.

Political leaders and legislators who support a national drinking age and other DUI penalties such as imprisonment have been engaged in what has been aptly described as "societal politics". Anti-drunk driving laws are popular with the press and the public. But the remedies thus far adopted are like placebos that neither cure nor aggravate the illness. They are largely ineffective.

There is a reasonable solution. Pennsylvania and other states should make drunk driving a summary offense. The offending vehicle would be impounded and confiscated by the state in an in rem proceeding. It is unlikely that anyone with an interest in a vehicle would permit it to be operated by a drunk driver. This includes parents, lessors, employers and others.

In the public interest members of MADD, RID and similar organizations should re-examine their positions. They should realize that it does little good and much harm to congest our courts and fill prisons with drunk drivers. On the other hand vehicle confiscation is a needed, practical deterrent to one of America's most serious problems.

George P. Kiester
Senior Judge
Court House
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OPINION

'Crack' buyers lose wheels

Local and federal law enforcement officials in New York City have come up with a new wrinkle in the battle against "crack," the potent cocaine derivative.

They began confiscating cars driven by persons coming into town to buy the illegal drug.

A 16-year-old federal law allows the confiscation of property used in drug transactions. Heretofore, the measure has been used mostly against drug dealers. But officials decided to start using it against buyers as well.

During a four-day period, 30 cars were taken in Manhattan, mostly from young persons living in middle-class suburban communities. Police Commissioner Benjamin Ward issued a warning:

"If you come to New York to buy crack, bring carfare and be prepared to take the bus back."

Other areas would do well to follow New York City's lead. If a person stands to lose his wheels, he might think twice about running out to buy a dangerous drug for a momentary high.

Chicago Tribune

Chicagoland

25¢ City and suburbs/35¢ elsewhere

Thursday, March 12, 1987

State aims 3 bills at repeat drunk drivers

By Jean Davidson

Illinois Secretary of State Jim Edgar will introduce legislation Thursday that would toughen the state's already-stringent drunken driving laws by increasing penalties for repeat offenders.

Among the punishments to be proposed by Edgar, a leader in Illinois' drunken driving crackdown, will be license revocations of at least 10 years and prison sentences of up to 3 years for individuals convicted three times or more.

The three-bill package, to be introduced at a Springfield news conference Thursday morning, also is intended to strengthen current laws that make no distinction between first-time and repeat offenders in meting out license penalties, according to sources in Edgar's office.

The proposed legislation would:

● Set a minimum five-year license revocation for second-time offenders and a minimum 10-year revocation for a third conviction for drunken driving, reckless homicide or leaving the scene of an accident involving a fatality or serious injury. After that period, the offender must apply to have the license reinstated. The current revocation period is one year after which an offender can seek reinstatement.

● Upgrade a third drunken driving conviction to a Class 4 felony that could carry a penalty of one to three years in prison and a fine of up to $10,000. Drunken driving is now a misdemeanor charge, and a third conviction is punishable by a mandatory 48-hour jail sentence.

● Increase the penalty for individuals who drive while their licenses are revoked to a 90-day jail sentence or 364 days of public service. The new provision, which would apply to individuals convicted of driving under the influence, reckless homicide or leaving the scene of a serious accident, would replace current penalties of seven days in jail or 30 days of public service.

● Outlaw identification cards that simulate Illinois driver's licenses and that allow persons under the drinking age of 21 to buy liquor illegally. Such cards could not resemble licenses in color, size or photo location and would be required to carry disclaimers.

According to state records, there are now about 27,000 Illi-

Continued on page 18

Drunk

Continued from page 1

nois drivers with two convictions for driving while intoxicated and 9,000 people convicted three or more times.

The multiple-offender package is to be sponsored by a bipartisan team including State Reps. Thomas McCracken [R., Westmont], John Cullerton [D., Chicago], John Countryman, [R., De Kalb], John O'Connell [D., Willow Springs], Roger McAuliffe [R., Chicago], Alfred Ronan [D., Chicago] and John Matijevich, [D., Waukegan].

If passed by the General Assembly, the crackdown measures would take effect Jan. 1, 1988, the sources said.

