

98156

8672

ALASKA LEGISLATURE, 1989-1990

HOUSE JUDICIARY 5732

Copper River School District



Superintendent's Office
Box 108
Glennallen, Alaska 99588
(907) 822-3234

February 6, 1989

Representative James E. Zawacki
P.O. Box V (MS 3100)
Juneau, AK 99811

Dear Jim:

Thank you for sponsoring such a greatly needed bill. It seems that HB52 will patch us some holes and allow us to keep people with a history of criminal sexual activity out of our schools.

Perhaps you should be aware that many of us (administrators) fear for our careers when we report a potential problem. This situation magnifies itself when the individual is a member of the NEA. Speaking from personal experience, my professional career is on the line because I investigated a teacher whom I suspected as being potentially dangerous to the children of this District.

The bottom line of this problem is the NEA's enforcement arm, the PTPC. I was told by the PTPC Executive Director that all NEA generated complaints against me would be dropped if I allow the PTPC to place a reprimand in my personnel file for notifying the members of my elected board of education of the contents of a court order I received garnishing the wages of one of my teachers for failure to pay child support. In my professional opinion, failure to pay child support should be viewed as child abuse, or at least child neglect.

Rep. James E. Zawacki
February 6, 1989
Page 2

I salute and support your efforts to establish HB52 as a means to protect the children of Alaska from criminals masquerading as teachers.

With great appreciation for your courage on this issue, I am,

Professionally yours,

A handwritten signature in cursive script, appearing to read "Leland L. Dishman".

Leland L. Dishman
Superintendent

Lillian Pingayak
P.O. Box 5403
Chevak, AK 99563

February 3, 1989

Representative Jim Zawacki
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Zawacki:

As per our conversation on 2-1-89, I am following up with a letter. As I mentioned, I firmly support House Bill No. 52 which, I understand, is pending a hearing.

I feel that the present educational system should play a role in preventing people with past crimes related to sexual activities from working in school environments. Keeping the State of Alaska in mind as a state with a reported high number of sexual crimes, there should be some measures made to prevent people with records of criminal sexual activities working in our schools.

I know that many schools practice a lot of safety measures involving school children such as preventing physical injuries around school properties and in school activities. In all instances, the vitally unseen safety of children can easily be overlooked and that is the safety from sexual harassment or other sexually related incidents. I believe it is time that our school system start taking steps to protect school children from unseen harm from employees who may be freely taking advantage of the unprotected.

In addition to my support for HB52, I would like to bring to your attention a situation our community is facing at this time. We have a community member--a former certified teacher--who was employed by LKSD. During the time he was employed, it was found that he was engaged in sexual misconduct involving one of his female students. Due to that he was fired and since then has moved to our village. His wife currently is employed by our district.

During the last elections he ran for the Kashunamiut Board of Education and because of family support and the little knowledge of his past from community members, he won by a marginal vote. At this time there is discontent among the villagers who feel that this individual should not be seated in the board because of his past activities while he worked as a teacher.

Representative Jim Zawacki
Alaska State Legislature

February 3, 1989

To my understanding there were no further developments after he was fired because the student he was involved with turned of age. As of this date I have not heard about his certificate being revoked other than simply being fired.

I strongly believe that any board of education is vitally important to the school(s) they serve. In addition they serve as role models and examples to the employees they hire and therefore should abide by the same rules that employees follow in order to serve the school(s). I feel that school boards should be included in the bill or something similar should be drawn up for them because they are important in our educational system. The same measures should be given to board members since they reflect the teachers they hire and the schools they serve.

Again, I am in total support of House Bill No. 52 and I wish you much success in Legislation this year.

Respectfully,



Lillian Pingayak
Concerned Citizen

cc Al Adams
Richard Foster



SCHOOL DISTRICT REAA 16

P.O. Box 226, Tok, Alaska 99780

Representative Jim Zawacki 907-883-5151

District 7

P. O. Box V

Juneau, Alaska 99811

February 6, 1989

Dear Representative Zawacki,

Your efforts in preventing persons from becoming school employees who have previous criminal sexual activity is certainly something that will be helpful. Alaska Gateway requires the fingerprinting check.

When I met you in Juneau the other day, I made the comment that I had initiated the action within the Professional Teaching Practices Commission which requires Alaska to participate in the interstate exchange of information about educators whose certificates have been revoked. The State Offices did not want the responsibility of communicating to all of the other States that we had revoked the certificate for a teacher or a administrator. You may, at some point, want to add that requirement to statute as well.

We certainly want to do everything we can to prevent child abuse, in any manner, at the hands of the State employee. I can also assure you that there is more child abuse that goes on in the hands of the family and friends in this school district, everyday, than there is at the hands of all school district employees in the State in years. If we really want to make a difference in child abuse, sexual and other wise, there needs to be some action taken in regard to the responsibility of bringing a human life into the world. Children, who are the product of recreational activity or adolescent need, instead of a loving adult relationship or children who have parents or family who abuse them and neglect them in favor of alcohol, drugs or other pleasures, and on and on, are a far more significant problem.

The biggest problem, of course, is the recidivism of sex offenders whether or not they are convicted. We do very little, at present, to prevent recurrence of the crime. Why is it we have a repeat rate of over 90% while Denmark's is exactly the opposite?

"Where Teachers Are The Gateway To Learning"

Dot Lake
907-882-2663

Eagle
907-547-2210

Mentasta
907-291-2317

Northway
907-778-6301

Tok
907-883-5161

Tetlin

Since we are one of the five, please consider us supporters. I hope that you will do some other things with offenders to keep them in a position where they can not repeat the crime, in ways other than this expensive denial system.

Thank you for being willing to put up with our Representative Richard Shultz.

Sincerely,



Spike Jorgensen

SJ/lm

cc: Senator Jack Coghill
Representative Richard Shultz



P.O. Box 142095
Anchorage, AK 99514-2095
907-337-9345

February 6, 1989

Dear Representative Zawacki:

The Alaska PTA supports passage of House Bill 52, relating to access to criminal records by the Department of Education for new teacher and administrator applicants. One of the Objects of the PTA is "To secure adequate laws for the care and protection of children and youth." HB 52 is such a law.

Our school system is built upon the trust of children and parents in teachers and administrators. It is important that children be protected in school from people with a history of criminal sexual activity. Many districts do not have adequate procedures or manpower to check that teacher and administrator applicants do not have such a record.

Although necessary, being fingerprinted and checked is distasteful to many applicants. Authorizing the Department of Education to do this once for applicants is preferable to having it done multiple times if an applicant is applying to more than one district or is changing districts within the state.

We urge you and your fellow legislators to act quickly to pass House Bill 52 for the protection of all Alaskan children.

Sincerely yours,

Ann H. McCoy
Ann McCoy
President, Alaska PTA

Carol HM Everett
Carol Everett
Legislative V.P.



Matanuska-Susitna Borough School District

125 WEST EVL. GREEN - P.O. BOX 1688 - PALMER, ALASKA 99645-1688 - (907) 745-4822

Bruce P. DeMond, Superintendent

R E S O L U T I O N

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH SCHOOL BOARD REQUESTING THAT THE ALASKA STATE LEGISLATURE PROVIDE LEGISLATION QUALIFYING THE STATE DEPARTMENT OF EDUCATION AS AN "INTERESTED PARTY" ENTITLED TO FINGERPRINT NEW EMPLOYEE APPLICANTS, FOR THE PURPOSE OF DISCLOSING A HISTORY OF CRIMINAL SEXUAL ACTIVITY.

WHEREAS, the Matanuska-Susitna Borough School Board is entrusted with the safety and well being of students of the Matanuska-Susitna Borough School District; and,

WHEREAS, schools should be a safe, healthy environment for students and staff to work and learn in; and

WHEREAS, the problem of criminal sexual activity by our society involving children is rising.

NOW, THEREFORE BE IT RESOLVED, that the Matanuska-Susitna Borough School Board requests that the Alaska State Legislature provide legislation for mandatory fingerprinting of new employee applicants for the purpose of disclosing a history of criminal sexual activity, in order to promote general health, welfare, and safety of the children of the Matanuska-Susitna Borough School District and the State of Alaska.

ADOPTED THIS 6th DAY OF FEBRUARY, 1989

MATANUSKA-SUSITNA BOROUGH SCHOOL BOARD

DEDICATED TO EXCELLENCE IN EDUCATION

TELECOPY DOCUMENT COVER PAGE

TO: Representative Jim Zawacki

OFFICE: Legislative Office

TELECOPIER NUMBER: 279-6731

FROM: Bruce P. DeMond

at

MATANUSKA-SUSITNA BOROUGH SCHOOL DISTRICT

125 W EVERGREEN

P O BOX 1688

PALMER AK 99645-1688

Telecopy: (907) 745-1094

Verification: (907) 745-4822

DOCUMENT TITLE: Resolution HB52

FILE NAME: Mat-Su School Board

NUMBER OF PAGES BEING SENT 1 + cover

OPERATOR'S NAME RJ Ellis

DATE 2/9/89 TIME: 3:40

Mr. Pius F. Imgalrea
P. O. Box 5448
Chevak, Ak. 99563

05 Feb. 89

Jim ZAWACKI, Rep. District 7

Pouch U

TUNEAU, ALASKA 99811

RE: Letter of Support HB 52

Dear Jim,

Obviously, that you are aware of the children's sexual abuse by teachers or any person employed in school districts.

As reading your addition in HB 52 AS 12.62.035 sec. 2, a new subsection (F) (1) shall request & receive records under (a) of this section for a person seeking certification as a teacher or administrator;

Now as a board member my concern is should a person (any public person) seek & get elected as a district board member even had involved in convictions involving contributing to the delinquency of the minor or any sexual crimes?

would it be appropriate to have amendment
added to section (1) adding also person
seeking Board seat, or school employment.
We can't offer employment when the person
was engaged in sexual with in the manner
or restricted in any crime and have the person
been around our school, or be the Policy
Decision maker. I'll feel safe, as well
as our children not having the person.
Your input on reply will be greatly be
appreciated as this amendment address
suggestion.

