

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4715 HJUD HB 348 - HB 354

8387

JOHN SUND, REPRESENTATIVE

2504 2nd Avenue
Ketchikan, Alaska 99901
(907) 225-5552

While in Juneau
P. O. Box V
Juneau, Alaska 99811
(907) 465-4919

February 8, 1988

Mr. Gary Grandy
P.O. Box 1111
Petersburg, Alaska 99833

Dear Mr. Grandy:

Thank you for your recent public opinion messages regarding Senate Bill 211 and House Bill 348.

Your message on SB 211 requested that we move the bill out of the House Judiciary Committee as soon as possible. I must explain, however, that the bill is not presently in my committee. It is awaiting hearings in the Senate Judiciary Committee.


I assure you that if the bill ever makes it to my committee I will give it my attention. Meanwhile, I suggest that you contact Senator Jay Kerttula who chairs the Senate Judiciary Committee.

Regarding HB 348, I agree with you that three state commissioners on the five-member Medicaid Rate Commission would be "stacking the deck," and I oppose the bill. The most qualified people for Medicaid rate setting are those who are working in the field.

The bill is now under consideration in the House State Affairs Committee with further referrals to the House Health, Education and Social Services Committee and House Judiciary Committee. If it makes its way to my committee, I will seriously question the need for the bill.

Thanks again for your input. Please feel free to contact me in the future.

Sincerely,


John Sund
Representative

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: O.W. BILL & JEANETTE LOWE

TITLE: RAMBLER ROAD

ADDRESS: HC 80 BOX 7180

CITY: CHUGIAK

PHONE: 688-2212

ZIP: 99567

BILL NO:

SUBJECT: INVESTMENT OF P.E.M. FUNDS

MESSAGE: WE OPPOSE STATE INVESTMENT IN ANCHORAGE REAL ESTATE OR ACQUISITION OF COMMERCIAL PROPERTY WITH EARNINGS FOR DEMOLITION. EXPENDITURES WILL NOT BENEFIT STATE OR GENERAL PUBLIC.

POMID: 03121056

DATE: 01/25/88

TIME: 12:10:56

LIONAME: ANCHORAGE LIO

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: GARY W. GRANDY

TITLE:

ADDRESS: BOX1111

CITY: PETERSBURG

PHONE: 772-4291

ZIP: 99833

BILL NO: SB 211

SUBJECT: CIVIL LIABILITY

MESSAGE: IMPORTANT LEGISLATION SHOULD NOT BE RETAINED IN COMMITTEE. TO DO SO IS POLITICALLY UNSOUND, AS THE MAJORITY OF CITIZENS IN A DEMOCRATIC SOCIETY WANT ISSUES DEBATED AND VOTED UPON. THEREFORE, I SUGGEST THAT SB211 SHOULD BE ACTED UPON AND MOVED FROM YOUR JUDICIARY COMMITTEE. PLEASE SEE THAT THIS HAPPENS.

POMID: 15141418

DATE: 01/25/88

TIME: 14:14:18

LIONAME: PETERSBURG LIO

-COPIES: REPRESENTATIVE

TAYLOR

COPIES: REPRESENTATIVES REPRESENTATIVES SENATORS

| | | |
|-------------|-----------|--------------|
| ADAMS | BARNES | ABOOD |
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| BROWN | CAIO | COGHILL |
| COLLINS | COTTEN | DUNCAN |
| DAVIDSON | PAVIS | ELIASON |
| DONLEY | ELLIS | FAHRENKAMP |
| FRANK | FURNACE | FAIKS |
| GOLL | GRUENBERG | FANNING |
| GRUSSENDORF | HANLEY | FISCHER |
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| HUDSON | KOPONEN | HENSLEY |
| LARSON | MARTIN | JONES |
| MENARD | MILLER | JOSEPHSON |
| NAVARRE | PEARCE | KELLY |
| PETTYJOHN | PHILLIPS | KERTTULA |
| POURCHOT | RIEGER | RODEY |
| SHULTZ | SPRINGER | STURGULEWSKI |
| SWACKHAMMER | TAYLOR | SZYMANSKI |
| ULMER | WALLIS | UEHLING |
| ZAWACKI | | ZHAROFF |

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: LISA PEGER
TITLE:
ADDRESS: 3903 PEGER RD.
CITY: FAIRBANKS ZIP: 99701
PHONE: 452-8397
BILL NO: HB 359
SUBJECT: CHILD SUPPORT; NOTICE OF PROPERTY SEIZURE
MESSAGE: AND SB117. I AM IN FAVOR OF THE TWO BILLS COMING UP AND HOPE
YOU'LL PASS THEM.

POMID: 07111858
DATE: 01/25/88
TIME: 11:18:58
LIONAME: FAIRBANKS LIO

COPIES: REPRESENTATIVES SENATORS

BOYER
DAVIS
FRANK
KOPONEN
MILLER
BARNES
COTTEN
GRUENBERG
NAVARRE
TAYLOR
ULMER
COGHILL
FAHRENKAMP
FANNING

PUBLIC OPINION MESSAGE

DEAR: REPRESENTATIVE SUND

NAME: GARY W. GRANDY
TITLE:
ADDRESS: BOX 589
CITY: PETERSBURG ZIP: 99833
PHONE: 772-4291
BILL NO: HB 348
SUBJECT: MEMBERSHIP OF MEDICAID RATE COMMISSION
MESSAGE: CHANGING THE COMPOSITION OF THE MEDICAID RATE COMMISSION TO INCLUDE THREE STATE COMMISSIONERS ON THE FIVE PERSON BOARD IS STACKING THE DECK, IN MY OPINION. PLEASE OPPOSE SB 348. THANK YOU.

POMID: 15140901
DATE: 01/25/88
TIME: 14:09:01
LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVE

TAYLOR

NO RESPONSE REQUIRED



Central Peninsula General Hospital

Operated by Lutheran Hospitals and Homes Society

250 HOSPITAL PLACE • SOLDOTNA, ALASKA 99669

(907) 262-4404

March 23, 1988

Ms. Sharon Jean
Chairperson
Governor's Interim
Commission on Health Care
P.O. Box H
Juneau, Alaska 99811-0601

Dear Ms. Jean:

I have just reviewed the recommendation to the Interim Commission on Facility rate setting. I have serious concerns about some of the statements and language in this document.

I have been the Administrator of Central Peninsula since October, 1981, and can give both a personal prospective and factual historical prospective on the Rate commission.

The Alaska State Hospital Association was approached by the Department of Health and Social Services to help develop a payment system that would meet both the States needs and the Providers needs for adequate and fair funding. This proposal was looked at carefully by both parties and it was evident that facility rates would increase drastically during the first two years of operations and then flatten. Later it was recognized by some providers and by Mary Benson, Executive Director of the rate commission that this system was not the best for long term care. The system was modeled after the rate setting process in Washington which doesn't include nursing homes.

The attachment 1, from the Interim commission certainly holds that true. During the first two years of the commissions function rates increased 29.31 percent, an average of 14.66 percent per year. Since that period rates have averaged only 3.58 percent per year increase. The lowest was a decrease of 3.09 percent per year and the highest an increase 16.17 percent.

I also have some concerns on methodology used in the paper. Average rates are figured by weighing each facilities rate by the number of patient days. This is the acceptable method used by both the federal government and many states. This system is used to set the rate paid rural facilities for their swing beds (long term beds in acute facilities). The current swing bed rate for

*Medicaid
rate
commission
HB348*

*Put in file
my bill file
currently in
Judicial. mm*

Ms. Sharon Jean
March 24, 1988
Page 2

Alaska, i.e., the average medicaid cost per patient day, is \$162.57. Considerably less than the \$212.00 quoted in the recommendation. You should also be aware that the Medicaid in Alaska includes ancillary costs where the rates outside have separate payments for these services as shown by the spread sheet titled "Medicaid Rate Commission, Data for Graphs" dated March 9, 1988. Ancillary costs are listed for Alaska facilities and not listed for Oregon. Other costs vary in Oregon compared to Alaska besides wages. Supplies, food, utilities, travel for staff education, legal, dues, and fuel all are significantly higher.

It is interesting that Alaska Psychiatric Institute and Harbor View, both State run facilities, have some of the highest Medicaid costs with minimal Capital costs.

I must agree that a large number of Seniors are not served through the Medicaid funds paid to facilities. What you must consider is that the level of care is the most intense of all other services. As an example, if home health care visited a client at home three times daily for nursing care, provided a homemaker service for meals and cleaning, and also provide one physical therapy treatment daily along with medications its rate would exceed the highest long term care rate in the state.

Of other interest is the Medicaid upper limit issue. In Mr. Albert J. Benz's letter dated March 17, 1988, to Commissioner Munson it is indeed identified that there may be an upper limits problem as described by Mary Benson of the Medicaid Rate Commission. But Ms. Benson also states in a letter dated March 11, 1988, to Norma Lundy of the Governor's Interim Health Care Commission that the state "Will prevail or partially prevail" and that they do not agree with the federal finding.

I also object to some of the language that I consider inflammatory, and some obvious jumps in logic in the section of the document that is labeled historical. If the writer wishes to make personal statements based on his own values, it should be listed as editorial in nature. Some of his statements are misleading at best. In 1983, when the medicaid rate commission came into effect this facility was receiving 100 percent of charges from both Medicaid and Medicare. Now we are receiving 100 percent of charges for Medicare and only 98 percent from Medicaid. It doesn't sound like my facility is ripping off the state.

Ms. Sharon Jean
March 24, 1988
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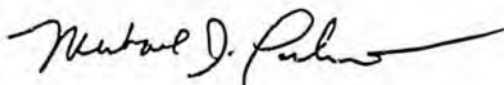
I do agree with the writer that the purpose of medicaid is not the survival of facilities but the care of patients. If you have been to some facilities in Oregon or Washington and smell the stench of stale urine, or tasted their food, or evaluated their State licensing surveys you would see the major issues.

We need to provide adequate care not substandard care to our patients. The issue is not the Medicaid Rate Commission. In fact, I personally feel we could do without the Commission. The issue is a payment system that will reward efficiencies in areas that do not affect quality care. Yet, on the other hand, will reward industry advances that improve the quality of life for our elderly. Similar to payment systems currently used in Maryland.

I understand the concerns both for the budget and equal access to health care for our elderly. My only hope is that short sighted solutions of dissolving or changing one entity without having a solution doesn't dismantle care for all our elderly.

I would request that the Interim commission reconsider their position on the Medicaid Rate Commission. I am not asking that it remain forever unchanged but that the time be allowed to develop a system that will replace it appropriately.