The new proposals follow a 1985 offensive led by Edgar that established the automatic suspension of driving privileges for drunken drivers. That legislation made Illinois laws the second toughest in the nation, when measured by the percentage—9 out of 10—of those arrested who lost driving privileges or suffered other penalties. Nearly 47,000 drivers had their licenses suspended or revoked in 1986, compared with slightly more than 13,000 the previous year.

Revocations and suspensions nearly doubled in Chicago, with 4,755 drivers penalized in 1986, compared to 2,561 the previous year.

Only Oregon has tougher laws. It sets a 0.08 blood-alcohol standard for drunkenness and imposes revocation and jail penalties comparable with those to be proposed by Edgar.

5-0266B

Original sponsor: Koponen

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 52 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

* Section 1. AS 28.35.030(c) is amended to read:

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 <u>and shall order forfeiture of the vehicle used in commission of the offense, subject to remission of forfeiture under AS 28.35.037,</u> if [,] within the preceding 10 years [,] the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has

more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.-15.181 [AND THE VEHICLE USED IN COMMISSION OF THE OFFENSE MAY BE FORFEITED UNDER AS 28.35.036]. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

* Sec. 2. AS 28.35.032(g) is amended to read:

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

28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 and shall order forfeiture of the vehicle used in the commission of the offense, subject to remission under AS 28.35.037, if [,] within the previous 10 years [,] the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

* Sec. 3. AS 28.35.036 is repealed and reenacted to read:

Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) the

court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(b) Forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) extinguishes the rights or claims of a person with an ascertainable interest in the motor vehicle, unless the person seeks remission of the forfeiture under AS 28.35.037 within 90 days after the person receives notice of the right of remission under AS 28.35.-037. Remission of forfeiture does not apply to a person convicted under AS 28.35.030(c) or 28.35.032(g) whose vehicle is forfeited.

(c) If not released under AS 28.35.037, a motor vehicle forfeited under AS 28.35.030(c) or 28.35.032(g) may be disposed of by the department.

(d) For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a single arrest, are considered one previous conviction.

* Sec. 4. AS 28.35.037(a) is repealed and reenacted to read:

(a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g), the state shall provide written notice to each person with an ascertainable ownership or security interest in the motor vehicle, other than the person convicted of the offense resulting in forfeiture, that

(1) the vehicle has been forfeited;

(2) the person has a right to intervene to protect an interest in the motor vehicle under (b) of this section; and

(3) failure to seek remission of forfeiture within 90 days will extinguish the rights of the person to the vehicle.

* Sec. 5. AS 28.35.037(b) is amended to read:

(b) At the request of a person with an ownership or security interest in a vehicle forfeited under AS 28.35.030(c) or 28.35.032(g), other than the person convicted of the offense resulting in forfeiture, the court shall schedule a hearing to determine if remission of forfeiture shall be ordered as provided under this section. At the hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

* Sec. 6. AS 28.35.037(d) is repealed.

Adopted

5-0266P
Ford
3/17/87

Original sponsor: Koponen

DRAFT

IN THE HOUSE BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 52 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

* Section 1. AS 28.35.030(c) is amended to read:

(c) Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 72 consecutive hours and a fine of not less than $250 if the person has not been previously convicted in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 20 consecutive days and a fine of not less than $500 if, within the preceding 10 years, the person has been previously convicted once in this or another jurisdiction of driving while intoxicated under this or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. ~~Upon conviction~~ under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 <u>and shall order forfeiture of the vehicle used in commission of the offense, subject to remission of forfeiture under AS 28.35.037,</u> if [,] within the preceding 10 years [,] the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has

more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under this or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under AS 28.35.032 or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. In addition, if the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked in accordance with AS 28.-15.181 [AND THE VEHICLE USED IN COMMISSION OF THE OFFENSE MAY BE FORFEITED UNDER AS 28.35.036]. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (d) of this section, finds appropriate.