Enjoy the New Year

Sincerely,

Don J. Hughes

T E S T I M O N Y

TO: House Hess Committee
House of Representatives
Alaska State Legislature

FROM: Sue Miller
P.O. Box 211248
Juneau, Ak. 99821
(907)-789-0479

RE: HB52

DATE: February 22, 1989

I would like to testify in favor of HB52.

As a teacher of 25 years, I noted that some people who wished to harm children found easy access through our educational system.

At this time, to be qualified to be a substitute teacher, one needs only to be 18 years of age and possess a High School Diploma or a GED.

In the past several years, with the breakdown of society, Juneau has experienced at least one case per year of people who wish to harm children congregating in our schools: one school board member (sex crime), one bus driver (sex crime), and one substitute teacher (dealing drugs).

In the past several months, I was part of a task force to appeal to the Juneau School System to proceed with a standardized background check of criminal records of all employees dealing with children.

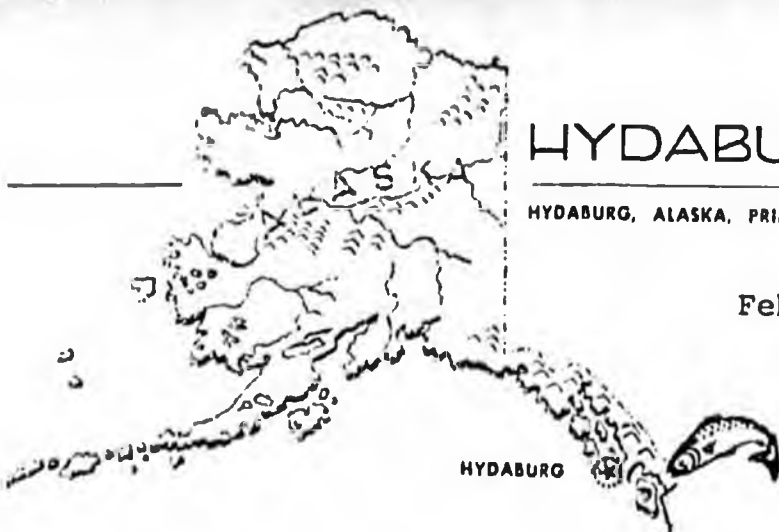
This year, a young man convicted of drug dealing in Juneau awaiting sentencing was hired by the Juneau School District as a substitute teacher for the 8th grade.

The task force requested that the School Board and Mr. Johnson, Superintendent have a standard procedure for criminal background checks for all people dealing with children.

In light of continuing difficulties and dangerous situations threatening our children, not only in Juneau, but throughout the state of Alaska, I strongly support HB52.

We, with experience in the educational system, feel the authority and procedures granted to DOE in HB52 are way overdue.

Thank You.



HYDABURG CITY SCHOOL

HYDABURG, ALASKA, PRINCE OF WALES ISLAND 99922

February 22, 1989

Representative Jim Zwacki
Court, Room 609
Alaska House of Representatives
P.O. Box V
Juneau, Ak. 99811

Dear Representative Zwacki:

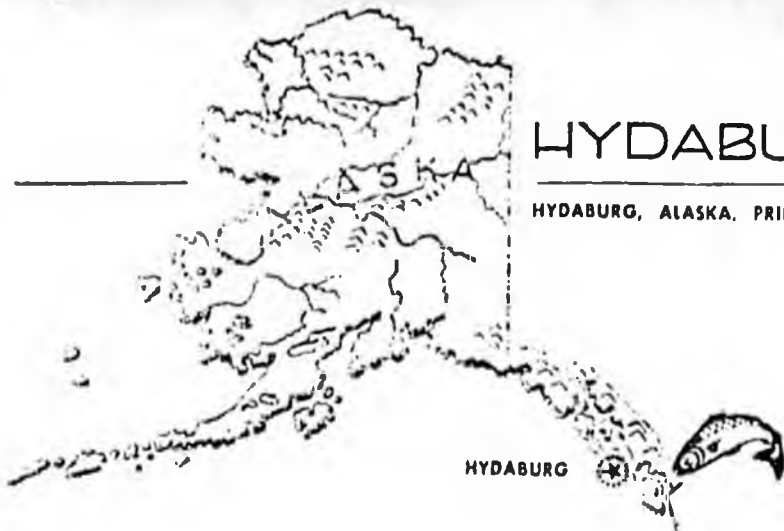
Please find enclosed a resolution passed by the Hyدابurg City School District, Board of Education. This resolution pledges support for HB-52 which you have sponsored. We feel that this legislation addresses a very real issue in the state and we will do everything in our power to promote its passage.

We appreciate your efforts and please feel free to contact us if there is anything which we can do to help.

Sincerely,

Larry L. Schroeder
Larry L. Schroeder
Superintendent

LLS:de



HYDABURG CITY SCHOOL

HYDABURG, ALASKA. PRINCE OF WALES ISLAND 99922

January 31, 1989

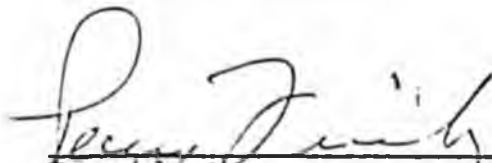
Resolution #88/89-3

WHEREAS, Education institutions have an obligation to provide a safe environment for all students; and,

WHEREAS, The guarantee of moral and professional personnel is a basic requirement for this environment;

THEREBY BE IT RESOLVED; That the Hydaburg City School District supports the passage of House Bill 52 which gives the Department of Education access to criminal records of any person applying for Certification in our state.

Attested to by:



President
Board of Education



Secretary to
Board of Education

Adopted on this day: 31st of January, 1989



LOWER YUKON SCHOOL DISTRICT

P.O. Box 32089 • Mt. Village, Alaska 99632 • (907) 591-2411

JAMES H. RIEDLINGER
Superintendent

February 20, 1985

The Honorable Jim Zawacki
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Sir:

On August 13, 1986, our Board of Education adopted a policy whereby teachers and administrators offered a Professional Services Contract would be obligated to fingerprinting so that appropriate authorities would provide our office with the results of an investigation for any conviction involving the educator's contribution to the delinquency of a minor and/or any criminal sexual activity. Since the adoption of the policy, we had an educator back out of a contract offer due primarily to the fingerprint requirement and an apparent record as defined in House Bill 52 which you introduced into the House of Representatives.

Due to our experience and success with the fingerprinting of newly hired educators, I fully support House Bill 52 which would facilitate our students to remain in safe school setting environments and be protected from the possibility of encountering someone who has a history of criminal sexual activity.

Sincerely,

James H. Riedlinger
Superintendent of Schools

JR/oo

cc: Richard Foster
F. Kay Wallis
Al Adams
John Binkley

February 2, 1989
Angoon, Alaska
99820

CHATHAM SCHOOL DISTRICT
Board of Education
Resolution #89-100

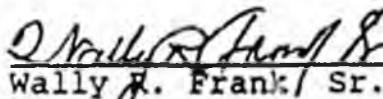
A resolution supporting H.B. 52 which will qualify the State Department of Education as an "interested party" entitling them to use a system for fingerprinting new teachers and administrative applicants.

WHEREAS, The Chatham School District finds it necessary to hire certified personnel to serve the educational needs of the districts each school year; and

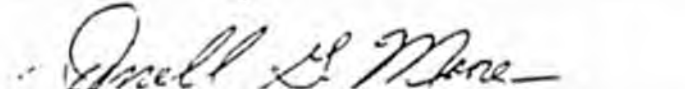
WHEREAS, The State of Alaska has experienced a high number of allegations involving contributing to the delinquency of a minor and sex crimes; and

WHEREAS, The Professional Teaching Practices Commission has revoked or suspended a number of certified teachers who have falsified their records;

BE IT RESOLVED That the Chatham School District Board of Education supports Representative Jim Zawaski in his efforts to pass House Bill 52.


Wally R. Frank, Sr., Board Chairman


Edward J. Gamble, Sr., Board Clerk


Darrell G. Moore, Supt. of Schools

SEWARD CHAMBER OF COMMERCE
P.O. BOX 749
SEWARD, AK 99664
(907) 224-8051

February 28, 1989

Alaska State Legislature
House of Representatives
Jim Zawacki, Rep. District 7
Pouch V
Juneau, AK 99811

Dear Representative Zawacki:

On behalf of the Seward Chamber of Commerce, I would like to express our support of **House Bill 52**.

There is a need for procedures to check into the past records as well as prior experience of persons employed by schools in Alaska to ensure the safety of the children being educated in our school systems.

With problems experienced in other states and communities, i.e. undisclosed history of criminal sexual activity, we must take whatever steps are necessary to prevent this type of problem from occurring in our state and schools. Setting provisions, mandated by law, that enable the school districts to investigate such criminal activity is imperative.

To learn that only 5 of the 55 school districts in the state have any procedures for checking possible criminal records of new applicants for teacher or administrator positions is somewhat shocking and very disconcerting. I believe that if this information were known by parents who have children enrolled in Alaskan schools, there would have been an earlier public outcry for steps to ensure that all schools have an adequate policy for investigation of new applicants, as well as current employees.

Thank you for your interest and concern for the safety of Alaskan school children, and the foresight to introduce this important measure.

Sincerely,

Cathy M. Clark

Cathy M. Clark
Executive Director/Manager

Administrative
& Support Offices
P.O. Box 00309
Nenana, Alaska 99760



Fred L. Lau
Superintendent

(907) 832-5594

February 16, 1989

Jim Zawacki, Representative
District 7
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Zawacki:

The district school board at their February 14, 1989 unanimously passed Resolution No. 89-02 in full support of HB 52 and its passage.

On behalf of the district school board thank you for introducing bills such as 52 for the safety of all children in Alaska.

Sincerely,

A handwritten signature in cursive script that reads "Linda Evans".

Linda S. Evans
Board Secretary

Attachment: Resolution No. 89-02



Administrative
& Support Offices
P.O. Box 00309
Nenana, Alaska 99760

Fred L. Lau
Superintendent

(907) 832-5594

RESOLUTION NO. 89-02

WHEREAS, there exists a serious concern in communities and schools relating to the problem of persons employed by school districts in Alaska having an undisclosed history of criminal sexual activity, and

WHEREAS, we want all children of Alaska sent to an educational facility where they will be safe and ealthy, and

WHEREAS, HB 52 has been introduced and would allow the Department of Education access to criminal records of all new teacher and administrator applicants, so

THEREFORE, BE IT RESOLVED, that the Yukon-Koyukuk School District Board supports the passage of HB 52 to ensure the safety of all our children.