Sincerely,



Michael J. Lockwood
Administrator

cc:

The Honorable Steve Cowper
Governor, State of Alaska

Representative Mike Navarre
Alaska State Legislature

Representative C. E. Swackhammer
Alaska State Legislature

Representative Niilo Coponen
Alaska State Legislature

Representative Johnny Ellis
Alaska State Legislature

Ms. Sharon Jean
March 24, 1988
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cc:

Representative Max F. Gruenberg, Jr.
Alaska State Legislature

Representative Bill Hudson
Alaska State Legislature

Representative Randy Phillips
Alaska State Legislature

Representative Alyce Hanley
Alaska State Legislature

Representative H. A. (Red) Boucher
Alaska State Legislature

Representative Cliff Davidson
Alaska State Legislature

Representative Terrie Martin
Alaska State Legislature

Representative Curt Menard
Alaska State Legislature

Senator Paul Fischer
Alaska State Legislature

Commissioner Hugh Malone
Department of Revenue

Commissioner Myra M. Munson
Department of Health and Social Services

Commissioner Barbara Haase
Medicaid Rate Commission

Commissioner Marianne Burke
Medicaid Rate Commission

Commissioner Frank Hickey
Medicaid Rate Commission

Commissioner Roger Harding
Medicaid Rate Commission

Commissioner Mark Regan
Medicaid Rate Commission

Ms. Sharon Jean
March 24, 1988
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Mr. John Vowell
Health Association of Alaska

Mr. Harlan R. Knudson
Health Association of Alaska

Ms. Mary Benson
Medicaid Rate Commission

Mr. Bob Evans
Legislative Liaison

ICF/SNF

HB 348
[Handwritten initials]

COMPARISON OF 5 HIGHEST MIXED FACILITIES IN OREGON
 TO 5 FREE STANDING FACILITIES IN ALASKA
 AVERAGE PER PATIENT DAY COSTS

| FACILITY | NURSING NURSING | SUPP SUPP | PROPERTY | SHELTER | LAUNDRY | HOUSE KEEPING | DIETARY | ADMIN. | EMPLOYEE BENEFITS & PAYROLL TAXES | TOTALS |
|--|--------------------|--------------|----------|---------|---------|------------------|---------|---------|--|----------|
| ----- | | | | | | | | | | |
| AVERAGE COSTS PER DAY | | | | | | | | | | |
| ALASKA FACILITIES | \$53.15 | \$6.21 | \$29.46 | \$6.58 | \$2.71 | \$5.69 | \$14.65 | \$21.12 | \$16.21 | \$155.78 |
| OREGON FACILITIES | \$27.69 | \$3.29 | \$6.02 | \$4.13 | \$1.45 | \$2.38 | \$6.66 | \$5.81 | \$9.89 | \$67.32 |
| RATIO OF ALASKA TO OREGON | 1.92 | 1.89 | 4.89 | 1.59 | 1.87 | 2.39 | 2.20 | 3.63 | 1.64 | 2.31 |
| ----- | | | | | | | | | | |
| ALASKA FACILITIES | \$53.15 | \$6.21 | \$29.46 | \$6.58 | \$2.71 | \$5.69 | \$14.65 | \$21.12 | \$16.21 | \$155.78 |
| OREGON FACILITIES AT ALASKA'S AVERAGE HOURLY WAGE RATE | \$40.75 | \$3.29 | \$6.02 | \$4.80 | \$2.23 | \$3.88 | \$9.59 | \$8.90 | \$13.54 | \$93.00 |
| RATIO OF ALASKA TO OREGON | 1.30 | 1.89 | 4.89 | 1.37 | 1.22 | 1.47 | 1.53 | 2.37 | 1.20 | 1.68 |

| | FACILITY CAPACITY | TOTAL DAYS | % OF OCCUPANCY |
|-------------------|----------------------|------------|-------------------|
| ALASKA FACILITIES | 175565 | 149209 | 84.99% |
| OREGON FACILITIES | 152019 | 136692 | 89.92% |

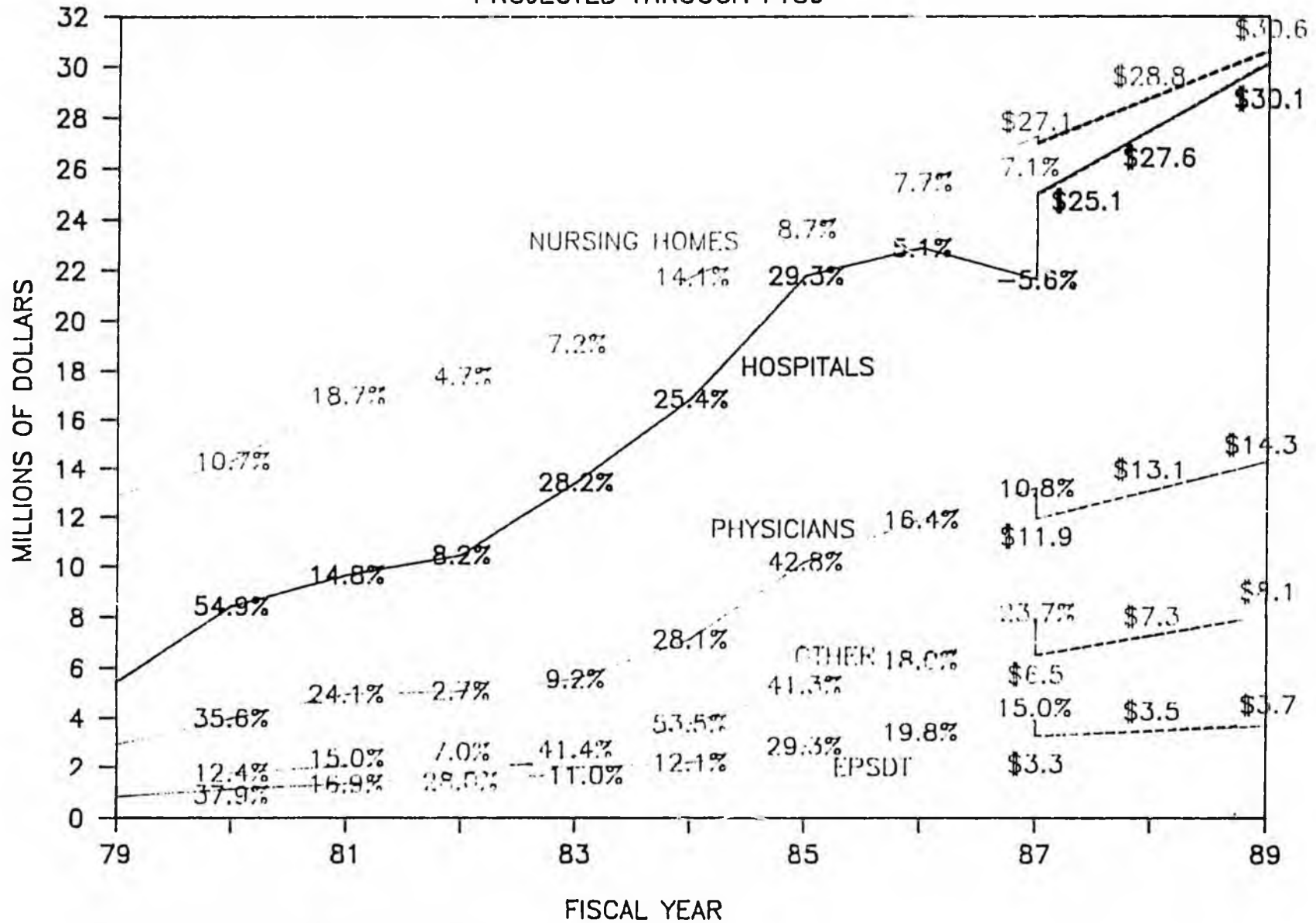
COMPARISON OF OREGON'S HIGHEST COST FACILITIES TO ALASKA'S
AVERAGE PER PATIENT DAY COSTS

| FACILITY | NURSING | NURSING SUPP | PROPERTY | SHELTER | LAUNDRY | HOUSE KEEPING | DIETARY | ADMIN. | EMPLOYEE BENEFITS & PAYROLL TAXES | TOTALS |
|--------------------|---------|--------------|----------|---------|---------|---------------|---------|---------|-----------------------------------|----------|
| ALASKA FACILITIES | | | | | | | | | | |
| DENALI | \$62.63 | \$7.97 | \$11.84 | \$6.97 | \$3.15 | \$5.35 | \$14.95 | \$19.81 | \$13.65 | \$146.32 |
| HERITAGE | \$55.29 | \$4.97 | \$86.26 | \$13.21 | \$1.59 | \$7.29 | \$13.76 | \$26.17 | \$17.70 | \$226.24 |
| OUR LADY | \$55.28 | \$6.49 | \$25.59 | \$4.30 | \$1.99 | \$4.68 | \$15.55 | \$16.32 | \$16.76 | \$146.96 |
| ST. ANN | \$54.29 | \$8.26 | \$20.85 | \$3.72 | \$3.49 | \$7.20 | \$14.76 | \$28.38 | \$19.31 | \$160.26 |
| WESLEYAN | \$38.24 | \$3.37 | \$2.76 | \$4.69 | \$3.33 | \$3.94 | \$14.23 | \$14.94 | \$13.62 | \$99.12 |
| AVE. COSTS PER DAY | \$53.15 | \$6.21 | \$29.46 | \$6.58 | \$2.71 | \$5.69 | \$14.65 | \$21.12 | \$16.21 | \$155.78 |
| OREGON FACILITIES | | | | | | | | | | |
| CAPITOL VIEW | \$24.63 | \$3.83 | \$3.32 | \$4.08 | \$1.26 | \$1.21 | \$5.36 | \$6.28 | \$10.92 | \$60.89 |
| FRIENDSHIP | \$32.25 | \$4.43 | \$4.08 | \$0.75 | \$0.53 | \$4.55 | \$6.65 | \$6.74 | \$9.75 | \$69.73 |
| MT. VIEW CONV.CTR. | \$28.64 | \$2.45 | \$11.07 | \$3.68 | \$1.11 | \$1.41 | \$5.48 | \$5.41 | \$5.15 | \$64.42 |
| PORTLAND ADVENTIST | \$26.63 | \$3.00 | \$7.98 | \$4.59 | \$3.11 | \$2.38 | \$6.38 | \$4.61 | \$10.23 | \$68.91 |
| ROBISON | \$26.30 | \$2.72 | \$3.65 | \$7.56 | \$1.22 | \$2.35 | \$9.42 | \$6.02 | \$13.40 | \$72.64 |
| AVE. COSTS PER DAY | \$27.69 | \$3.29 | \$6.02 | \$4.13 | \$1.45 | \$2.38 | \$6.66 | \$5.81 | \$9.88 | \$67.32 |

| | FACILITY CAPACITY | TOTAL DAYS | % OF OCCUPANCY |
|---------------------|----------------------|------------|-------------------|
| | ----- | ----- | ----- |
| ALASKA FACILITIES | | | |
| DENALI | 36865 | 27403 | 74.33% |
| HERITAGE | 16425 | 6617 | 40.29% |
| OUR LADY | 81760 | 78941 | 96.55% |
| ST. ANN | 16425 | 13606 | 82.84% |
| WESLEYAN | 24090 | 22642 | 93.99% |
| | ----- | ----- | ----- |
| TOTALS | 175565 | 149209 | 84.99% |
| | ----- | ----- | ----- |
| OREGON FACILITIES | | | |
| CAPITOL VIEW | 12696 | 11908 | 93.79% |
| FRIENDSHIP | 9200 | 8440 | 91.74% |
| MT. VIEW CONV. CTR. | 22448 | 19232 | 85.67% |
| PORTLAND ADVENTIST | 63875 | 57425 | 89.90% |
| ROBISON | 43800 | 39687 | 90.61% |
| | ----- | ----- | ----- |
| TOTALS | 152019 | 136692 | 89.92% |
| | ----- | ----- | ----- |