* Sec. 2. AS 28.35.032(g) is amended to read:

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

28.35.030 or another law or ordinance with substantially similar elements or refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. Upon conviction under this section the court shall impose a minimum sentence of imprisonment of not less than 30 consecutive days and a fine of not less than $1,000 and shall order forfeiture of the vehicle used in the commission of the offense, subject to remission under AS 28.35.037, if [,] within the previous 10 years [,] the person has been previously convicted in this or another jurisdiction of more than one of the following offenses or has more than once been previously convicted of one of the following offenses: (1) driving while intoxicated under AS 28.35.030 or another law or ordinance with substantially similar elements; (2) refusal to submit to a chemical test under this section or another law or ordinance with substantially similar elements. The execution of sentence may not be suspended nor may probation be granted except on condition that the minimum imprisonment provided in this section is served. Imposition of sentence may not be suspended. If the offense involved driving a motor vehicle for which a driver's license is required, the person's driver's license shall be revoked under AS 28.15.181. In addition, the court shall order, and a person convicted under this section shall undertake, for a term specified by the court, that program of alcohol education or rehabilitation that the court, after consideration of any information compiled under (h) of this section, finds appropriate. The sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the committed person.

* Sec. 3. AS 28.35.036 is repealed and reenacted to read:

Sec. 28.35.036. FORFEITURE OF MOTOR VEHICLE. (a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) the

court shall require the surrender of the registration and certificate of title of that motor vehicle. The registration and certificate of title shall be delivered to the department.

(b) Forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g) extinguishes the rights or claims of a person with an ascertainable interest in the motor vehicle, unless the person seeks remission of the forfeiture under AS 28.35.037 within 90 days after the person receives notice of the right of remission under AS 28.35.-037.

(c) If not released under AS 28.35.037, a motor vehicle forfeited under AS 28.35.030(c) or 28.35.032(g) may be disposed of by the department.

* Sec. 4. AS 28.35.037(a) is repealed and reenacted to read:

(a) Upon forfeiture of a motor vehicle under AS 28.35.030(c) or 28.35.032(g), the state shall provide written notice to each person with an ascertainable ownership or security interest in the motor vehicle, other than the person convicted of the offense resulting in forfeiture, that

(1) the vehicle has been forfeited;

(2) the person has a right to intervene to protect an interest in the motor vehicle under (b) of this section; and

(3) failure to seek remission of forfeiture within 90 days will extinguish the rights of the person to the vehicle.

* Sec. 5. AS 28.35.037(b) is amended to read:

(b) <u>At the request of a person with an ownership or security interest in a vehicle forfeited under AS 28.35.030(c) or 28.35.032(g), other than the person convicted of the offense resulting in forfeiture, the court shall schedule a hearing to determine if remission of forfeiture shall be ordered as provided under this section.</u> At the

hearing, a person who claims an ownership or security interest in the motor vehicle must establish by a preponderance of the evidence that

(1) the petitioner has an interest in the motor vehicle acquired in good faith;

(2) a person other than the petitioner was convicted of the offense that resulted in the forfeiture; and

(3) before parting with the motor vehicle, the petitioner did not know or have reasonable cause to believe that it would be used in the commission of an offense.

* Sec. 6. AS 28.35.037(d) is repealed.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : 4852
REQUEST: Publish Date :

Revision Date:
Title : An Act relating to motor vehicle forfeiture
Sponsor : Koponen
Requestor : House State Affairs

Agency Affected : Public Safety
BRU : AK Highway Safety Planning Agency
Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

JNR 1/23/87

Prepared by : T. Michael Lewis TML Phone : 465-4374
Division : Alaska Highway Safety Planning Agency Date : 1/22/87
Approved by Commissioner : Date : 1/23/87
Agency :

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:

Bill Version : HB 52
Publish Date :

Revision Date:
Title : "An Act relating to motor vehicle forfeiture."
Sponsor :
Requestor :

Agency Affected : Department of Law
BRU : Prosecution

Components : Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		132.7	136.7	140.8	145.0	149.4
TRAVEL		3.6	3.7	3.8	3.9	4.0
CONTRACTUAL		38.8	40.0	41.2	42.4	43.7
SUPPLIES		12.3	8.0	8.2	8.4	8.7
EQUIPMENT		11.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		198.4	188.4	194.0	199.7	205.8
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		198.4	188.4	194.0	199.7	205.8
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard A. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services Division
Date : Feb. 9, 1987

Richard A. Pegues /FOR/
Approved by Commissioner : Grace Berg Schaible, Atty. Gen.
Date : Feb. 9, 1987
Agency : Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

This bill amends AS 28.35.036(a) by mandating that the state seek forfeiture of the motor vehicle involved if the convicted person has been previously convicted more than once for driving while intoxicated or for refusing to submit to a chemical test. Under current law, the state has the option of seeking forfeiture, but it is not mandated to do so.