PASSED, APPROVED AND ADOPTED BY THE SCHOOL BOARD OF THE YUKON-KOYUKUK SCHOOL DISTRICT THIS 14th Day of February, 1989.

ATTESTED:

Luke Titus
Chairman, Yukon-Koyukuk School Board

2/14/89
Date

V. Cheryl Robb
Clerk, Yukon-Koyukuk School Board

2/14/89
Date

Cordova Chamber of Commerce

P.O. Box 99
Cordova, Alaska 99574
(907) 424-7260



Representative Zawacki
House of Representatives
Pouch V
Juneau, Alaska . 99811

March 20, 1989

Dear Representative Zawacki:

The Cordova Chamber of Commerce would like to make known to you its decision to support House Bill 52 which would qualify the State Department of Education to access criminal records. We agree it is an issue of urgent concern.

Thank you for including the Cordova Chamber of Commerce while soliciting support for HB 52.

Sincerely,

Connie Taylor

Connie Taylor
President

North Slope Borough School District



March 20, 1989

Representative Jim Zawacki
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811


RE: House Bill 52, Access to Criminal Records

Dear Representative Zawacki:

The North Slope Borough School District is in support of House Bill 52, related to access to criminal records by the Department of Education for persons seeking certification as teachers or administrators. We recommend, however, that the implementation of this proposed law rest with the Department of Education; not the school districts in Alaska. We suggest that DOE review criminal records at the time they receive State certification requests, and that this law be administered by DOE and at their expense.

Thank you for giving us the opportunity to give our thoughts on this matter.

Sincerely,



Shirley Holloway, Ed.D.
Superintendent

BI/ma

cc: Senator Al Adams
Representative Eileen MacLean
School Board members
Patsy Aamodt, Assistant Superintendent for Instruction
Wally Berard, Assistant Superintendent for Administration
Brenda Itta, Special Assistant to the Superintendent
Ashley Reed, Lobbyist, NSBSD



NEA-ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

ANCHORAGE REGIONAL OFFICE

1411 W 33RD AVENUE
ANCHORAGE, ALASKA 99503
(907) 274-0536

JUNEAU OFFICE

105 MUNICIPAL WAY, SUITE 302
JUNEAU, ALASKA 99801
(907) 586-3090

FAIRBANKS REGIONAL OFFICE

2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
(907) 456-4435

March 27, 1989

To: Representative Johnny Ellis, Chair
Members, House HESS Committee

Re: House Bill No. 52: "An Act relating to access
to criminal records by the Department of Education
and providing for an effective date."

NEA-Alaska supports the concept that the Department of Education be the interested party on behalf of all school districts in obtaining records of criminal convictions of prospective applicants for certificated positions as a part of their initial certification process through the Department.

However, as a result of the initial hearing by the Committee we are not certain as to the scope or intent of this legislation. Accordingly, this statement will attempt to address potential concerns.

As stated above, we do support the Department being the interested person on behalf of all school districts as the records check pertains to initial certification.

We oppose any change which would require subsequent criminal records checks as a part of the recency or re-certification process except in instances where a person has let their certification expire.

It is inappropriate for any employee whose performance is competent and satisfactory and is a continuing employee on the initiative of the school district to have to periodically prove that they do not have a criminal record. Such a requirement is unusual, highly questionable, degrading, and offensive and is not expected of any other public employee.

NEA-Alaska could support legislation which would mandate that the courts or an appropriate agency of government be required to provide timely notification to the current employer of record of any person who is convicted of the crimes as referenced in AS 12.62.035.

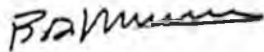
HB 52 should not be viewed as a means of purging the ranks of school district employees. Its primary purpose is to supplement the pre-employment reference checks which should be undertaken by all school district administrators as an integral part of their pre-hire procedures.

We further feel that school administrators and boards of education should be responsible and accountable to the public when they in fact do hire a person who has a record of criminal convictions per AS 12.62.035 and that they should be penalized accordingly as well.

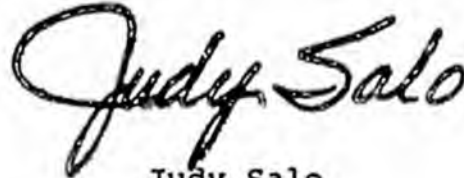
Employment decisions are substantial, especially when the potential employee is going to supervise children, and should not be done casually and should only be done after rigorous and thorough background checks.

Thank you for your consideration of our position.

Respectfully submitted,



Bob Manners
Executive Secretary



Judy Salo
President

cc: Representative Jim Zawacki

f26mar1



SKAGWAY CITY SCHOOL

P.O. Box 497

• Skagway, Alaska 99840

• (907) 983-2960

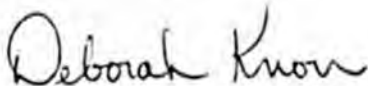
March 8, 1989

Representative Jim Zawacki
Alaska State Legislature
House of Representatives
Pouch V
Juneau, Alaska 99811

Dear Representative Zawacki:

Enclosed is Resolution #89-3 which was adopted by the Skagway City School Board on February 22, 1989. This resolution supports House Bill 52.

Sincerely,



Deborah Knorr
Board Secretary

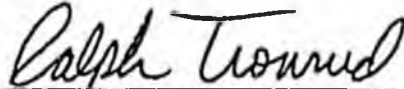
RESOLUTION #89-3

WHEREAS, the safety and welfare of children is the primary focus of the Skagway School Board; and,

WHEREAS, the best interest of the children can only be served by employing the most qualified and capable professional staff;

THEREFORE BE IT RESOLVED THAT the Skagway School Board unanimously supports legislation that requires checking for possible criminal records, involving contributing to the delinquency of a minor and/or sexual abuse, of new applicants for teacher or administrator positions.

ADOPTED the 22nd day of February, 1989.



Ralph Tronrud, President
Skagway School Board

**BIG LAKE
CHAMBER OF COMMERCE**

P.O. Box 520067
Big Lake, Alaska 99652

February 8, 1989

East Lake Hall
(907)892-6109

Resolution Serial No. 89-001

A RESOLUTION OF THE BIG LAKE CHAMBER OF COMMERCE SUPPORTING HB-52 IN ITS PRESENT FORM, AS INTRODUCED BY REP. JIM ZAWACKI, DISTRICT 7.

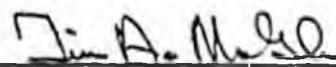
WHEREAS, the welfare and safety of our children is of the utmost importance; and

WHEREAS, the State of Alaska has been lax in providing the protection of our children from school employees who may have a history of criminal sexual activity; and

WHEREAS, only 5 of 55 school districts in the State of Alaska have any legal avenues of checking for possible criminal records of new applicants for teaching or administrative positions;

NOW THEREFORE BE IT RESOLVED, that the Big Lake Chamber of Commerce wholly supports HB-52 as introduced by Rep. Jim Zawacki, District 7.

ACCEPTED AND APPROVED by the Big Lake Chamber of Commerce this 8th. day of February, 1989.



Tim McGhan, President

Jjn



BIG LAKE CHAMBER OF COMMERCE

Resolution Serial No. 89-001 (Sub.)

A RESOLUTION OF THE BIG LAKE CHAMBER OF COMMERCE SUPPORTING HB-52, INTRODUCED BY REP. JIM ZAWACKI, AMENDING THE PROPOSED AMENDMENT, TO INCLUDE ALL PERSONS WHO HOLD OR ARE SEEKING TO HOLD POSITIONS WITH A SCHOOL DISTRICT.

WHEREAS, the welfare and safety of our children is of the utmost importance; and

WHEREAS, the State of Alaska has been lax in providing the protection of our children from school employees who may have a history of criminal sexual activity; and

WHEREAS, only 5 of 55 school districts in the State of Alaska have any legal avenues of checking for possible criminal records of new applicants for teaching or administrative positions; and

WHEREAS, the Big Lake Chamber of Commerce wishes to amend the proposed amended Section 1, AS 12.62.035 (a) to read as follows:

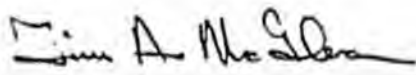
" (a) Notwithstanding any other provision of law, an interested person (AS DEFINED IN (e) OF THIS SECTION) may request from the Commission, records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position with a school district. The Commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request." and

WHEREAS, Section 2. AS 12.62.035 (f) (1) should reflect the above inclusion of employees or prospective employees of all school districts, as follows:

" (1) shall request and receive records under (a) of this section for all persons holding or applying for a position (certificated and noncertificated) with a school district."

NOW THEREFORE BE IT RESOLVED, that the Big Lake Chamber of Commerce supports amending the proposed amendment to HB-52 as introduced by Rep. Jim Zawacki, District 7.

ACCEPTED AND APPROVED by the Big Lake Chamber of Commerce this 8th. day of February, 1989.


Tim McGhan, President

TALKEETNA CHAMBER OF COMMERCE, INC.

P. O. BOX 334, TALKEETNA, AK 99676

Representative
Jim Zawacki
Pouch V
Juneau, AK 99811

March 10, 1989

Dear Mr. Zawacki,

Please be advised that the Talkeetna Chamber of Commerce has passed a Resolution in support of House Bill #52. This is an issue of concern in our community, and through out Alaska. This bill is vitally important to our childrens welfare and education. If we can be of any further assistance please feel free to contact us.

Sincerely Yours

Kristine D. Mahay

Kristine D. Mahay

Sec/Tres

Talkeetna Chamber of Commerce





FAIRBANKS NORTH STAR BOROUGH SCHOOL DISTRICT

P.O. Box 1250 Fairbanks, Alaska 99707-1250 (907) 452-2000

Board of Education

Mike Kramer
President
Seat D
457-4447

March 9, 1989

Gene Redden
Vice President
Seat G
456-8085

Honorable Jim Zawacki
House of Representatives
P. O. Box V
Juneau, Alaska 99811

Andy Warwick
Treasurer
Seat F
474-9148

Dear Representative Zawacki:

Bonnie Brody
Clerk
Seat E
479-4139

On behalf of the Fairbanks North Star Borough Board of Education, I am forwarding Resolution 89-6 which supports House Bill 52, Access to Criminal Records. The resolution was unanimously approved by the Board at its meeting on March 7, 1989.