MEDICAID EXPENDITURES

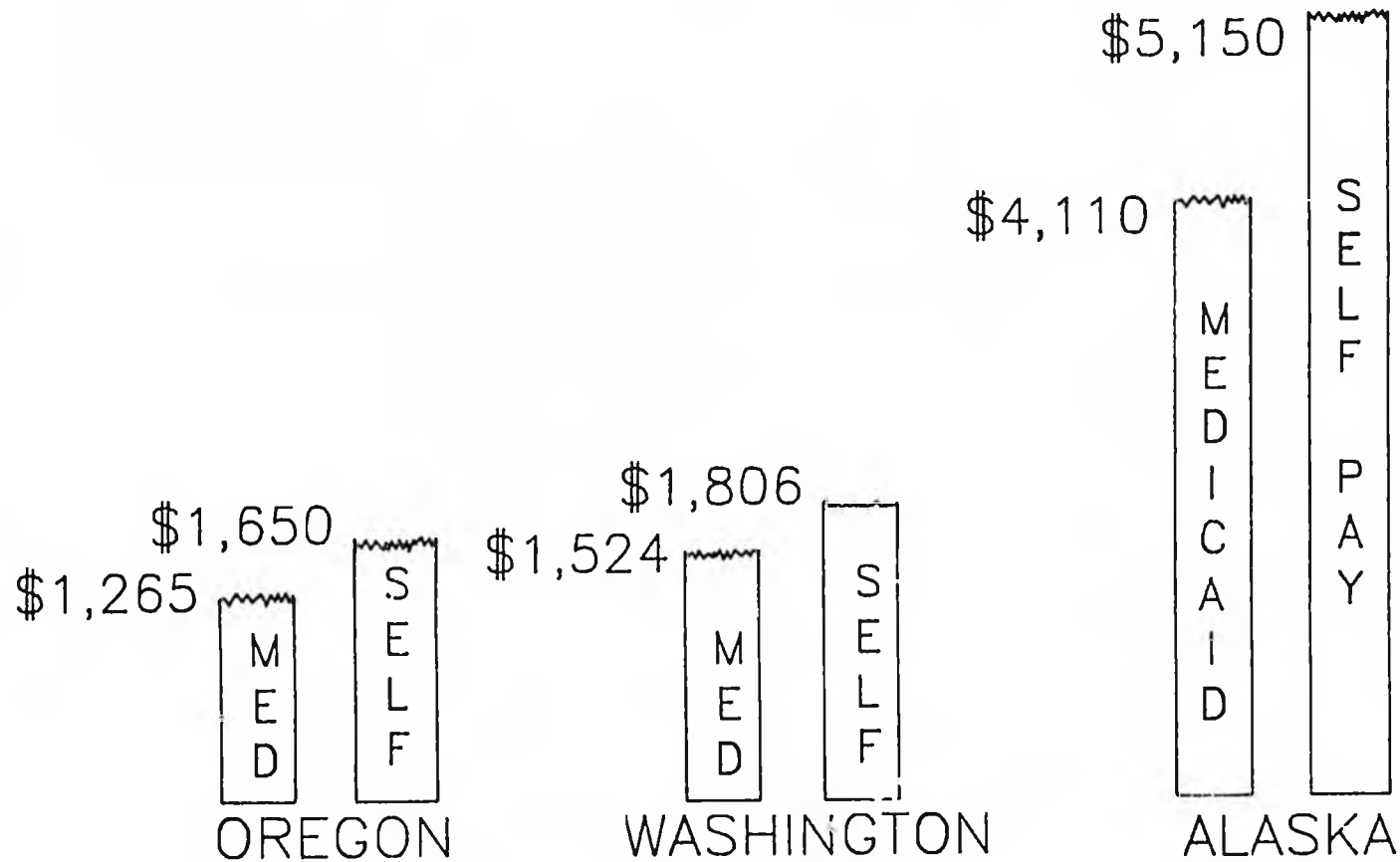
PROJECTED THROUGH FY89



Expenditures by date of service.
 Projections 87 - 89 made using straight line method using
 79 through 86 as base years.

NURSING HOME CARE

TYPICAL MONTHLY COST TO MEDICAID AND SELF-PAYING PATIENTS



Alaska State Legislature

House of Representatives

Al Adams

Chairman

Committee on Finance

MAR 22 1988

WHILE IN SESSION

P.O. Box V

State Capitol

Juneau, Alaska 99811

(907) 465-3706

OUT OF SESSION

P.O. Box 333

Kotzebue, Alaska 99752

(907) 442-3320

1024 W. 6th

Anchorage, Alaska 99501

(907) 274-0615

Official Business

March 22, 1988

Representative John Sund
Chairman
House Judiciary Committee
P.O. Box V
Juneau, AK 99811

Re: CS HB 348 (HESS)

Dear Representative Sund:

I would like to take this opportunity to voice my support for CS House Bill 348 (HESS) "An Act relating to payment rates for health facilities and to the Medicaid Rate Advisory Commission."

As I am sure you are aware, the entitlement programs in general and the Medicaid budget in particular represent an ever increasing portion of the Department of Health & Social Services Budget. From FY 86 - FY 88, a period when the majority of state funded programs were sustaining double-digit percentage budget reductions, state general funds for Medicaid increased by 12.2%. If you add the FY 88 request for supplemental funding pending before the House Finance Committee, the increase is approximately 37.1%. I have attached a spreadsheet which more clearly demonstrates the growth in this program during this period.

While some of these increased costs can be attributed to expansion of services and increased caseloads, it is also true that a significant

portion of the increased costs are directly related to the rate increases awarded to Medicaid eligible facilities by the existing Medicaid Rate Commission.

Under current law, the rate commission operates outside the normal policy/budget process and the composition of the commission further aggravates the problems inherent in this situation. CS House Bill 348 (HFSS) would provide for the commission to act in an advisory capacity only with actual rate setting authority placed within the Department of Health & Social Services and therefore presumably more sensitive to the overall policy and budget priorities of the state.

To illustrate just how out of step with the normal budget process the current commission appears to be, I have attached a copy of a notice of proposed changes in the regulations of the Medicaid Rate Commission which came across my desk last month. If the commission adopts these regulations as written, the state will be obligated for an additional \$2.9 million for FY 89 with further increases in succeeding years. These funds are not in the current Governor's FY 89 budget request nor will the regulations likely be approved in time for consideration by the legislature this year. As a practical matter what we have here is a FY 89 supplemental request. We are set-up for a FY 89 Medicaid supplemental before we have even approved the original FY 89 budget!

In addition, I have grave concerns that the proposed regulation currently before the Medicaid Rate Commission will result in the federal government making a determination that we are out of compliance with our state plan for medical assistance. At worst, this could result in the federal government withdrawing all financial support for our medicaid program. At best, we will be obligated to pay all costs associated with the new regulation. For your information, FY 89 federal receipts associated with the Medicaid facility and Medicaid non-facility budgets are estimated to be \$49.8 million. By way of comparison this is equivalent to 18.5% of the general fund budget for the entire Department of Health & Social Services and is greater than the entire general fund budget for the Department of Fish & Game.

In conclusion, I urge the Judiciary Committee to give favorable consideration to CS HB 348 (HESS). I am under no illusions that this will solve all our Medicaid funding problems; but I am convinced it is a worthwhile step in the right direction. In the absence of additional

Representative John Sund

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cost containment measures in this area, I fear that further erosion in funds for other vital health & social services programs is inevitable.

Sincerely,



Al Adams

Chairman

House Finance Committee

cc Rep. Mark Boyer
Chairman
House Finance HESS Budget Subcommittee

ATTACHMENT A MEDICAID BUDGET FY 87 ACTUAL-FY 89 (GENERAL FUNDS ONLY)

| COMPONENT | FY 87 ACT | FY 88 AUTH | FY 88 SUPP | FY 88 TOTAL | FY 89 GCV | FY 89 REGS | FY 89 TOTAL | FY 89 V FY 87 | FY 89 V FY 87 |
|-----------------------|-----------------|-----------------|----------------|-----------------|-----------------|----------------|-----------------|-----------------|---------------|
| | | | | | | | | AMOUNT | % |
| MEDICAID-NON FACILITY | 12,556.1 | 10,972.6 | 4,970.0 | 15,942.6 | 17,213.2 | 0.0 | 17,213.2 | 4,657.1 | 37.1% |
| MEDICAID-FACILITY | 22,822.4 | 26,598.2 | 3,375.0 | 29,973.2 | 33,112.1 | 2,900.0 | 36,012.1 | 13,189.7 | 57.8% |
| TOTAL | 35,378.5 | 37,570.8 | 8,345.0 | 45,915.8 | 50,325.3 | 2,900.0 | 53,225.3 | 17,846.8 | 50.4% |