Department of Law records, as well as those of the Division of Motor Vehicles, indicate that the department would have to seek forfeiture in 300 to 400 cases annually, where it does not do so now. The forfeiture process can be somewhat complicated whenever parties other than the person convicted hold an ownership or security interest in the vehicle involved. A separate court hearing would have to be held in each individual case. A title search of each vehicle would have to be conducted. All third parties with an ownership interest would have to be notified so that they may assert their ownership interest at the hearings. If a third party proves their ownership or security interest, and proves that they did not know or have reasonable cause to know the vehicle would be used in the commission of an offense, the vehicle and title to vehicle is released to the party holding ownership, or an amount equal to the value in the vehicle held by the party holding a security interest is paid to that party. In any event, a substantial amount of resources will be required to acquire and hold vehicles, and to manage the proceeds from vehicles that have been sold.

Attorneys with the Municipality of Anchorage, which conducts a municipal forfeiture program under AS 28.35.038, have advised us that ownership or security interests are held by persons other than the person convicted of an offense in 90 to 95 per cent of the cases that they have handled. Thus, it appears that very few forfeitures will be straightforward or without need for costly legal proceedings. The Department of Law estimates that at least one attorney III, one paraprofessional, and one clerk typist will be required to prepare and handle forfeiture actions. In addition to normal personnel and support costs, a sum of $25,000 will be needed to publish legal notices for lien holders, and others with ownership interests who cannot be easily contacted or readily identified. Other departments that will also probably see a fiscal impact if this bill is enacted are the Public Defender and the Court System, who would experience increased caseload. Likewise, the Department of Public Safety, who would be responsible for holding and disposing of vehicles, and for remitting the proceeds of sales to those having security interest in many of the vehicles that are to be sold, will also experience a fiscal impact. The department recognizes the valuable social purpose that this bill serves; however, it must caution against burdening it with new responsibilities in a budget year when many of the department's core prosecution functions are being severely curtailed due to budget constraints.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

HB 52 Fiscal Analysis

Funding Summary

	Atty III	P/A II	Clerk Typist III	Total
71000	62.5	42.6	27.6	132.7
72000	1.8	1.8	-0-	3.6
73000	29.8	4.8	4.2	38.8
74000	4.5	4.5	3.3	12.3
75000	1.5	1.5	8.0	11.0
Total	55.2	100.1	43.1	198.4

Costs beyond FY 88 include a 3 per cent annual inflation factor.

Position Title	No. of Positions	Range/Step	Barg. Unit
Attorney III	1	22A	PX

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	49,140	
Benefits	13,311	
Premium Pay		
Other		
Total Personal Services		62,451
Travel		1,800
Contractual		29,800
Commodities		4,500
Equipment		1,500
Other		
Total Cost		100,051

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	100,051
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by HB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Paralegal Assistant II	1	16A	GGU

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	32,424	
Benefits	10,127	
Premium Pay		
Other		
Total Personal Services		42,551
Travel		1,800
Contractual		4,800
Commodities		4,500
Equipment		1,500
Other		
Total Cost		55,151

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	55,151
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by HB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class.

Request For New Position

Agency Department of Law

BRU Prosecution

Component Third Judicial District

Revised Date

FY 88

Position Title	No. of Positions	Range/Step	Barg. Unit
Clerk Typist III	1	8B	GGU

Time Status	Staff Months	Location	Election District
PFT	12	EBA - Anchorage	8

Type of Expenditure		Amount
1	2	3
Salary	20,136	
Benefits	7,507	
Premium Pay		
Other		
Total Personal Services		27,643
Travel		-0-
Contractual		4,200
Commodities		3,300
Equipment		8,000
Other		
Total Cost		43,143

Funding Source for Total Cost		
Federal Receipts	1002	
G. F. Match	1003	
General Fund	1004	43,143
I-A Receipts	1006	
CIP Receipts	1061	
Other		

Justification

This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by HB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended.