Jerry McBeath, Ph.D.
Member
Seat C
479-2870

In the Board's discussion, several members inquired as to whether the district could access criminal records for all felony charges and not just contributing to the delinquency of a minor and sex crimes. Board members believe it is just as important for the Department of Education and the school district to know about a murder conviction, for example.

Walt Schlotfeldt
Member
Seat A
457-5635

Karl Schroeder
Member
Seat B
479-6548

Thank you for the opportunity to comment on the proposed legislation.

Lt. Col. Mike Griffin
Eielson Air Force Base
Representative
372-1648

Sincerely yours,

Richard S. Cross
Superintendent

Major Richard Musick
Fort Wainwright Army Post
Representative
356-2294

Margarette-Carole Bolden
Student Representative
457-1913

RSC/plh
Enclosure

cc: Board of Education

Superintendent of Schools

Richard S. Cross

FAIRBANKS NORTH STAR BOROUGH BOARD OF EDUCATION

Resolution 89-6

Support of House Bill 52 - Access to Criminal Records

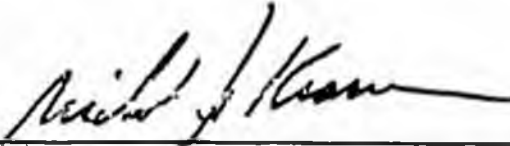
WHEREAS, the Fairbanks North Star Borough School District has been fingerprinting employees for criminal reference checks for the past three years as a condition of employment; and

WHEREAS, required criminal reference checks on all employees assist in determining an educational environment which is safe and healthy; and

WHEREAS, conducting criminal reference checks through the Department of Education would permit the exchange of information from criminal reference checks on a statewide basis;

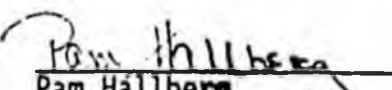
NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Board of Education supports House Bill 52 making it a requirement of the Department of Education to request and receive records on all convictions involving contributing to the delinquency of a minor and any sex crimes for any person seeking certification as a teacher or administrator in the State of Alaska.

PASSED AND APPROVED MARCH 7, 1989.



Mike Kramer, President
Board of Education

ATTEST:



Pam Hallberg
Secretary to the Board

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 9, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/31/89

The HEALTH, EDUCATION & SOCIAL SERVICES Committee recommends that:

HOUSE BILL NO. 52 [TEACHERS/ADMINISTRATORS CRIMINAL RECORDS]
"An Act relating to access to criminal records by the Department of Education; and providing for an effective date."

be replaced with CSHB 52 (HESS) the same title
 a new title

have attached amendment(s)

- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the

Finance Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact
- zero fiscal note
- zero with analysis

APPROVES PREVIOUS:

- fiscal note(s) published: _____
- zero fiscal notes(s) published: _____

SIGNING DO PASS:

[Signature]
[Signature]
Mark Bauer
[Signature]

SIGNING OTHER THAN DO PASS:
(Do Not Pass, No Recommendation, Amend)

[Signature]

[Signature]
Chairman's signature

Original sponsor: Zawacki

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 52 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

9 * Section 1. AS 12.62.035(a) is amended to read:

10 (a) An [NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN] inter-
11 ested person [AS DEFINED IN (e) OF THIS SECTION] may request from the
12 Department of Public Safety [COMMISSION] records of all convictions
13 involving contributing to the delinquency of a minor, ^{and} ~~or~~ convictions
14 involving [AND] any sex crimes of a person who holds or applies for a
15 position in which the person has or would have supervisory or disci-
16 plinary power over a minor. The Department of Public Safety [COMMIS-
17 SION] shall authorize the disclosure of the information to the re-
18 questing interested person and shall provide a copy of the information
19 to the person who is the subject of the request.

20 * Sec. 2. AS 12.62.035 is amended by adding a new subsection to read:

21 (f) The Department of Education shall request and receive re-
22 cords under (a) of this section for a person seeking certification as
23 a teacher or administrator.

24 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
25
26
27
28
29

Introduced: 1/9/89
 Referred: Health, Education,
 & Social Services
 and Judiciary

1 IN THE HOUSE

BY ZAWACKI

2 HOUSE BILL NO. 52

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to access to criminal records by the
 7 Department of Education; and providing for an effec-
 8 tive date."

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

10 * Section 1. AS 12.62.035(a) is amended to read:

11 (a) Notwithstanding any other provision of law, an interested
 12 person [AS DEFINED IN (e) OF THIS SECTION] may request from the com-
 13 mission records of all convictions involving contributing to the
 14 delinquency of a minor and any sex crimes of a person who holds or
 15 applies for a position in which the person has or would have supervi-
 16 sory or disciplinary power over a minor. The commission shall author-
 17 ize the disclosure of the information to the requesting interested
 18 person and shall provide a copy of the information to the person who
 19 is the subject of the request.

20 * Sec. 2. AS 12.62.035 is amended by adding a new subsection to read:

21 (f) The Department of Education

22 (1) shall request and receive records under (a) of this sec-
 23 tion for a person seeking certification as a teacher or administrator;
 24 and

25 (2) shall request records on behalf of a school district.

26 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).
 27
 28
 29



Alaska State Legislature House of Representatives

P.O. BOX 783
GIRDWOOD, ALASKA 99567
(907) 783-2905

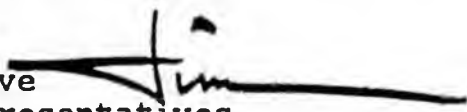
WHILE IN APOU
POUCH V
JUNEAU, ALASKA 99811
(907) 465-2693/2719

REPRESENTATIVE
JIM ZAWACKI
DISTRICT 7

MEMBER
COMMUNITY & REGIONAL
AFFAIRS COMMITTEE
LEGISLATIVE BUDGET &
AUDIT COMMITTEE
FINANCE SUBCOMMITTEE

MEMORANDUM

TO: Representative Johnny Ellis, Chairman
Health, Education and Social Services
House of Representatives

FROM: Jim Zawacki
Representative
House of Representatives 

DATE: February 17, 1989

RE: HB52

I have reintroduced legislation addressing the problem of access to criminal records by the Department of Education for individuals being considered for certification as teachers or administrators.

The bill is HB52, "An Act relating to access to criminal records by the Department of Education; and providing for an effective date."

HB52 is currently scheduled for a hearing in the House HESS Committee next Wednesday, February 22, 1989 at 8:30am. I thank you for scheduling HB52 so promptly.

The original intent of HB52 was to qualify the Department of Education as an "interested person" and to allow DOE, as an interested person, to request and receive records related to convictions involving contributing to the delinquency of a minor and sex crimes.

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Access to criminal records by
the Department of Education
Sponsor: Zawacki
Requestor: House HESS

Agency Affected: Education
BRU: Education Finance & Support
Services
Components: District Support

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		14.6	14.6	14.6	14.6	14.6
TRAVEL						
CONTRACTUAL		4.0	4.0	3.0	3.0	3.0
SUPPLIES		5	5	5	5	5
EQUIPMENT		4.5				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		23.6	19.1	18.1	18.1	18.1

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND / PR		23.6	19.1	18.1	18.1	18.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME		1	1	1	1	1
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Costs include 1 part time clerktypist, postage and phone costs, general office supplies, and minimal computer programming costs to upgrade system to integrate background check data into existing teacher certification data base. In the first year, purchase of one word processing terminal and file cabinet storage capacity is necessary.

Prepared by: Mary Hakala Phone: 465-2800
Division: Commissioner's Office Date: March 31, 1989

Approved by Commissioner: William G. Demmert Date: March 31, 1989
Agency: Education

Distribution (by preparer):

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

Position Title Clerk Typist III		No. of Positions 1	Range/Step 8B	Barg. Unit GGU
Time Status PT	Staff Months 6.0	Location Juneau		Election District
Type of Expenditure		Amount		
1	2	3		
Salary	9.8			
Benefits	4.8			
Premium Pay				
Other				
Total Personal Services		14.6		
Travel				
Contractual				
Commodities				
Equipment				
Other				
Total Cost				
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004			
I-A Receipts	1006			
CIP Receipts	1061			
Other	GF/PR	14.6		
Justification				
The part time clerical position will handle administrative functions associated with implementation of HB 52, insuring that background checks are properly completed by each initial applicant for teacher certification in Alaska.				

**Request For
New Position**

Agency Education
 BRU Education Finance & Support Services
 Component District Support

Page 2 of 2
 Revised Date

FY 90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Access to Criminal Records by
the Department of Education
Sponsor: Zawacki
Requestor: Zawacki

Agency Affected: Education
BRU: Education Finance and Support
Services
Components: District Support, Teacher
Certification Unit

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES		31.5	31.5	31.5	31.5	31.5
TRAVEL						
CONTRACTUAL		3.0	3.0	3.0	3.0	3.0
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	35.5	35.5	35.5	35.5	35.5

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		35.5	35.5	35.5	35.5	35.5
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

To implement program, one Clerk IV and associated costs are necessary. Position will handle public inquiries, processing and tracking of records in the certification process and on behalf of school districts.