FY 88 TOTAL=AUTHORIZED PLUS PROPOSED SUPPLEMENTAL; FY 89 TOTAL=FY 89 GOVERNOR PLUS PROPOSED NEW REGULATIONS

DRAFT

FACILITY RATE SETTING

ISSUE

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

HISTORY

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

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

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

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

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

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

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

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

DRAFT

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

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

POPULATION AFFECTED

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

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

DRAFT

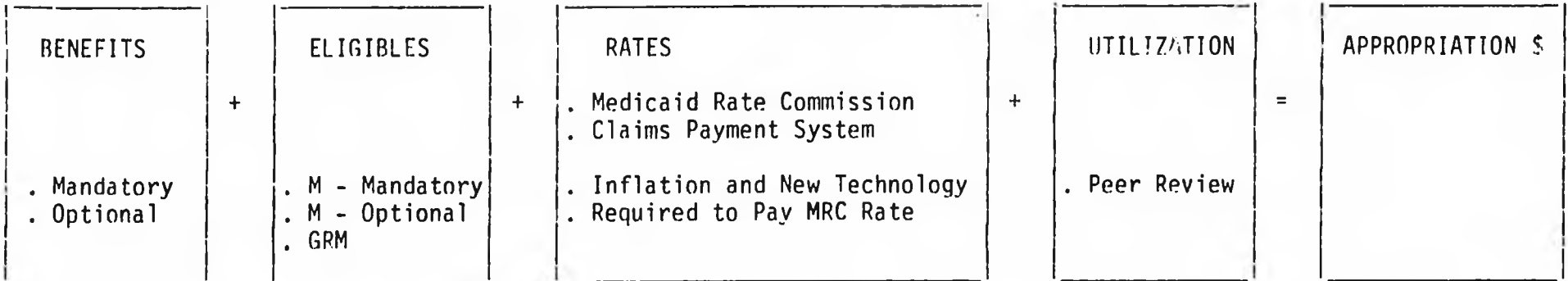
DRAFT

OPTIONS TO ADDRESS THE ISSUE

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

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

FY89 MEDICAL ASSISTANCE



PROGRAM INCREMENTS:

- . No new benefits/services
 - . 4.2% in Medicaid Facilities
 - . 4.5% in all other programs
 - . Healthy baby bill implement SOBRA option
 - . 3.8% for all programs
- . No adjustment for Change in Utilization Patterns
- . Base Adjustment for Unmet Need

ADMINISTRATIVE INCREMENTS FOR COST MANAGEMENT

- | | |
|--|--|
| <ul style="list-style-type: none"> . Hearing Officer 2.0 . Auditors 94.6 | <ul style="list-style-type: none"> . Physicians Services 99.5 . Pharmacists Services 103.5 . Continue Pre-Admission Screening 211.8 . Continued Third Party Liability Recoveries 0 |
|--|--|

Implementation of the Medicaid Management Information System impacts each of the four areas above.

TABLE OF MEDICAID PRIORITIES - AS 47.07.035

112

(Lowest to Highest)

| Service | Recipients | FY88 Annual Amount | | |
|---|------------|--------------------|---------|----------------|
| 1. Chiropractic | 600 | 410.0 | BENEFIT | |
| 2. Adult Dental | 2,032 | 571.2 | } | |
| 3. Emergency Hospital Services | -0- | -0- | | |
| 4. Speech, Hearing & Language Disorders | 298 | 113.0 | | |
| 5. Optometrists Services & Eyeglasses | 4,543 | 984.0 | | |
| 6. Occupational Therapy | 36 | 53.4 | | |
| 7. Prosthetic Devices | 198 | 679.8 | | |
| 8. Medical Supplies & Equipment | 330 | | | |
| 9. Clinic Services Includes Mental Health Clinics | 1,384 | 3,979.2 | | |
| 10. Physical Therapy | 224 | 255.4 | | |
| 11. Personal Care | 96 | 526.8 | | |
| 12. Non-Institutional Long Term Care | -0- | -0- | | |
| 13. Inpatient Psychiatric Services | 69 | 5,570.5 | | |
| 14. Intermediate Care for the Mentally Retarded | 116 | 10,566.1 | | |
| 15. Intermediate Care Services | 400 | 17,108.6 | | 40,81 |
| 16. Individuals Under 21 Not Eligible for AFDC (RIBICCF KIDS) | 1,500 | 1,785.0 | | Eligible Group |
| 17. Skilled Nursing Services for Individuals under 21 | 14 | 786.3 | | } |
| 18. Aged, Blind and Disabled Individuals <i>IN AN INSTITUTION</i> | 2,766 | 19,824.8 | | |
| 19. Individuals in a Hospital, Skilled or Intermediate Care Under 300% SSI level | 49 | 2,800.2 | | |
| 20. Individuals Under 21 Under Supervision of the Department - <i>FOSTER CARE</i> | 500 | 595.0 | | |
| | | <u>\$66,609.3</u> | | |

13 Includes Alaska Psychiatric Institute
 14 Includes Harborview Developmental Center
 16-20 Are Eligibility Groups. The costs shown are included in the above optional services as well as the mandatory Medicaid services.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 21, 1988

SUBJECT: HB 348; Relating to the Medicaid Rate
Commission

TO: Representative John Sund, Chair
House Judiciary Committee

FROM: George Utermohle *GU*
Legislative Counsel

HB 348, relating to the Medicaid Rate Commission, has been referred to the House Judiciary Committee.

If the Judiciary Committee takes action on the HESS Committee Substitute for HB 348, I would recommend a technical, clean-up amendment to the bill. A new section should be added to the bill to amend the reference in AS 39.25.110(23) to the Medicaid Rate Commission to read, "Medicaid Rate Advisory Commission."

GU
GU:bb
b4/030

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

MEDICAID RATE COMMISSION

STEVE COWPER GOVERNOR

PO BOX 242149
300 C STREET SUITE 59.
ANCHORAGE ALASKA 99524-0249
PHONE (907) 562 1996

February 17, 1988

The Honorable Myra Munson
Commissioner
Department of Health & Social Services
Pouch H-01
Juneau, AK 99811

Dear Myra:

Today, I received correspondence from Region X concerning the upper limits issues for our FY84 and FY85 fiscal years.

I want to keep you fully informed of the potential liability the state faces with this and other issues. While the state needs to require federal participation based on our approved State Plan, the upper limit issue is a problem for the state of Alaska.

Currently, we have approved State Plans through June 30, 1987. The 1988 State Plan is not approved. Our aggregate calculations for hospital services indicate the approved rates are under the upper limit for FY87 and FY88.

The long term care rates continue to be the major issue for state. I am listing an estimate of the contingent liability the state faces on several issues including the federal upper limit, regulations pending before the Medicaid Rate Commission, and appeals in process. All the issues listed below will likely be all general state funds. The appeals from providers request payments for expenses not included in the State Plan. While I do not believe the facilities will prevail, it is important to consider the appeals as contingent liabilities against General state funds. The outstanding issues are as follows:

| | |
|---------------------------------|---------------------|
| FY87 Long Term Care Upper Limit | \$ 2,055,000 |
| FY88 Long Term Care Upper Limit | \$ 2,515,000 |
| FY89 Long Term Care Upper Limit | <u>\$ 2,800,000</u> |
| Potential Federal Claim | \$ 7,370,000 |

| | |
|----------------------------|---------------------|
| FY89 Proposed Regulation | \$ 2,900,000 |
| Outstanding Appeals | <u>\$ 7,000,000</u> |
| Total Contingent Liability | \$17,270,000 |

RECEIVED

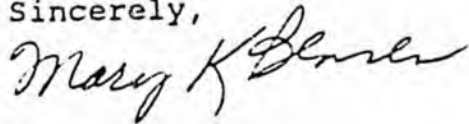
FEB 19 1988

Budget & Finance
Director's Office

If any of the contingencies become a reality, the impact will be in the FY89 appropriation. As you consider the appropriation request for FY89, you may want to consider requesting funding for some of the contingencies. As a note, the federal upper limit issue and the chart above reflect only the federal portion. I estimate excess above the upper limit for the 3 three years is approximately \$14,645,000 in actual payments to the health care facilities or just under 20% of the rate.

If you wish to discuss any of these issues or I can be of any assistance, please do not hesitate to contact me.

Sincerely,



Mary K. Bensen
Executive Director

cc: -Commission Members, Medicaid Rate Commission
Karen Perdue, Deputy Commissioner DHSS
Kim Busch, Medical Assistance
Harlan Knudson, Health Association of Alaska
Robert Bilden, Legislative Audit

MEMORANDUM

State of Alaska

TO: Norma Lundy
Governor's Interim Health
Care Commission

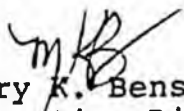
DATE: March 11, 1988

FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: State's Potential
Liability to Federal
Government on Medicaid


FROM: Mary K. Bensen
Executive Director
Medicaid Rate Commission

In response to your Committee's questions concerning the state's potential liability to the federal government on Medicaid, I have prepared the following summary.

The state has a variety of issues concerning Medicaid payments to hospitals and long term care facilities. Attached is a memorandum outlining issues as of February 17, 1988. Since that time several other issues have developed increasing the state's potential liability.

In late February, the federal government identified an upper limit issue with acute care services for 1984, 1985, and 1986. We have been notified approximately \$2.0 million will be requested back from the state. It appears this argument will continue into 1987 and 1988. I estimate we will be arguing another \$2.0 million in 1987 and \$1.0 million in 1988. The state does not agree with the federal finding. We anticipate we will prevail or partially prevail.

The second issue involves litigation with Cordova Hospital challenging the Medicaid Rate Commission's ability to apply audit findings prior to August 1986. The facility's contention is the state could only audit prior to that time but had no ability to recoup funds based on audits. I was notified Monday, the Alaska Health Association is planning to join the suit on behalf of all members facilities. Regardless of who prevails, the federal government will take its half from the state. Based on current audit findings, it appears there will be at least \$1.0 million in audit findings for 1985 and 1986. This will result in \$500,000 in payments to the federal government. We feel the state will prevail.

The outstanding issues are recapped as follows:

| | |
|----------------------------------|------------------|
| FY 87 Long Term Care Upper Limit | \$ 2,055,000 |
| FY 88 Long Term Care Upper Limit | 2,515,000 |
| FY 89 Long Term Care Upper Limit | <u>2,800,000</u> |
| Potential Federal Claim | \$ 7,370,000 |
| | |
| FY 89 Proposed Regulation | \$ 2,900,000 |
| Outstanding Appeals | <u>7,000,000</u> |
| Total Contingent Liability | \$17,270,000 |
| | |
| 1984/5/6 Hospital Upper Limit | \$ 2,000,000 |
| 1987 Hospital Upper Limit | 2,000,000 |
| 1988 Hospital Upper Limit | 1,000,000 |
| Audit Finding | <u>500,000</u> |
| Total | \$22,770,000 |

Attachment

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

MEDICAID RATE COMMISSION

STEVE COMPER, GOVERNOR

PC BOX 240245
360 C STREET SUITE 597
ANCHORAGE ALASKA 99524-0245
PHONE (907) 567 1956

February 17, 1988

The Honorable Myra Munson
Commissioner
Department of Health & Social Services
Pouch H-01
Juneau, AK 99811

Dear Myra:

Today, I received correspondence from Region X concerning the upper limits issues for our FY84 and FY85 fiscal years.