Request For New Position

Agency: Department of Law

BRU: Prosecution

Component: Third Judicial District

Revised Date

FY 88

Alaska State Legislature

Representative Niilo Koponen

Pouch V
Juneau, Alaska 99811
(907) 465-4992

542 4th Avenue, Suite C
Fairbanks, Alaska 99701
(907) 456-8161

POSITION PAPER

HB 52 "AN ACT RELATING TO MOTOR VEHICLE FORFEITURE."

Alaska ranks third highest per capita nationwide in alcohol-related accident fatalities. After HB 6 was signed into law in September 1983, the prosecution was given the option to request the confiscation of a vehicle for second time DWI offenders. In Fairbanks, only one person in three years has been ordered to forfeit their car. Alaska statistics show that in 1985, there were 365 drunk driving accidents involving third time offenders. During the first 11 months of 1986, this figure increased to 412 drunk driving accidents. These alarming statistics have led me to introduce this legislation.

The purpose of HB 52 is to strengthen the legislative intent of AS 28.35.036 by stating that "...the state shall [may] move the court to order the forfeiture of the motor vehicle..." The primary intent of HB 52 is to limit drunk driving fatalities. This legislation may also act as as a deterrent by convincing first time DWI offenders that they will no longer have a vehicle in their possession if they are convicted of a second time DWI offense.

It is important to realize that under AS 28.35.037 (Remission of Forfeitures) an offender can go to court in order to retrieve his or her car, thereby protecting and third party interests in the motor vehicle. The offender must follow the guidelines within statute and present relevant arguments to the judge. Sec. 28.35.037(c) states that if the person satisfies these requirements, the court shall order that the motor vehicle and title be released.

It is routine practice of Alaska game wardens to immediately confiscate cars, trucks and guns when a hunting violation is charged, prior to completion of the violator's due process proceedings. It is my feeling that the protection of human life should be considered at least as important in state law as a hunting or parking violation.

MADD
MOTHERS AGAINST DRUNK DRIVERS
Fairbanks Northern Lights Chapter
P.O. Box 1167
Fairbanks, Alaska 99707-1167
(907) 456-3964

FORFEITURE OF VEHICLE

OBJECTIVE

It is no secret that the effects of Driving While Intoxicate (DWI), are a major health problem. Once again 1985 statistics compiled by individual state departments of highway, Alaska has ranked third nationwide for the highest rate per capita of alcohol-related crash fatalities (see attached). Death, injury, and trauma occur to the victims and victim families of DWI crashes. Economically this problem is costing our communities millions annually in lost wages, court costs, unrecoverable medical charges, higher insurance rates, and other related expenses.

Mothers Against Drunk Driving (MADD), is an organization whose primary goal is to reduce the number of deaths and injuries resulting from DWI crashes through our educational, legislative and Victim Assistance programs.

In the past three years, we have asked you, our legislators, to increase the penalties for DWI, and refusal to submit to a breath test, to raise the drinking age to 21, to prohibit Happy Hour sales, to institute mandatory driver insurance, and to allow for vehicle confiscation for second time DWI offenders, and other related legislation.

We are once again faced with making a request that you consider amending AS 28.35.036 Forfeiture of Motor Vehicle.

It has been our observation since the passage of HB-6 which was signed into law in September of 1983 by then Governor Sheffield, that our district attorneys and judges have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date, our district attorney's office in Fairbanks (Fourth Judicial District), have been failing to exercise their option to confiscate a vehicle for a second offender for DWI. To date our district attorney's office reports that they have only confiscated one (1) vehicle.

We do not feel that the confiscation of one vehicle in nearly three years serves as a deterrent for anyone, and without deterrents that keep the public's attention, we can never hope to see a decrease in this type of conduct. In fact, we have seen a serious rise in the number of people [illegible] in the Fairbanks North Star Borough the last three years.