Prepared by: Marv Hakala Phone: 465-2800
Division: Commissioner's Office Date: 2/2/89

Approved by Commissioner: William G. Bennett Date: 2/2/89
Agency: Education

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Law
 Title: "An Act relating to access to criminal records by the Department of Education..." BRU: Prosecution
 Sponsor: Repr. Zawacki Components: Criminal Justice Litigation
 Requestor: Repr. Zawacki

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues / Director Phone: 465-3672
 Division: Administrative Services Division Date: February 1, 1989
Richard I. Pegues / FOR
 Approved by Commissioner: Grace Berg Schaible, Atty. Gen. Date: February 1, 1989
 Agency: Department of Law

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

This bill amends AS 12.65.035 to provide that the Department of Education shall request and receive criminal records for a person seeking certification as a teacher or administrator. The bill further provides that the Department of Education shall request such records on behalf of school districts, which employ persons serving in positions having a supervisory or disciplinary power over a minor. The safekeeping and administration of criminal records are handled by the Department of Public Safety. Consequently, this bill will not have a fiscal impact on the Department of Law. The bill could, however, have a fiscal impact on the Department of Education for administering requests from school districts for criminal history records. Existing statute permits school districts to request this information directly from the Department of Public Safety, without the second level of administration proposed in the bill.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: HB 52
PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act Relating to Access to
Criminal Records by Dept. of Education
Sponsor: Zawacki
Requestor: HESS

Agency Affected: Public Safety
BRU: DPS Administration
Component: Administrative
Services

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	5.3	31.8	31.8	31.8	31.8	31.8
TRAVEL						
CONTRACTUAL		1.8	.3	.3	.3	.3
SUPPLIES						
EQUIPMENT		7.0				
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		40.6	32.1	32.1	32.1	32.1

CAPITAL		0	0	0	0	0
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REVENUE		0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND		40.6	32.1	32.1	32.1	32.1
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

HB 52 will substantially impact the Records and Identification Section which operates the Alaska Automated Fingerprint Identification System (AAFIS). Because of the complexity of the research which is required to process criminal history record checks under AS 12.62.035, the services of a full-time Clerk IV will be required to handle the estimated 4,500 requests from the Department of Education annually. (Attachments including New Position Request)

Prepared by: M.J. Clemens
Division: Administrative Services

Phone: 465-4336
Date: 2/21/89

Approved by Commissioner: Arthur English
Agency: Department of Public Safety

Date: 2/21/89

HB 52 FISCAL NOTE
(Analysis, continued)

The Department of Education has estimated that they will submit 4000-4500 certification and recertification criminal history record checks annually. These records checks are in addition to those under this statute requested by other interested persons, such as the employers of day care providers. The provision of a criminal history record to a law enforcement or criminal justice agency is a relatively quick and simple process. Requests for records under 12.62.035 are much more time consuming and complicated to process.

The processing of a request for information under 12.62.035 begins with the interested party (or agency) sending a letter to Records and Identification detailing how they fall under the statute and requesting that records checks be performed on its employees. This letter is retained on file. Completed fingerprint cards showing the interested party as the contributor may then be submitted for processing.

The fingerprint cards submitted are searched in AAFIS for the existence of a fingerprint record. If a fingerprint record is identified, the APSIN record for the person identified through AAFIS is then checked for the existence of a criminal history. Because of the requirement in 12.62.035 that fingerprints submitted under this statute may not be retained beyond six months, it is necessary to process them separately from other applicant cards. The second fingerprint card, accompanied by a money order for the \$14 fee, is submitted by mail to the FBI Identification Division to check for an out of state criminal history.

If a criminal history record verified by fingerprints exists in Alaska, it must be reviewed to determine if the offense is reportable under 12.62.035(e)(1)(3), and if a conviction resulted. If both of these conditions are met, the interested party and the applicant are notified of the charge and disposition by mail. Unfortunately, about 25% of arrest records in Alaska do not have disposition information. In these cases, the court records must be researched to determine the outcome of the case. This can be a very time consuming process.

If the FBI fingerprint check results in the return of a rap sheet, it must be carefully examined. First the reported offenses must be examined to see if any might be reportable under 12.62.035. If so, each must be checked for disposition information. A large proportion of the arrests shown on FBI rap sheets do not indicate a disposition. In this case the records division of the contributing state must be contacted by mail for disposition information. Because of the dramatically differing sexual assault statutes in the different states, it is frequently necessary to contact the arresting police agency in the other state to determine if the factual circumstances of the violation would have been a reportable offense had it occurred in Alaska.

HB 52 FISCAL NOTE
(Analysis, continued - Page 3)

Because of NLETS and NCIC regulations prohibiting the use of those systems for employment and licensing purposes, all of the contacts with outside agencies must be conducted by mail. If a conviction is identified which is reportable under 12.62.035, both the interested party and the applicant are notified of the findings by mail. The fingerprint cards are returned to the contributor.

During the time that 12.62.035 has been in effect, less than 1% of the criminal history records checks processed have resulted in convictions being reported to the interested party. However, about 11% of the records examined pursuant to requests under 12.62.035 have been found to have serious violations not reportable under this statute. These have included convictions for attempted homicide, assault, and drug sales.

The duties of segregating and tracking record requests under this statute; managing the required correspondence; researching disposition information; and determining the applicability of out-of-state convictions will require the addition of one full time clerk position.

AAFIS and APSIN operator times to perform criminal history record checks under 12.62.035 are summarized in the table.

Function	# Cards	Seconds	Hours
Search AAFIS	4500	540	550
APSIN Search	4500	96	120
AK Dispo. Research	70	4800	93
Sort and Mail	9000	14	35
Research FBI rcds	495	9060	1246
Sort other FBI	4005	64	71
Total Processing Time			2115 hours/year

Notes:

11% of the 4500 cards checked by the FBI will have serious out of state violations requiring research. A survey done of present 12.62.035 checks indicates the average time to research out of state records is 151 minutes.

Position Title Clerk IV			No. of Positions 1	Range/Step 9A	Barg. Unit G
Time Status PFT	Staff Months 12		Location Anchorage		Election District 7
Type of Expenditure			Amount		
1			2		
3					
Salary*			20.8 ////////////////////		
Benefits*			11.0 ////////////////////		
Premium Pay (Included in Above)			////////////////////		
Other			////////////////////		
Total Personal Services			31.8 ////////////////////		
Travel					
Contractual Line hook up - \$1.5			1.8		
Commodities					
Equipment Micro \$6.2 chair \$.8			7.0		
Other					
Total Cost			40.6		
Funding Source for Total Cost					
Federal Receipts 1002					
G.F. Match 1003					
General Fund 1004			40.6		
Program Receipts/GF 1005					
I-A Receipts 1007					
CIP Receipts 1061					
Other					
* Personal Services Salary and Benefits Costs are from PACS Scenario #2.					
Justification					
Processing criminal history record checks under AS 12.62.035 involves actions by a Clerk II, AAFIS Operator I, Clerk IV, and AAFIS Operator II.					
The additional workload connected with HB52 will require the equivalent of a full-time position as outlined on the workload calculations attached.					
Initial furniture and equipment costs would not be needed in future years.					
Due to the immediate effective date of the bill, assuming it becomes law about May 1, two months of personal services would be needed to pay unbudgeted overtime to existing staff who would have to handle requests prior to classification, recruitment selection and training of a new position.					

REQUEST FOR
NEW POSITION

AGENCY Department of Public Safety
 BRU DPS Administration
 COMPONENT Administrative Services

Page 4 of 4
 Revised Date

FY 90

posed limitations
r to consider that
n of sentence, the
propose the same
three-judge panel
the limitations;
ommon-law devel-
with legislation.
App. Op. No. 718
2d (1987).
fy presumptive
ory scheme gives
ubstantial discre-
nether to modify
light of nonstat-
mitigating factors.
e disturbed only
ise of that discre-
ken. *Winther v.*
o. 783 (File No.
988).

State, Ct. App.
A-1139), 741 P.2d
State, Ct. App. Op.
1751), P.2d

State, Ct. App. Op.
A-2091), P.2d

v. State, Dep't of
p. No. 3234 (File
368 (1987).

State, Ct. App. Op.
1), 715 P.2d 1174
Ct. App. Op. No.
1), 717 P.2d 855
Ct. App. Op. No.
739 P.2d 1314
State, Ct. App. Op.
5), 739 P.2d 1310
Ct. App. Op. No.
P.2d (1987);
pp. Op. No. 799
P.2d 1022 (1988).

§S.

t. The sureties
he rights and
nal Procedure,
manner pre-
21 SLA 1985)

Effect of amendments. — The 1985 amendment substituted "under AS 12.30" for ", including the right to arrest the de-
fendant as provided in AS 12.30.020" and "by law" for "therein "

Chapter 62. Criminal Justice Information Systems Security and Privacy.

Section

- 35. Access to certain crime information
- 70. Definitions

Sec. 12.62.035. Access to certain crime information. (a) Notwithstanding any other provision of law, an interested person as defined in (e) of this section may request from the commission records of all convictions involving contributing to the delinquency of a minor and any sex crimes of a person who holds or applies for a position in which the person has or would have supervisory or disciplinary power over a minor. The commission shall authorize the disclosure of the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section shall include within it the fingerprints of the person who is the subject of the request and any other data specified in regulations adopted by the commission. The request shall be on a form approved by the commission, and the commission may charge a fee to be paid by the requesting interested person for the actual cost of processing the request. The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request.

(c) The commission shall adopt regulations to implement the provisions of this section.

(d) If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information.

(e) As used in this section

(1) "contributing to the delinquency of a minor" means a conviction for a violation or attempted violations of AS 11.51.130(a)(1), (3), or (5); former AS 11.40.130; or the laws of another jurisdiction if the offense would have been a crime in this state under AS 11.51.130(a)(1), (3), or (5) or former AS 11.40.130 if committed in the state;

(2) "interested person" means a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor;

(3) "sex crime" means a conviction for a violation or attempted violation of AS 11.41.410 — 11.41.470, AS 11.61.110(a)(7), or AS 11.66.100 — 11.66.130; former AS 11.15.120, 11.15.134, or 11.15.160; former AS 11.40.080, 11.40.110, 11.40.130, or 11.40.200 — 11.40.420; or the laws of another jurisdiction if the offense would have been a crime in this state under one of the sections listed in this paragraph if committed in the state. (§ 2 ch 66 SLA 1983; am § 44 ch 6 SLA 1984)

Editor's notes. — This section is set out above to correct a typographical error in the main pamphlet.