I want to keep you fully informed of the potential liability the state faces with this and other issues. While the state needs to require federal participation based on our approved State Plan, the upper limit issue is a problem for the state of Alaska.

Currently, we have approved State Plans through June 30, 1987. The 1988 State Plan is not approved. Our aggregate calculations for hospital services indicate the approved rates are under the upper limit for FY87 and FY88.

The long term care rates continue to be the major issue for state. I am listing an estimate of the contingent liability the state faces on several issues including the federal upper limit, regulations pending before the Medicaid Rate Commission, and appeals in process. All the issues listed below will likely be all general state funds. The appeals from providers request payments for expenses not included in the State Plan. While I do not believe the facilities will prevail, it is important to consider the appeals as contingent liabilities against General state funds. The outstanding issues are as follows:

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| | |
|----------------------------|--------------|
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| Total Contingent Liability | \$17,270,000 |

Medicaid Cost
Appeals
RECEIVED


FFB 19 1988

Budget & Finance
Director's Office

If any of the contingencies become a reality, the impact will be in the FY89 appropriation. As you consider the appropriation request for FY89, you may want to consider requesting funding for some of the contingencies. As a note, the federal upper limit issue and the chart above reflect only the federal portion. I estimate excess above the upper limit for the 3 three years is approximately \$14,645,000 in actual payments to the health care facilities or just under 20% of the rate.

If you wish to discuss any of these issues or I can be of any assistance, please do not hesitate to contact me.

Sincerely,



Mary K. Bensen
Executive Director

cc: -Commission Members, Medicaid Rate Commission
Karen Perdue, Deputy Commissioner DHSS
Kim Busch, Medical Assistance
Harlan Knudson, Health Association of Alaska
Robert Bilden, Legislative Audit

Myra A. Munson, Commissioner
Department of Health and Social Services
P. O. Box 11-07
Juneau, Alaska 99811

Dear Ms. Munson:

During a recent meeting, members of your staff requested an explanation of how the disapproval of a state plan amendment would affect Alaska's Medicaid program. They also expressed an interest in learning what actions HCFA would take if the State chose to implement the changes contained in the disapproved amendment.

A state electing to receive payments under Title XIX of the Social Security Act must submit and receive approval of its state plan for medical assistance. Once the Medicaid state plan has been approved, it can only be changed via the state plan amendment process. This process requires the state to thoroughly describe the proposed change in the form of a state plan amendment and submit the document to HCFA for approval. If the amendment is approved, it becomes part of the approved Medicaid state plan and the change is effectuated. If HCFA disapproves the amendment, the proposed change cannot be implemented and the state plan remains unchanged.

A state may choose to ignore HCFA's disapproval and implement the proposed change. This course of action would result in the state being out of compliance with the approved state plan and could have significant financial ramifications. The exact extent of the financial consequences would depend on the substantiality of the non-compliance but could range from the disallowance or deferral of the FFP associated with the disapproved change to the termination of FFP for the state's entire Medicaid program.

If you have any questions concerning this matter, our contact person is Bob Grauman. Bob can be reached at (206) 442-0445.

Sincerely,

Norman V. Meyer
Associate Regional Administrator
for Program Operations

cc: Kim Beach
BG 1138k
File Code: SMO-1

DIVISION OF MEDICAL ASSISTANCE

BUDGET INCREASE FACTORS

| | <u>Dept. Request</u> | <u>FY87 Authorized</u> | <u>Actual</u> | <u>National CPI</u> | <u>Dept. Request</u> | <u>FY88 Authorized</u> | <u>Projected</u> | <u>FY89 Dept. Request</u> |
|------------------------------|--------------------------|----------------------------|---------------|-------------------------|--------------------------|----------------------------|------------------|-----------------------------------|
| Medicaid Facility | | | | | | | | |
| Price | 3.7% | 0.0% | 5.0% | 15.7% | 3.5% | 2.5% | 5.5% | 3.8% |
| Utilization | 3.1% | 3.1% | 7.5% | | 0.0% | 0.0% | 6.5% | 0.0% |
| Eligibles | 8.5% | 8.5% | 6.0% | | 6.3% | 6.3% | 6.0% | 4.2% |
| Medicaid Non-Facility | | | | | | | | |
| Price | 3.7% | 0.0% | 15.7% | 15.7% | 2.8% | 0.0% | 5.5% | 3.8% |
| Utilization | 3.1% | 3.1% | Unk. | | 0.0% | 0.0% | 6.5% | 0.0% |
| Eligibles | 10.4% | 10.4% | 6.0% | | 6.3% | 6.3% | 6.0% | 4.5% |

**STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE**

NO. 1

BILL VERSION: HB 348
PUBLISH DATE: HOUSE 1/11/88

REQUEST

Bill Resolution No. : _____
 Title : An Act Relating to the Membership
of the Medicaid Rate Commission
 Sponsor : Rules Committee
 Requestor : Governor
 Date of Request : _____

FISCAL DETAIL

Agency Affected: Health & Social Services
 BRU: Medicaid Rate Commission
 Components: Medicaid Rate Commission

EXPENDITURES/REVENUES : (Thousands of Dollars)

| OPERATING | FY 88 | FY 89 | FY 90 | FY 91 | FY 92 | FY 93 |
|------------------------|-------|-------|-------|-------|-------|-------|
| PERSONAL SERVICES | | -0- | -0- | -0- | -0- | -0- |
| TRAVEL | | -0- | -0- | -0- | -0- | -0- |
| CONTRACTUAL | | -0- | -0- | -0- | -0- | -0- |
| SUPPLIES | | -0- | -0- | -0- | -0- | -0- |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | | -0- | -0- | -0- | -0- | -0- |

| | | | | | | |
|----------------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|----------------|--|--|--|--|--|--|

| | | | | | | |
|----------------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|----------------|--|--|--|--|--|--|

FUNDING : (Thousands of Dollars)

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

POSITIONS :

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

ANALYSIS : Attach a separate page if necessary

The proposed language changing the membership of the Medicaid Rate Commission would have a net zero impact on the Medicaid Rate Commission budget.

Prepared by: Randy Super *For: Kim Busha* Phone: 465-3355
 Division: Medical Assistance Date: 12/8/87

Approved by Commissioner: [Signature] *Health & Social Services* Date: 12/8/87
 Agency: _____

Distribution (by Agency preparing fiscal note):

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

HOUSE COMMITTEE REPORT

(11)

Date referred: 3/14/88

FURTHER REFERRALS:

Judiciary

DATE: 3-17-88

The Health, Education and Social Services Committee has considered HB 348

"An Act relating to the composition of the Medicaid Rate Commission."

RECOMMENDS:

- replace with CS HB 348 (HESS) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

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

SIGNING DO PASS:

[Signature]

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

[Signature]

[Signature]

Co-Chairman's signature

[Signature]

HB

354

Alaska State Legislature

Committees:

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



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

REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

April 11, 1988

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

FROM: Representative Fran Ulmer

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

How To Increase Penalties For The Worst Drunk Drivers

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

WHY A FOURTH DWI CONVICTION
SHOULD BE A FELONY

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

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

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

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

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

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

WHY WE NEED CS HB 354
EXAMPLE

JAMES E. JOHNSON

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

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

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

JAMES E. JOHNSON'S CONVICTIONS

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

SSN: 517-46-9517;
517-48-9513;
517-46-9515

(All cases in Anchorage District Court unless otherwise noted)

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

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

The defendant was sentenced on 85-3329, 85-3592, and 85-375 on the same day, July 26, 1985. It was a specific condition of probation on all three cases that the defendant complete one year at a residential alcohol treatment program upon his release from custody.

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

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

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

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

STATE OF ALASKA,

Plaintiff,

vs.

JAMES JOHNSON,

DOB: 9/12/42

Defendant.

Court No. 3AN-S85-3592 Cr.
3AN-S85-3329 Cr.

STATE'S MEMORANDUM IN AID OF SENTENCING
PROBATION VIOLATIONS

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

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

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

DISTRICT ATTORNEY, STATE OF ALASKA
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(907) 277-8622

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DISTRICT ATTORNEY, STATE OF ALASKA
1031 WEST FOURTH AVENUE, SUITE 520
ANCHORAGE, ALASKA 99501
(907) 277-8522

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

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

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

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

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

6
7 The court has repeatedly offered opportunities for
8 rehabilitation to this defendant. He not only rejects
9 treatment, but immediately re-offends upon release from
10 custody.

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

18
19 The defendant's repeated decisions to endanger the
20 lives of so many Alaskans so seriously so many times requires
21 a heavy emphasis on deterrence of others and the
22 reaffirmation of societal condemnation for driving while
23 intoxicated. See Huckaby v. State, 632 P.2d 975, 977 (Alaska
24 App. 1981). Finally, isolation also takes on a special
25 importance unusual in misdemeanor cases. This defendant is a
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manslaughter in the making. Every day the court keeps this defendant off the streets and highways of Alaska makes Alaskans safer.

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

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

DWAYNE W. McCONNELL
DISTRICT ATTORNEY

By: CJ Groh
Clifford John Groh
Assistant District Attorney

CJG: lhr

(corrected 2-29-88)

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June 1986 • Volume III • Number 1
Duke University School of Law

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

I. INTRODUCTION

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

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

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

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

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

4. *Id.* at 911.

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

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

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

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

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

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

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

93. *See, e.g.*, OKLA. STAT. ANN. tit. 47 § 11-9C2(c) (1962 & Cum. Supp. 1984-85); TEX. TRAF. REG. CODE ANN. § 6701e-1 (Vernon Cum. Supp. 1983).

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

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

96. Until 1980, California's penalties for repeat offenders were more lenient than Alaska's penalties, *see* CAL. VEH. CODE § 23102(a) (West 1971) (repealed 1980), but now the California minimum sentence for repeat DWI offenders is much longer than that of Alaska. *Compare* CAL. VEH. CODE § 23165 (West Cum. Supp. 1985) (90-day minimum for second offense) with ALASKA STAT. § 28.35.030(b) (1984). Four years after the Criminal Code revision, the Alaska legislature added some harsh penalties not involving incarceration for repeat DWI offenders. These involve revoking defendants' licenses for long periods of time. *See* ALASKA STAT. § 28.15.1S1(c) (1984). Nevertheless, a legislature's willingness to impose harsh non-jail penalties on DWI offenders does not prove that it is willing to impose severe jail sentences on Intoxicated Motorists.

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

98. TENN. CODE ANN. § 55-10-403(a)(1) (Supp. 1984).

99. S.C. CODE ANN. § 56-5-2940(3), (5) (Law. Co-op. Cum. Supp. 1984).

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

E. Summary .

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

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

IV. THE PEARS CASE

A. The Facts

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

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

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

STATE OF ALASKA
THE LEGISLATURE

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May, 1988

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

Mary Van Nimwegen

H. JUD.

4-18-88

1:30p.m.

DATE: April 21, 1988

The Judiciary Committee has considered HB 354

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

RECOMMENDS:

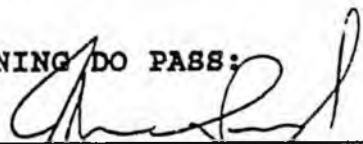
- replace with CS HB 354 (Jud) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

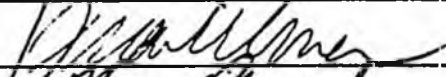
ADOPTS: _____ letter of intent

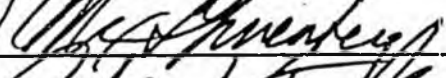
ATTACHES NEW FISCAL NOTE(S):

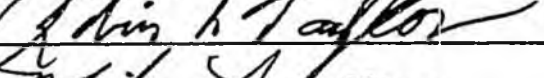
- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
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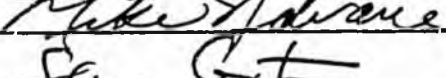
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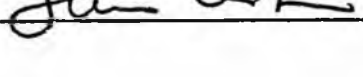












SIGNING OTHER RECOMMENDATIONS:

Chairman's signature

5-1464P
Chenoweth
4/22/88

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

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 354 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

17 * Section 1. AS 28.15.046(e) is amended to read:

18 (e) For purposes of determining whether an applicant has been
19 convicted of an offense listed under (c) or (d) of this section, a
20 conviction under r state law or in another jurisdiction of an
21 offense having elements [SUBSTANTIALLY] similar to those of the of-
22 fenses listed in (c) or (d) of this section is considered a convic-
23 tion.

24 * Sec. 2. AS 28.15.165(a) is amended to read:

25 (a) If a chemical test administered under AS 28.35.031(a) to a
26 person driving a motor vehicle for which a driver's license is re-
27 quired produces a result described in AS 28.35.030(a)(2) or if a
28 person under arrest for driving a motor vehicle for which a driver's
29 license is required refuses to submit to a chemical test under

1 AS 28.35.031(a), a law enforcement officer shall read a notice and
2 deliver a copy to the person. The notice must [SHALL] advise that

3 (1) the department intends to revoke the person's driver's
4 license, privilege to drive, privilege to obtain a license, or nonres-
5 ident privilege to drive, or refuse to issue an original license to
6 the person;

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

9 (3) the notice itself is a temporary driver's license that
10 expires seven days after it is delivered to the person;

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

16 * Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

17 (c) The department shall revoke the person's license, privilege
18 to drive, privilege to obtain a license, or nonresident privilege to
19 drive a motor vehicle in the state, or refuse to issue an original
20 license effective upon expiration of the temporary driver's license
21 issued under (a) c this section upon receipt of a sworn report of a
22 law enforcement officer that states

23 (1) that a chemical test under AS 28.35.031(a) produced a
24 result described in AS 28.35.030(a)(2) or that a person refused to
25 submit to a chemical test under AS 28.35.031(a);

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

28 (3) the circumstances surrounding the arrest and the
29 grounds for the officer's belief that the person was driving, while

1 intoxicated, a motor vehicle for which a driver's license is required.

2 * Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

3 (1) A hearing officer revoking a driver's license because a
4 chemical test administered to the person produced a result described
5 in AS 28.35.030(a)(2) or because the person refused to submit to a
6 chemical test may grant limited license privileges under this sub-
7 section. The hearing officer may grant the limited license privileges
8 if the hearing officer determines that the person's ability to earn a
9 livelihood would be severely impaired and a limitation under AS 28.-
10 15.201 can be placed on the license that will enable the person to
11 earn a livelihood without excessive danger to the public. The limited
12 license privileges may be restored to the person

13 (1) for the final 60 days during which the license was
14 revoked if the person, during the preceding 10 years, has not been
15 previously convicted more than once of an offense described in AS 28.-
16 15.181(a)(5) or (8) or under another law or ordinance with similar
17 elements;

18 (2) for the final five years during which the license was
19 revoked if

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

24 (B) the hearing officer or the commissioner determines
25 that the person has successfully completed an alcoholism educa-
26 tion and rehabilitation treatment program; in determining whether
27 compliance with this subparagraph warrants restoration of limited
28 license privileges, the hearing officer or the commissioner may
29 also consider whether the person

1 (i) is enrolled in an alcoholism treatment pro-
2 gram in which the person receives antabuse or a similar
3 chemical substance intended to produce an aversion to alco-
4 hol in the treatment of alcoholism; or

5 (ii) operates a motor vehicle with an ignition
6 interlock device or similar equipment designed to prevent a
7 motor vehicle from being operated by a person who has con-
8 sumed an alcoholic beverage.

9 * Sec. 5. AS 28.15.181(a) is amended to read:

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

13 (1) manslaughter or negligent homicide resulting from
14 driving a motor vehicle;

15 (2) a felony in the commission of which a motor vehicle is
16 used;

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

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

22 (5) driving a motor vehicle while intoxicated;

23 (6) reckless driving;

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

26 (8) refusal to submit to a chemical test under AS 28.35.-
27 032;

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

1 * Sec. 6. AS 28.15.181(c) is amended to read:

2 (c) A court convicting a person of an offense described in
3 (a)(5) or (8) of this section arising out of the operation of a motor
4 vehicle for which a driver's license is required shall revoke that
5 person's driver's license. The revocation may be concurrent with or
6 consecutive to an administrative revocation under AS 28.15.165. The
7 court may not, except as provided in (e) of this section, grant limit-
8 ed license privileges for the following periods:

9 (1) not less than 90 days if, within the preceding 10
10 years, the person has not previously been convicted of an offense

11 (A) described in (a)(5) or (8) of this section; or

12 (B) under a law or ordinance in another jurisdiction
13 with elements [SUBSTANTIALLY] similar to an offense described in
14 (a)(5) or (8) of this section;

15 (2) not less than one year if, within the preceding 10
16 years, the person has been previously convicted of one offense

17 (A) described in (a)(5) or (8) of this section; or

18 (B) under a law or ordinance in another jurisdiction
19 with elements [SUBSTANTIALLY] similar to an offense described in
20 (a)(5) or (8) of this section;

21 (3) not less than 10 years if, within the preceding 10
22 years, the person has been previously convicted of more than one of
23 the following offenses or has more than once been previously convicted
24 of one of the following offenses:

25 (A) an offense described in (a)(5) or (8) of this
26 section; or

27 (B) an offense under another law or ordinance in
28 another jurisdiction with elements [SUBSTANTIALLY] similar to an
29 offense described in (a)(5) or (8) of this section.

1 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

2 (e) A court revoking a driver's license under (c) of this sec-
3 tion, or sustaining the action of the department under AS 28.15.-
4 165(c), may grant limited license privileges

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

10 (2) for the final five years during which the license was
11 revoked if

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

16 (B) the court determines that the person has success-
17 fully completed an alcoholism education and rehabilitation treat-
18 ment program; in determining whether compliance with this sub-
19 paragraph warrants a grant of limited license privileges, the
20 court may also consider whether the person

21 (i) is enrolled in an alcoholism treatment pro-
22 gram in which the person receives antabuse or a similar
23 clinical substance intended to produce an aversion to alco-
24 hol in the treatment of the alcoholism; or

25 (ii) operates a motor vehicle with an ignition
26 interlock device or similar equipment designed to prevent a
27 motor vehicle from being operated by a person who has con-
28 sumed an alcoholic beverage.

29 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

10 * Sec. 9. AS 28.15.291(a) is amended to read:

11 (a) A person may not drive a motor vehicle on a highway or
12 vehicular way or area at a time when that person's driver's license,
13 [OR] privilege to drive, or privilege to obtain a license has been
14 canceled, suspended, or revoked in this or another jurisdiction, or
15 when driving in violation of a limitation placed upon that person's
16 license, [OR] privilege to drive, or privilege to obtain a license in
17 this or another jurisdiction. Except as provided in (c) of this
18 section, upon conviction of a violation of this section, the court
19 shall impose a sentence of imprisonment of (1) not less than 72 hours
20 if, within the previous 10 years, the person has not been previously
21 convicted in this or another jurisdiction under this or another law or
22 ordinance with similar elements; (2) not less than 10 consecutive days
23 if, within the preceding 10 years, the person has been previously
24 convicted once in this or another jurisdiction under this or another
25 law or ordinance with similar elements; and (3) not less than 20
26 consecutive days if, within the preceding 10 years, the person has
27 been previously convicted more than once in this or another jurisdic-
28 tion under this or another law or ordinance with similar elements [10
29 DAYS]. The execution of sentence may not be suspended nor may

1 probation or parole be granted until the minimum imprisonment provided
2 in this section has been served; nor may imposition of sentence be
3 suspended. In addition, the person's license, [OR] privilege to
4 drive, or privilege to obtain a license shall be revoked, and the
5 person may not be issued a new license nor may the privilege to drive
6 be restored for an additional period of not less than 90 days [ONE
7 YEAR] after the date that the person would have been entitled to
8 restoration of driving privileges.