Sec. 12.62.070. Definitions. In this chapter

(1) "commission" means the Governor's Commission on the Administration of Justice established under AS 44.19.110 — 44.19.122;

(2) "criminal justice information" means information concerning an individual in a criminal justice information system and indexed under the individual's name, or retrievable by reference to the individual by name or otherwise and which is collected or stored in a criminal justice information system;

(3) "criminal justice information system" means a system, including the equipment, facilities, procedures, agreements, and organizations related to the system funded in whole or in part by the Law Enforcement Assistance Administration, for the collection, processing, or dissemination of criminal justice information;

(4) "intelligence information" means information concerning the background, activities or associations of an individual or group collected or obtained by a law-enforcement agency for preventive, precautionary or general investigative purposes not directly connected with the investigation of a specific crime which has been committed nor with the apprehension of a specific person in connection with the commission of a particular crime;

(5) "interstate systems" means agreements, arrangements and systems for the interstate transmission and exchange of criminal justice information, but does not include record keeping systems in the state maintained or controlled by a state or local agency, or a group of agencies, even if the agency receives information through, or otherwise participates in, systems for the interstate exchange of criminal justice information;

(6) "law enforcement" means any activity relating to crime prevention, control or reduction or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control or reduce crime or to apprehend criminals, activities of criminal prosecution, courts, public defender, corrections, probation or parole authorities;

(7) "law enforcement agency" means a public agency which performs as one of its principal functions activities pertaining to law

H B

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State of Alaska
ombudsman

Duncan C. Fowler

January 27, 1989

Representative Fran Ulmer
Alaska House of Representatives
Pouch V
Juneau, Alaska 99811-3100

RE: HB 53

Dear Representative Ulmer:

House Bill 53 relates to the administrative suspension of drivers licenses of persons accused of driving while intoxicated. There is little argument regarding the benefits of the bill, not only to protect the safety of the public but as a deterrent to those who might otherwise consider driving while intoxicated.

There is an issue relating to the fairness of the administrative suspension process that you may wish to address in your bill. In the past 6 years, this office has received at least 17 complaints relating to the fairness of the implementation of AS 28.15.165. Several of these complaints speak directly to the fairness of a process where our court system has found someone innocent, or has dismissed charges of driving while intoxicated, yet an administrative suspension of their drivers license remains in place. The complainants perceive the state is not playing by the rules and, in their view, it is punishing those who have been proven "innocent" in the courts.

As you know, these suspensions can be severe, as long as 10 years, if there have been two previous convictions. The problem appears to be that people in this circumstance do not clearly differentiate between the administrative suspension process with its available appeals and the criminal prosecution process. Citizens have the notion that if you are found innocent by our court system their "world" is then OK and they may return to their normal life. It is hard for them to understand that because they did not file a timely appeal on the administrative suspension (within 7 days of the incident) that - despite being found "innocent" by our court system months later - their license may still be administratively suspended for as long as 10 years.

I believe the process would be more fair with the availability of an additional appeal. I suggest that an opportunity for an appeal of an administrative suspension be made statutorily available within 30 days of the time of either a dismissal or reduction of a criminal charge of driving under the influence. The same opportunity should be afforded the person found innocent of charges by the courts. This new appeal option would really be placed at the most logical place in our system. It would also allow the citizen the opportunity to present their court record for consideration during the administrative appeal.

Reply to:

P.O. Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624

P.O. Box W0
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P.O. Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

January 27, 1989

Many Alaskans do not understand that a very different standard of proof is used in each process. The courts use "beyond a reasonable doubt" as their standard. The administrative process uses the standard of whether or not there were "Preponderance of the Evidence" that the act occurred, a more permissive standard of proof. This may mean that a person "cleared" by the courts may still have their license administratively suspended, but they will at least have had an opportunity for a more fair review of their situation.

The legislature also could choose to vacate an administrative suspension if there was an acquittal in the courts. That policy would certainly be perceived as fair by those who have complained to this office. It would, however, allow more drivers on the road than persons might otherwise think should not be allowed to drive.

I have enclosed copies of summaries of the 17 ombudsman complaints which relate to this issue for your use.

Sincerely,



Duncan C. Fowler
Ombudsman

Enclosure: 17 STAIRS summaries



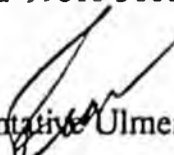
State of Alaska
ombudsman

Duncan C. Fowler

March 16, 1989

Representative Fran Ulmer
Alaska House of Representatives
Post Office Box V
Juneau, Alaska 99811-3100

RE: HB 53

Dear Representative  Ulmer:

Thanks for the additional opportunity to comment on HB 53. The issue I have raised relates to the perception of fairness by those who have had their drivers license administratively suspended, and later cleared for one reason or another by the criminal system and yet been unable to regain their license.

The Assistant Attorney General clearly misunderstood my intentions regarding the license suspension. I fully agree with the immediate administrative suspension of drivers licenses for those accused of driving while intoxicated.

I do have a problem with not allowing a person the opportunity to present facts developed for a criminal proceeding which may challenge the legal basis of an administrative action. It is entirely possible for a criminal proceeding to develop facts which find fault in the accuracy of the breathalyzer, prove that the defendant was not the driver of the vehicle or other information which would clearly dispute the basis for the administrative suspension. As I understand it, the statement of a police officer and the results of a breathalyzer test are the sole basis for initiating the suspension. The veracity of both would be closely examined during a criminal proceeding.

I believe allowing an opportunity for the appeal of an administrative suspension, at the completion of a criminal proceeding, would resolve any perception of unfair action by the state on the part of the defendants. New evidence, if developed for the criminal proceeding could then be presented and the administrative suspension confirmed or dismissed based on all the available facts.

Many of those who complained to this office never took the opportunity to appeal. They mistakenly believed the administrative suspension would be lifted based upon the results of their criminal proceedings. This, I believe, has founded the widely held perception by Alaskans who believe the criminal justice system is our society's arbiter of illegal behavior and dismissal or a finding of not guilty reflects society's determination on the act.

Reply to:

P O Box 102636
Anchorage, AK 99510-2636
(907) 563-3673
(800) 478-2624

P O Box W0
Juneau, AK 99811-3000
(907) 465-4970
(800) 478-4970

P O Box 74358
Fairbanks, AK 99707
(907) 452-4001
(800) 478-3257

March 16, 1989

There is a partial solution to this problem which would not need a change in state law to accomplish. That would be a clear notice by the Department of Public Safety on the "NOTICE AND ORDER OF REVOCATION" (copy enclosed) that the administrative revocation was separate and distinct from any criminal proceeding. It would not, however, resolve the problem for the citizen who developed evidence for use at the criminal hearing which could dispute the basis for the administrative determination.

Whether or not the legislature chooses to allow the privilege to drive to be withheld for as much as a 10 year period based upon a "preponderance of the evidence" which may later be proven during a criminal proceeding to be fallacious evidence is really the crux of this issue. It is not related to the issue of immediate suspension of licenses, which I believe is sound public policy.

Sincerely,



Duncan C. Fowler
Ombudsman

DCF:pjc
Enclosure

STATE OF ALASKA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF MOTOR VEHICLES

*Date Issued _____

Enf. Agency _____

UTC or Case No. _____

NAME _____ DOB _____

MAIL ADDRESS _____ DL. No. _____ State _____

CITY _____ STATE _____ ZIP _____

NOTICE AND ORDER OF REVOCATION

You are hereby notified that on the date shown above (*date issued) you were asked to submit to a chemical test to determine the alcohol concentration of your breath pursuant to AS 28.35.031(a), the Implied Consent Law.

- Because you refused to submit to testing, the Department of Public Safety will revoke your driver's license or nonresident privilege to drive, or will refuse to issue an original license to you.
- Because you submitted to a breath test which disclosed an alcohol concentration of .10 or more, the Department of Public Safety will revoke your driver's license or nonresident privilege to drive, or will refuse to issue an original license to you. Results of the breath test indicated a breath alcohol concentration of _____.

YOUR DRIVER'S LICENSE OR PRIVILEGE TO DRIVE IN THIS STATE IS HEREBY REVOKED. THIS IS YOUR OFFICIAL NOTICE OF REVOCATION. THIS REVOCATION WILL TAKE EFFECT 7 DAYS AFTER THE DATE SHOWN ABOVE, UNLESS YOU REQUEST AN ADMINISTRATIVE REVIEW OF THE REVOCATION. Information on the reverse side of this form tells you how to apply for this review. You must apply for administrative review within seven days from today. The revocation is for 90 days if you have not previously been convicted of DWI or refusal to submit to a breath test within the preceding 10 years. The revocation is for one year if you have once previously been convicted of DWI or refusal to submit to a breath test within the preceding 10 years. The revocation is for 10 years if you have previously been convicted more than once of DWI and/or refusal to submit to a breath test within the preceding 10 years.

SURRENDER OF DRIVER'S LICENSE

By law, the officer is required to take all license certificates in your possession, and if you have a valid license, issue a temporary license effective for only seven days. You are hereby ordered to surrender your driver's license if you have it with you.

- Yes No Driver's License card surrendered and forwarded with this report.

TEMPORARY LICENSE

This document must be carried with you and shall serve as your temporary Driver's License. It is subject to ALL restrictions on your original license. THIS DOCUMENT DOES NOT PROVIDE ANY DRIVING PRIVILEGES IF YOUR LICENSE IS CURRENTLY SUSPENDED, REVOKED, CANCELLED OR DENIED. It expires at midnight, seven (7) days from the issue date.

- No temporary license issued because: _____

AFFIDAVIT OF RECEIPT

THE NOTICE AND ORDER OF REVOCATION HAS BEEN READ AND A COPY DELIVERED TO ME. I UNDERSTAND THAT MY DRIVER'S LICENSE HAS BEEN REVOKED BEGINNING IN 7 DAYS AND I HAVE HAD ANY QUESTIONS EXPLAINED TO ME.

PEACE OFFICER MUST COMPLETE INFORMATION ON THE REVERSE SIDE

**AFTER COMPLETION FORWARD TO:
DIVISION OF MOTOR VEHICLES
P.O. BOX 20
JUNEAU, AK 99802-0020**

SIGNATURE DATE

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

DIVISION OF MOTOR VEHICLES

PO BOX 20
JUNEAU, ALASKA 99802-0020

PHONE 465-4363

License No. _____

This is to notify you that the revocation of your driving privilege imposed by the department because of breath test results of .10 or greater, or your refusal to take the chemical test to determine the alcohol concentration of your breath, is effective _____ through _____. The notice and order of revocation was given to you at the time of your arrest on _____. This revocation imposed will continue beyond the period specified above until proof of future financial responsibility is provided.

Before your driving privilege will be reinstated you must show proof of financial responsibility for the future. This proof may be in the form of a Certificate of Insurance (SR-22); or as an alternative to the insurance you may have an Insurance or Surety Company file with the Department a surety bond in the amount of \$125,000. Proof of future financial responsibility must be maintained for a period of three years following your license revocation.

At the end of your period of revocation you will be required to take all tests and pay the fee for a new license. In addition, Alaska law requires a payment of a \$100.00 reinstatement fee following a revocation. You are directed to return any driver's license still in your possession to this office.

Should you be convicted of driving while your license is suspended or revoked, or driving in violation of a limitation imposed on your driving privilege, you will be subject to a mandatory jail sentence. The minimum sentence is for ten days; or if your license was revoked by the court for first offense DWI or refusal to take the breath test, the mandatory jail time is 30 days; or if your license was revoked for a second or subsequent offense of DWI and/or refusal to take the breath test, the mandatory jail time is 90 days. In addition, Alaska law requires that your driver's license be revoked for an additional period of one year.

Juanita M. Hensley

Juanita M. Hensley, Records of Conviction Supervisor
Division of Motor Vehicles, State of Alaska

RECEIVED JAN 21 1988

ATTORNEY GENERAL

THE SUPREME COURT OF THE STATE OF ALASKA

4th JUDICIAL DISTRICT
STATE OF ALASKA

KENNETH M. SVCHODA,)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF PUBLIC SAFETY, DIVISION OF)
 MOTOR VEHICLES,)
)
 Appellee.)

File No. S-1992

MEMORANDUM OPINION
AND JUDGMENT*

[No. 379 - December 9, 1987]

Appeal from the Superior Court of the State of
Alaska, Fourth Judicial District, Fairbanks,
James R. Blair, Judge.

Appearances: Lyle R. Carlson, Fairbanks, for
Appellant. Ardith Lynch, Assistant Attorney
General, Fairbanks, Grace Berg Schable,
Attorney General, Juneau, for Appellee.

Before: Matthews, Chief Justice, Rabinowitz,
Burke, Compton, and Moore, Justices.

The controlling issue in this appeal is whether the
superior court erred in dismissing Kenneth M. Svchoda's
administrative appeal as untimely. We affirm.

* Entered pursuant to Appellate Rule 214.

RECEIVED JAN 21 1984

T. FACTS AND PROCEEDINGS.

On December 2, 1983, Svoboda was stopped and arrested for driving while intoxicated. He was given a "Notice and Order of Revocation" which prominently stated that his driver's license would be revoked after seven days unless he requested an administrative review. In small letters, it stated that if he had been convicted more than once of DWI, his license would be revoked for ten years.

The notice also had two boxes, one to be checked if the driver refused to submit to the Intoximeter breath test, and the other to be checked if he submitted to the breath test and failed. Beside the latter box was a blank to be filled in with the breath alcohol concentration as found by the test. Although the officer mistakenly neglected to check either box, he wrote in ".221" in the blank indicating breath alcohol concentration.

Svoboda did not request an administrative review, and on December 12, 1983, the Department of Public Safety sent him a letter informing him that his driver's license was revoked for ten years.

In a criminal action against Svoboda, the district court suppressed the results of the Intoximeter, and the prosecuting attorney dismissed the case on April 27, 1984.

RECEIVED 11/21/87

On July 18, 1984, Svoboda's attorney requested an administrative hearing to have his driving privileges reinstated on the basis of the dismissal of the criminal action. The Department denied that request on July 30, 1984. Over two years later, on August 21, 1986, he again requested a hearing, which was denied a few days later. Svoboda appealed to the superior court on September 25, 1986. The superior court dismissed the appeal on December 11, 1986, and Svoboda appeals from that order.

II. DID THE SUPERIOR COURT ERR IN DISMISSING SVOBODA'S APPEAL?

Svoboda could have filed an appeal in the superior court within thirty days of the Department's July 30, 1984, denial of his request to have his driving privilege reinstated. Alaska R. App. P. 602(a)(2). Given that Svoboda has failed to explain the delay in filing his appeal, we hold that the superior court did not err in dismissing the appeal. In short, we conclude that the superior court did not abuse its discretion in dismissing the appeal and thus implicitly denying an extension of time for taking the appeal. Sheehan v. University of Alaska, 700 P.2d 1295, 1297 (Alaska 1985); Ballard v. Stich, 628 P.2d 916, 921 (Alaska 1981); Jerrell v. Kenai Peninsula Borough School District, 567 P.2d 760, 766 (Alaska 1977).

AFFIRMED.

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750
C. J. ...
C. J. ...
12-21-87
-3-
12-29-87

THE SUPREME COURT OF THE STATE OF ALASKA

FRANK T. BEGLEY,)
)
 Appellant,)
)
 v.)
)
 STATE OF ALASKA,)
)
 Appellee.)

File No. S-1671

MEMORANDUM OPINION

AND JUDGMENT*

[No. 346 - June 10, 1987]

Appeal from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, James R. Blair, Judge.

Appearances: Fleur Roberts, Dick L. Madson, Law Offices of Dick L. Madson, Fairbanks for Appellant. Ardith Lynch, Assistant Attorney General, Fairbanks, Harold M. Brown, Attorney General, Juneau, for Appellee.

Before: Rabinowitz, Chief Justice, Burke, Matthews, Compton, and Moore, Justices.

The central issue in this appeal is whether the superior court erred in dismissing Frank T. Begley's administrative appeal as untimely. We affirm.

* Entered pursuant to Appellate Rule 214.

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I. FACTS.

On February 20, 1985, Frank T. Begley was arrested for driving while intoxicated ["DWI"] and for his refusal to submit to a breathalyzer test. On February 21, the Department of Public Safety, Division of Motor Vehicles ["the Department"] issued a notice and order of revocation of Begley's driver's license based on his refusal to submit to the test. Begley did not request an administrative hearing and received notice on March 7 that the Department had revoked his driving privileges for 10 years, the period of revocation mandated for a third-time DWI offender. See AS 28.15.181(c)(3). Begley did not appeal the Department's revocation decision to the superior court within the thirty-day period allotted by AS 28.15.166(m).

On February 22, 1985, the day after issuance of the notice of revocation, a criminal complaint was filed against Begley for DWI and refusal to submit to a breathalyzer test. Begley entered a Cooksey plea, see Cooksey v. State, 524 P.2d 1251 (Alaska 1974), and judgment was entered against him on the refusal charge on August 5, 1985. Begley abandoned the Cooksey appeal and, at the October 1 sentencing hearing, his counsel took the position that the conviction was Begley's first for purposes of sentencing under Alaska law. Further proceedings were scheduled.

On December 6, 1985, the court of appeals issued its decision in Pananen v. State, 711 P.2d 528 (Alaska App. 1985),

holding that a conviction which is invalid for purposes of imposing a sentence of imprisonment for the offense because the defendant was unrepresented by counsel remains invalid for purposes of increasing a term of imprisonment for a subsequent conviction under a repeat-offender statute. Id. at 531-32. Thereafter, on December 18, Begley's counsel and the district attorney stipulated that the state did not have sufficient proof of Begley's 1980 Oregon DWI conviction to comply with Baldasar v. Illinois, 446 U.S. 222, 64 L. Ed. 2d 169 (1980); that is, the state could not demonstrate that Begley was afforded the right to counsel in the prior case. See Pananen, 711 P.2d at 532. Accordingly, Begley was then sentenced in the criminal proceeding under the enhanced penalty provisions for a second-time DWI offender.

Three months after his sentencing and more than thirteen months after the Department's ten-year revocation of his driving privileges, Begley attempted to appeal the revocation in superior court. The state moved to dismiss the appeal as untimely, and the superior court granted the motion because Begley failed to seek an administrative hearing within the seven-day period allotted by AS 28.15.166(b) and failed to appeal the DMV's revocation within the thirty-day period allotted by Appellate Rule 602. This appeal followed.

II. DID THE SUPERIOR COURT ERR IN DISMISSING BEGLEY'S APPEAL?

In our view, the state is correct that Begley could have challenged the Department's determination that he was a three-time DWI offender by filing an appeal in the superior court within thirty days of the issuance of the revocation of his license on March 7, 1985. He failed to do so. We further agree with the state that Begley utterly failed to demonstrate good cause for relaxing the time limits for the taking of an appeal.

The decision whether to grant or deny an extension of the time for taking an appeal will be reversed if the superior court abused its discretion. Sheehan v. University of Alaska, 700 P.2d 1295, 1297 (Alaska 1985). A decision of the trial court which is arbitrary, capricious, manifestly unreasonable, or stems from an improper motive constitutes an abuse of discretion. Id. Here we conclude that the superior court did not abuse its discretion in dismissing Begley's untimely appeal. In light of the fact that Begley advanced no explanation for his delay in filing an appeal, we hold that the superior court did not err in refusing to relax the time limits for the taking of an appeal. See Ballard v. Stich, 628 P.2d 918, 921 (Alaska 1981); Jerrell v. Kenai Peninsula Borough School Dist., 567 P.2d 760, 766 (Alaska 1977).

AFFIRMED.

6-22-87
500
Appellate
Appellate
6-22-87
by [Signature]
[Signature]

MEMORANDUM

State of Alaska

Department of Law

TO

Andy Hemenway
Staff Counsel
House Judiciary Committee

DATE

July 27, 1989

FILE NO

TEL NO

465-3428

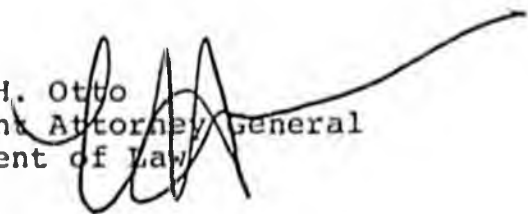
SUBJECT

HB 53 - DWI Legislation

RECEIVED

FROM

Laurie H. Otto
Assistant Attorney General
Department of Law



Attached is the latest work draft of a CS for HB 53. As we discussed, it corrects a number of technical drafting problems with the current version of CS HB 53. In addition, it addresses several issues raised by the Legislative Affairs Agency in the September 1988 Report to the Sixteenth State Legislature: Examining Court Decisions and Opinions of the Attorney General Construing Alaska Statutes. The attached draft needs some additional work; in this memo I will try to address the issues the draft leaves unresolved.