9 * Sec. 10. AS 28.15.291(c) is amended to read:

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

27 * Sec. 11. AS 28.35.030(b) is amended to read:

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

1 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

2 (c) Upon conviction under this section,

3 (1) the court shall enter judgment as follows:

4 (A) if, within the preceding 10 years, the person has
5 not been previously convicted in this or another jurisdiction of
6 driving while intoxicated under this or another law with similar
7 elements or of refusal to submit to a chemical test under AS 28.-
8 35.032 or another law or ordinance with similar elements, the
9 court shall impose

10 (i) a minimum sentence of imprisonment of not less
11 than 72 hours; and

12 (ii) a fine of not less than \$250;

13 (B) if, within the preceding 10 years, the person has
14 been previously convicted once in this or another jurisdiction of
15 driving while intoxicated under this or another law or ordinance
16 with similar elements or of refusal to submit to a chemical test
17 under AS 28.35.032 or another law or ordinance with similar
18 elements, the court shall impose

19 (i) a minimum sentence of imprisonment of not less
20 than 20 consecutive days; and

21 (ii) a fine of not less than \$1000;

22 (C) if, within the preceding 10 years, the person has
23 been previously convicted twice in this or another jurisdiction
24 of driving while intoxicated under this or another law or ordi-
25 nance with similar elements or of refusal to submit to a chemical
26 test under AS 28.35.032 or another law or ordinance with similar
27 elements, or has been previously convicted twice of a combination
28 of these offenses, the court shall impose

29 (i) a minimum sentence of imprisonment of not less

1 than 100 consecutive days; and

2 (ii) a fine of not less than \$1000;

3 (D) if, within the preceding 10 years, the person has
4 been previously convicted three times in this or another juris-
5 diction of driving while intoxicated under this or another law or
6 ordinance with similar elements or of refusal to submit to a
7 chemical test under AS 28.35.032 or another law or ordinance with
8 similar elements, or has been previously convicted three times of
9 a combination of these offenses, the court shall impose

10 (i) a minimum sentence of imprisonment of not
11 less than 120 days; and

12 (ii) a fine of not less than \$1000;

13 (E) if, within the preceding 10 years, the person has
14 been previously convicted four times in this or another jurisdic-
15 tion of driving while intoxicated under this or another law or
16 ordinance with similar elements or of refusal to submit to a
17 chemical test under AS 28.35.032 or another law or ordinance with
18 similar elements, or has been previously convicted four times of
19 a combination of these offenses, the court shall impose

20 (i) a minimum sentence of imprisonment of not
21 less than 180 days; and

22 (ii) a minimum fine of not less than \$1000;

23 (2) the court may not

24 (A) suspend execution of sentence;

25 (B) grant probation except on condition that the
26 person serve the minimum imprisonment provided in (1) of this
27 subsection;

28 (C) suspend imposition of sentence;

29 (3) if the offense involved driving a motor vehicle for

1 which a driver's license is required,

2 (A) the court shall direct that the person's driver's
3 license be revoked in accordance with AS 28.15.181; and

4 (B) the court may order the vehicle used in commission
5 of the offense to be forfeited under AS 28.35.036;

6 (4) the court shall order, and the person convicted under
7 this section shall undertake, for a term specified by the court, that
8 program of alcohol education or rehabilitation that the court, after
9 consideration of any information compiled under (d) of this section,
10 finds appropriate.

11 * Sec. 13. AS 28.35.030 is amended by adding a new subsection to read:

12 (h) A person is guilty of a class C felony if, within the pre-
13 ceding 10 years, the person has been previously convicted five or more
14 times in this or another jurisdiction of

15 (1) the offense of driving while intoxicated under this or
16 another law or ordinance with similar elements;

17 (2) refusal to submit to a chemical test under AS 28.35.032
18 or another law or ordinance with similar elements; or

19 (3) a combination of the offenses set out in (1) and (2) of
20 this subsection.

21 * Sec. 14. AS 28.35.032(f) is amended to read:

22 (f) Except as provided in (k) of this section, refusal [REFUSAL]
23 to submit to the chemical test of breath authorized by AS 28.35.031(a)
24 is a class A misdemeanor.

25 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

26 (g) Upon conviction under this section,

27 (1) the court shall enter judgment as directed in AS 28.-
28 35.030(c)(1);

29 (2) the court may not

1 (A) suspend execution of sentence;

2 (B) grant probation except on condition that the
3 person serve the minimum imprisonment required under (1) of this
4 subsection;

5 (C) suspend imposition of sentence;

6 (3) if the offense involved driving a motor vehicle for
7 which a driver's license is required,

8 (A) the court shall direct that the person's driver's
9 license be revoked in accordance with AS 28.15.181; and

10 (B) the court may order the vehicle used in commission
11 of the offense to be forfeited under AS 28.35.036;

12 (4) the court shall order, and the person convicted under
13 this section shall undertake, for a term specified by the court, that
14 program of alcohol education or rehabilitation that the court, after
15 consideration of any information compiled under (h) of this section,
16 finds appropriate; and

17 (5) the sentence imposed by the court under this subsection
18 shall run consecutively with any other sentence of imprisonment im-
19 posed on the person.

20 * Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

21 (k) A person is guilty of a class C felony if, within the pre-
22 ceding 10 years, the person has been previously convicted five or more
23 times in this or another jurisdiction of

24 (1) the offense of refusal to submit to a chemical test
25 under this section or another law or ordinance with similar elements;

26 (2) driving while intoxicated under AS 28.35.030 or another
27 law or ordinance with similar elements; or

28 (3) a combination of the offenses set out in (1) and (2) of
29 this subsection.

1 (1) The sentence imposed by the court under (k) of this section
2 shall run consecutively with any other sentence of imprisonment im-
3 posed on the person.

4 * Sec. 17. AS 28.35.036(a) is amended to read:

5 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
6 35.032 involving a motor vehicle of a type for which a driver's li-
7 cense is required, the state may move the court to order the forfei-
8 ture of the motor vehicle involved in the commission of the offense if
9 the convicted person has been previously convicted in this or another
10 jurisdiction of more than one of the following offenses or has more
11 than once been previously convicted of one of the following offenses:

12 (1) driving while intoxicated under AS 28.35.030 or another
13 law or ordinance with [SUBSTANTIALLY] similar elements; or

14 (2) refusal to submit to a chemical test under AS 28.35.032
15 or another law or ordinance with [SUBSTANTIALLY] similar elements.

16 * Sec. 18. AS 28.35.038 is amended to read:

17 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
18 standing other provisions in this title, a municipality may adopt an
19 ordinance providing for the impoundment or forfeiture of a motor
20 vehicle involved in the commission of an offense under AS 28.35.030,
21 28.35.032, or an ordinance with elements [SUBSTANTIALLY] similar to
22 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
23 is not required to be consistent with this title or regulations adopt-
24 ed under this title.

25 * Sec. 19. AS 28.37.140(c) is amended to read:

26 (c) If the laws of a party state do not provide for offenses or
27 violations denominated or described in precisely the words employed in
28 (a) of this section, the party state shall construe the denominations
29 and descriptions appearing in (a) of this section as being applicable

1 to and identifying the offenses or violations of a [SUBSTANTIALLY]
2 similar nature, and the laws of the party state shall contain the
3 provisions necessary to ensure that full force and effect is given to
4 this section.

5 * Sec. 20. AS 28.40.100(a)(5) is repealed and reenacted to read:

6 (5) "driver's license", or "license" when used in relation
7 to driver licensing, means a license or permit to drive a motor
8 vehicle, or the privilege to drive or to obtain a license to drive a
9 motor vehicle, under the laws of this state, whether or not a person
10 holds a valid license issued in this or another jurisdiction;

11 * Sec. 21. This Act takes effect January 1, 1989.
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Original sponsors: Ulmer, Koponen,
Pearce, et al.

IN THE HOUSE

BY THE JUDICIARY COMMITTEE

CS FOR HOUSE BILL NO. 354 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to the privilege to drive and to obtain a license; to penalties for driving while that license or privilege is suspended, canceled, or revoked, or driving in violation of a limitation; increasing the penalties for certain persons convicted of driving while intoxicated or refusing to submit to a chemical test; making amendments relating to references to convictions for similar offenses under the Alaska Uniform Vehicle Code; and providing for an effective date."

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

* Section 1. AS 28.15.046(e) is amended to read:

(e) For purposes of determining whether an applicant has been convicted of an offense listed under (c) or (d) of this section, a conviction under prior state law or in another jurisdiction of an offense having elements [SUBSTANTIALLY] similar to those of the offenses listed in (c) or (d) of this section is considered a conviction.

* Sec. 2. AS 28.15.165(a) is amended to read:

(a) If a chemical test administered under AS 28.35.031(a) to a person driving a motor vehicle for which a driver's license is required produces a result described in AS 28.35.030(a)(2) or if a person under arrest for driving a motor vehicle for which a driver's license is required refuses to submit to a chemical test under

AS 28.35.031(a), a law enforcement officer shall read a notice and deliver a copy to the person. The notice must [SHALL] advise that

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

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

(3) the notice itself is a temporary driver's license that expires seven days after it is delivered to the person;

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

* Sec. 3. AS 28.15.165(c) is repealed and reenacted to read:

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

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

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

(3) the circumstances surrounding the arrest and the grounds for the officer's belief that the person was driving, while

1 intoxicated, a motor vehicle for which a driver's license is required.

2 * Sec. 4. AS 28.15.166(1) is repealed and reenacted to read:

3 (1) A hearing officer revoking a driver's license because a
4 chemical test administered to the person produced a result described
5 in AS 28.35.030(a)(2) or because the person refused to submit to a
6 chemical test may grant limited license privileges under this sub-
7 section. The hearing officer may grant the limited license privileges
8 if the hearing officer determines that the person's ability to earn a
9 livelihood would be severely impaired and a limitation under AS 28.-
10 15.201 can be placed on the license that will enable the person to
11 earn a livelihood without excessive danger to the public. The limited
12 license privileges may be restored to the person

13 (1) for the final 60 days during which the license was
14 revoked if the person, during the preceding 10 years, has not been
15 previously convicted more than once of an offense described in AS 28.-
16 15.181(a)(5) or (8) or under another law or ordinance with similar
17 elements;

18 (2) for the final five years during which the license was
19 revoked if

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

24 (B) the hearing officer or the commissioner determines
25 that the person

26 (i) has successfully completed an alcoholism
27 education and rehabilitation treatment program;

28 (ii) is enrolled in an alcoholism treatment
29 program in which the person receives antabuse or a similar

1 chemical substance intended to produce an aversion to alco-
2 hol in the treatment of alcoholism; or

3 (iii) operates a motor vehicle with an ignition
4 interlock device or similar equipment designed to prevent a
5 motor vehicle from being operated by a person who has
6 consumed an alcoholic beverage.

7 * Sec. 5. AS 28.15.181(a) is amended to read:

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

11 (1) manslaughter or negligent homicide resulting from
12 driving a motor vehicle;

13 (2) a felony in the commission of which a motor vehicle is
14 used;

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

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

20 (5) driving a motor vehicle while intoxicated;

21 (6) reckless driving;

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

24 (8) refusal to submit to a chemical test under AS 28.35.-
25 032;

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

28 * Sec. 6. AS 28.15.181(c) is amended to read:

29 (c) A court convicting a person of an offense described in

1 (a) (5) or (8) of this section arising out of the operation of a motor
2 vehicle for which a driver's license is required shall revoke that
3 person's driver's license. The revocation may be concurrent with or
4 consecutive to an administrative revocation under AS 28.15.165. The
5 court may not, except as provided in (e) of this section, grant limited
6 license privileges for the following periods:

7 (1) not less than 90 days if, within the preceding 10
8 years, the person has not previously been convicted of an offense

9 (A) described in (a) (5) or (8) of this section; or

10 (B) under a law or ordinance in another jurisdiction
11 with elements [SUBSTANTIALLY] similar to an offense described in
12 (a) (5) or (8) of this section;

13 (2) not less than one year if, within the preceding 10
14 years, the person has been previously convicted of one offense

15 (A) described in (a) (5) or (8) of this section; or

16 (B) under a law or ordinance in another jurisdiction
17 with elements [SUBSTANTIALLY] similar to an offense described in
18 (a) (5) or (8) of this section;

19 (3) not less than 10 years if, within the preceding 10
20 years, the person has been previously convicted of more than one of
21 the following offenses or has more than once been previously convicted
22 of one of the following offenses:

23 (A) an offense described in (a) (5) or (8) of this
24 section; or

25 (B) an offense under another law or ordinance in
26 another jurisdiction with elements [SUBSTANTIALLY] similar to an
27 offense described in (a) (5) or (8) of this section.

28 * Sec. 7. AS 28.15.181(e) is repealed and reenacted to read:

29 (e) A court revoking a driver's license under (c) of this

1 section, or sustaining the action of the department under AS 28.15.-
2 165(c), may grant limited license privileges

3 (1) for the final 60 days during which the license was
4 revoked if the person, during the preceding 10 years, has not been
5 previously convicted more than once of an offense described in (a)(5)
6 or (8) of this section or under another law or ordinance with similar
7 elements;

8 (2) for the final five years during which the license was
9 revoked if

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

14 (B) the court determines that the person

15 (i) has successfully completed an alcoholism
16 education and rehabilitation treatment program;

17 (ii) is enrolled in an alcoholism treatment
18 program in which the person receives antabuse or a similar
19 clinical substance intended to produce an aversion to
20 alcohol in the treatment of the alcoholism; or

21 (iii) operates a motor vehicle with an ignition
22 interlock device or similar equipment designed to prevent a
23 motor vehicle from being operated by a person who has
24 consumed an alcoholic beverage.

25 * Sec. 8. AS 28.15.181 is amended by adding a new subsection to read:

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

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

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

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

6 * Sec. 9. AS 28.15.291(a) is amended to read:

7 (a) A person may not drive a motor vehicle on a highway or
8 vehicular way or area at a time when that person's driver's license,
9 [OR] privilege to drive, or privilege to obtain a license has been
10 canceled, suspended, or revoked in this or another jurisdiction, or
11 when driving in violation of a limitation placed upon that person's
12 license, [OR] privilege to drive, or privilege to obtain a license in
13 this or another jurisdiction. Except as provided in (c) of this
14 section, upon conviction of a violation of this section, the court
15 shall impose a sentence of imprisonment of (1) not less than 72 hours
16 if, within the previous 10 years, the person has not been previously
17 convicted in this or another jurisdiction under this or another law or
18 ordinance with similar elements; (2) not less than 10 consecutive days
19 if, within the preceding 10 years, the person has been previously
20 convicted once in this or another jurisdiction under this or another
21 law or ordinance with similar elements; and (3) not less than 20
22 consecutive days if, within the preceding 10 years, the person has
23 been previously convicted more than once in this or another jurisdic-
24 tion under this or another law or ordinance with similar elements [10
25 DAYS]. The execution of sentence may not be suspended nor may pro-
26 bation or parole be granted until the minimum imprisonment provided in
27 this section has been served; nor may imposition of sentence be sus-
28 pended. In addition, the person's license, [OR] privilege to drive,
29 or privilege to obtain a license shall be revoked, and the person may

1 not be issued a new license nor may the privilege to drive be restored
2 for an additional period of not less than 90 days [ONE YEAR] after the
3 date that the person would have been entitled to restoration of driv-
4 ing privileges.

5 * Sec. 10. AS 28.15.291(c) is amended to read:

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

23 * Sec. 11. AS 28.35.030(b) is amended to read:

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

26 * Sec. 12. AS 28.35.030(c) is repealed and reenacted to read:

27 (c) Upon conviction under this section,

28 (1) the court shall enter judgment as follows:

29 (A) if, within the preceding 10 years, the person has

1 not been previously convicted in this or another jurisdiction of
2 driving while intoxicated under this or another law with similar
3 elements or of refusal to submit to a chemical test under AS 28.-
4 35.032 or another law or ordinance with similar elements, the
5 court shall impose

6 (i) a minimum sentence of imprisonment of not less
7 than 72 hours; and

8 (ii) a fine of not less than \$250;

9 (B) if, within the preceding 10 years, the person has
10 been previously convicted once in this or another jurisdiction of
11 driving while intoxicated under this or another law or ordinance
12 with similar elements or of refusal to submit to a chemical test
13 under AS 28.35.032 or another law or ordinance with similar
14 elements, the court shall impose

15 (i) a minimum sentence of imprisonment of not less
16 than 20 consecutive days; and

17 (ii) a fine of not less than \$1000;

18 (C) if, within the preceding 10 years, the person has
19 been previously convicted twice in this or another jurisdiction
20 of driving while intoxicated under this or another law or ordi-
21 nance with similar elements or of refusal to submit to a chemical
22 test under AS 28.35.032 or another law or ordinance with similar
23 elements, or has been previously convicted twice of a combination
24 of these offenses, the court shall impose

25 (i) a minimum sentence of imprisonment of not less
26 than 100 consecutive days; and

27 (ii) a fine of not less than \$1000;

28 (D) if, within the preceding 10 years, the person has
29 been previously convicted three times in this or another

1 jurisdiction of driving while intoxicated under this or another
2 law or ordinance with similar elements or of refusal to submit to
3 a chemical test under AS 28.35.032 or another law or ordinance
4 with similar elements, or has been previously convicted three
5 times of a combination of these offenses, the court shall impose

6 (i) a minimum sentence of imprisonment of not
7 less than 120 days; and

8 (ii) a fine of not less than \$1000;

9 (E) if, within the preceding 10 years, the person has
10 been previously convicted four times in this or another jurisdic-
11 tion of driving while intoxicated under this or another law or
12 ordinance with similar elements or of refusal to submit to a
13 chemical test under AS 28.35.032 or another law or ordinance with
14 similar elements, or has been previously convicted four times of
15 a combination of these offenses, the court shall impose

16 (i) a minimum sentence of imprisonment of not
17 less than 180 days; and

18 (ii) a minimum fine of not less than \$1000;

19 (2) the court may not

20 (A) suspend execution of sentence;

21 (B) grant probation except on condition that the
22 person serve the minimum imprisonment provided in (1) of this
23 subsection;

24 (C) suspend imposition of sentence;

25 (3) if the offense involved driving a motor vehicle for
26 which a driver's license is required,

27 (A) the court shall direct that the person's driver's
28 license be revoked in accordance with AS 28.15.181; and

29 (B) the court may order the vehicle used in commission

of the offense to be forfeited under AS 28.35.036;

1
2 (4) the court shall order, and the person convicted under
3 this section shall undertake, for a term specified by the court, that
4 program of alcohol education or rehabilitation that the court, after
5 consideration of any information compiled under (d) of this section,
6 finds appropriate.

* Sec. 13. AS 28.35.030 is amended by adding a new subsection to read:

7 (h) A person is guilty of a class C felony if, within the pre-
8 ceding 10 years, the person has been previously convicted five or more
9 times in this or another jurisdiction of

10 (1) the offense of driving while intoxicated under this or
11 another law or ordinance with similar elements;

12 (2) refusal to submit to a chemical test under AS 28.35.032
13 or another law or ordinance with similar elements; or

14 (3) a combination of the offenses set out in (1) and (2) of
15 this subsection.

16 * Sec. 14. AS 28.35.032(f) is amended to read:

17 (f) Except as provided in (k) of this section, refusal [REFOCAL]
18 to submit to the chemical test of breath authorized by AS 28.35.031(a)
19 is a class A misdemeanor.

20 * Sec. 15. AS 28.35.032(g) is repealed and reenacted to read:

21 (g) Upon conviction under this section,

22 (1) the court shall enter judgment as directed in AS 28.-
23 35.030(c)(1);

24 (2) the court may not

25 (A) suspend execution of sentence;

26 (B) grant probation except on condition that the
27 person serve the minimum imprisonment required under (1) of this
28 subsection;

(C) suspend imposition of sentence;

(3) if the offense involved driving a motor vehicle for which a driver's license is required,

(A) the court shall direct that the person's driver's license be revoked in accordance with AS 28.15.181; and

(B) the court may order the vehicle used in commission of the offense to be forfeited under AS 28.35.036;

(4) the court shall order, and the 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; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

* Sec. 16. AS 28.35.032 is amended by adding new subsections to read:

(k) A person is guilty of a class C felony if, within the preceding 10 years, the person has been previously convicted five or more times in this or another jurisdiction of

(1) the offense of refusal to submit to a chemical test under this section or another law or ordinance with similar elements;

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

(3) a combination of the offenses set out in (1) and (2) of this subsection.

(1) The sentence imposed by the court under (k) of this section shall run consecutively with any other sentence of imprisonment imposed on the person.

* Sec. 17. AS 28.35.036(a) is amended to read:

1 (a) After conviction of an offense under AS 28.35.030 or AS 28.-
2 35.032 involving a motor vehicle of a type for which a driver's li-
3 cense is required, the state may move the court to order the forfei-
4 ture of the motor vehicle involved in the commission of the offense if
5 the convicted person has been previously convicted in this or another
6 jurisdiction of more than one of the following offenses or has more
7 than once been previously convicted of one of the following offenses:

8 (1) driving while intoxicated under AS 28.35.030 or another
9 law or ordinance with [SUBSTANTIALLY] similar elements; or

10 (2) refusal to submit to a chemical test under AS 28.35.032
11 or another law or ordinance with [SUBSTANTIALLY] similar elements.

12 * Sec. 18. AS 28.35.038 is amended to read:

13 Sec. 28.35.038. MUNICIPAL IMPOUNDMENT AND FORFEITURE. Notwith-
14 standing other provisions in this title, a municipality may adopt an
15 ordinance providing for the impoundment or forfeiture of a motor
16 vehicle involved in the commission of an offense under AS 28.35.030,
17 28.35.032, or an ordinance with elements [SUBSTANTIALLY] similar to
18 AS 28.35.030 or AS 28.35.032. An ordinance adopted under this section
19 is not required to be consistent with this title or regulations adopt-
20 ed under this title.

21 * Sec. 19. AS 28.37.140(c) is amended to read:

22 (c) If the laws of a party state do not provide for offenses or
23 violations denominated or described in precisely the words employed in
24 (a) of this section, the party state shall construe the denominations
25 and descriptions appearing in (a) of this section as being applicable
26 to and identifying the offenses or violations of a [SUBSTANTIALLY]
27 similar nature, and the laws of the party state shall contain the
28 provisions necessary to ensure that full force and effect is given to
29 this section.