1. The purpose of the amendment on page 2, lines 17 - 22 is to overturn State v. Stagno, 739 P.2d 198 (Alaska App. 1987) (discussed on page 52 of the above-cited Legislative Affairs Agency report), and to require revocation of a driver's license for operating any vehicle while under the influence of intoxicating liquor. (In Stagno the court said a license can not be revoked for operating an airboat on land while under the influence of alcohol.) However, to be effective, the definition of motor vehicle for AS 28.15.165, AS 28.15.166, AS 28.15.181 needs to be broadened to include watercraft and aircraft. I suggest adding a new subsection to each of the cited sections that sets out the following definition: "In this section, 'motor vehicle' means a motor vehicle as defined in AS 28.40.100, or an aircraft or watercraft."

2. Page 7, line 15: the position of "previously" and "been" should be reversed so that the phrase reads "been previously".

3. During meetings between Representatives Goll and Ulmer, amendments that solved to two concerns Representative Goll had about the bill were discussed. I do not know whether Representative Ulmer agreed to amend the bill consistent with the discussion, or whether Representative Goll would support the bill even with the amendments. I am setting out the amendments that were discussed solely for your information.

a. The first issue was providing a five year, rather than a ten year, license revocation following a third conviction

for DWI/Refusal. A fourth conviction for DWI/Refusal would result in a ten year license revocation.

If the length of license revocation is reduced for a third conviction, amendments would need to be made on page 7 of the work draft to add a new section (c)(3) to read "at least five years if the person has been previously convicted twice;" and the existing (c)(3) should be renumbered (c)(4) and amended to read "at least 10 years if the person has been previously convicted more than twice".

As a result of this change, an amendment would also need to be made on page 10 by adding a new paragraph (B) on line 7 to read "(B) for the final two years during which the license was revoked if the person has been previously convicted twice" and the existing (B) should be renumbered as (C) and amended to read "for the final five years during which the license was revoked if the person has not been previously convicted more than three times, and the court determines that the person has successfully completed an alcoholism education and rehabilitation treatment program".

Finally, on page 10, line 12, "three" should be changed to "four".

b. The second issue was removal of the felony penalties for DWI/Refusal from the bill. This would mean deleting the phrase "except as provided in (c) of this section" on page 14, line 2; deleting bill section 23 on page 15; deleting bill section 26 on page 16; and deleting page 17, lines 16 - 20. If, after removing the felony penalties, mandatory misdemeanor sentences are desired, the penalties should be set out on page 14 following line 14, and on page 16 following line 24.

3. Page 12, lines 13 - 14: The legislative drafter, on his own initiative, renamed this section to be "DRIVING IN VIOLATION OF LICENSE OR PRIVILEGE TO DRIVE." We would prefer that the section remain named "DRIVING WHILE LICENSE CANCELLED, SUSPENDED, REVOKED, OR IN VIOLATION OF LIMITATION" (as it is under current law) because (a) it makes it easier for practitioners if the names of crimes stay consistent over the years; and (b) the Departments of Law, Public Safety, and Corrections, as well as the Court System, all have computer systems set up around the crime being called "driving while license cancelled, suspended or revoked" and it doesn't make sense for everyone to have to go to the expense of redoing the computer systems over the name of a section that doesn't need to be changed.

4. Page 13, line 3, following "AS 28.15.181(c)(1)," add "or if the person was driving in violation of a limited license under AS 28.15.201(d)". This change is necessary for consistency with page 13, lines 7 - 12, and together, the changes have the effect

Andy Hemenway

July 27, 1989

Page 3

of overturning State v. Robertson, 749 P.2d 902 (Alaska App. 1988)(discussed on page 54 of the September 1988 Legislative Affairs Agency report cited above).

5. Page 18, lines 24 - 25: I am concerned that this definition will be interpreted narrowly as including only aircraft or watercraft, when the intent is to add aircraft and watercraft to the AS 28.40.100 definition of motor vehicle. It would be more clear if the sentence read "In AS 28.35.030 - 28.35.039, 'motor vehicle' means a motor vehicle as defined in AS 28.40.100, or an aircraft or watercraft."

Attachment

cc: The Honorable Fran Ulmer
The Honorable Peter Goll

LHO:me-106

NOTES RE DWI FINES IN OTHER STATES:

CALIFORNIA:

	<u>Non-injury cases</u>	<u>Injury cases</u>
1st offense	\$390 - \$1000	\$390 - \$1000
2nd offense	" "	\$390 - \$5000
3rd offense	" "	\$1015 - \$5000
all subsequent offenses	" "	" "

IDAHO:

	<u>Non-injury cases</u>	<u>Injury cases</u>
1st offense	Up to \$1000 max	Up to \$5000 max
2nd offense	Up to \$2000 max	Up to \$5000 max
3rd offense	Up to \$3000 max	Up to \$5000 max
all subsequent offenses	" "	" "

(No mandatory minimum fine in Idaho.)

MONTANA:

1st offense	\$100 - \$500
2nd offense	\$300 - \$500
3rd offense	\$500 - \$1000
all subsequent offenses	" "

NEVADA:

\$200 - \$1000
\$500 - \$1000
\$2000 - \$5000
" "

OREGON:

1st (and all subsequent) offenses: Up to \$2500 max; no minimum.

DWI FINES IN OTHER STATES (cont):

WASHINGTON:

	<u>Non-injury cases</u>	<u>Injury Cases</u>
1st offense	\$250 - \$1000	\$250 - \$10,000
2nd offense	\$500 - \$2000	\$500 - \$10,000
all subsequent offenses	" "	" "

FISCAL NOTE

REQUEST:

Revision Date: 11/28/89
Title: An Act relating to privilege to drive ...
Sponsor: Rep. Ulmer
Requestor: House Judiciary

Agency Affected: Public Safety
BRU: Motor Vehicles
Component: _____

EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not included)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

It is anticipated there will be a slight increase in the number of requests for limited licenses. This will be handled by the Driver Improvement office with current staff.

Prepared by: Bill Brown
Division: Motor Vehicles

Phone: 465-4335
Date: 11/28/89

Approved by Commissioner: D.A.H. Arthur English
Agency: Department of Public Safety

Date: 11-29-89
Page 1 of 1

1989

FISCAL NOTE

REQUEST:

Revision Date: 1-10-90
Title: An act relating to drunk driving penalties
Sponsor: Rep. Ulmer
Requestor: _____

Agency Affected: Department of Corrections
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL						
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

see Attached

Susan E. Knighton

Prepared by: Susan E. Knighton, Director Phone: 465-3376
Division: Administrative Services Date: 1-12-90
Susan Humphrey Barnett

Approved by Commissioner: _____ Date: 1-12-90
Agency: Department of Corrections

Distribution (by preparer):

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

OFFENSE	ESTIMATED # PERSONS	CURRENT LAW			TOTAL DAYS
		CURRENT LAW	LESS GOOD TIME	DAYS SERVED	
1st DWI	2253	3	0	3	6759
2nd DWI	647	20	-7	13	8411
3rd DWI	257	45	-15	30	7710
4th DWI	76	149	-50	99	7524
5th DWI	24	120	-40	80	1920
6th OR MORE	14	180	-60	120	1680
					34004
DWLR/DWLS 1/NON-DWI	169	10	-3	7	1183
DWLR/DWLS 2/NON-DWI	169	10	-3	7	1183
DWLR/DWLS DWI-1	74	30	-10	20	1480
DWLR/DWLS DWI-2 OR MORE	160	90	-30	60	9600
					13446
					60896

CS HB 53 (JUD)

OFFENSE	ESTIMATED # PERSONS	NEW LAW	CURRENT LAW		TOTAL DAYS
			LESS GOOD TIME	DAYS SERVED	
1st DWI	2253	3	0	3	6759
2nd DWI	647	20	-7	13	8411
3rd DWI	257	60	-20	40	10280
4th DWI	76	120	-40	80	6080
5th DWI	24	240	-80	160	3840
6th OR MORE	14	360	-120	240	3360
					38730
DWLR/DWLS 1/NON-DWI	169	10	-3	7	1183
DWLR/DWLS 2/NON-DWI	169	10	-3	7	1183
DWLR/DWLS DWI-1	74	20	-7	13	962
DWLR/DWLS DWI-2 OR MORE	160	30	-10	20	3200
					6528
					51786

OFFENSE	CURRENT	CS HB 53 (JUD)
1st DWI	6759	6759
2nd DWI	8411	8411
3rd DWI	7710	10280
4th DWI	7524	6080
5th DWI	1920	3840
6th OR MORE	1680	3360
	34004	38730
DWLR/DWLS 1/NON-DWI	1183	1183
DWLR/DWLS 2/NON-DWI	1183	1183
DWLR/DWLS DWI-1	1480	962
DWLR/DWLS DWI-2 OR MORE	9600	3200
	13446	6528
	60896	51786

OFFENSE	CURRENT	CS HB 53 (JUD)	DIFFERENCE
1st DWI	\$540,787.59	\$540,787.59	\$0.00
2nd DWI	\$672,964.11	\$672,964.11	\$0.00
3rd DWI	\$616,877.10	\$822,502.80	-\$205,625.70
4th DWI	\$601,995.24	\$486,460.80	(\$115,534.44)
5th DWI	\$153,619.20	\$307,238.40	\$153,619.20
6th OR MORE	\$134,416.80	\$268,833.60	\$134,416.80
DWLR/DWLS 1/NON-DWI	\$64,047.62	\$64,047.62	\$0.00
DWLR/DWLS 2/NON-DWI	\$64,047.62	\$64,047.62	\$0.00
DWLR/DWLS DWI-1	\$80,127.20	\$52,082.68	(\$28,044.52)
DWLR/DWLS DWI-2 OR MORE	\$519,744.00	\$173,248.00	(\$346,496.00)

\$3,586.74

Original sponsor(s): REP. ULMER, Koponen, Collins

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 53 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the privilege to drive, driver
7 licensing, driving while intoxicated, and other
8 procedures and matters related to driving and operat-
9 ing aircraft and watercraft and the revocation of
10 driving privileges; amending Alaska Rules of Appel-
11 late Procedure 603 and 611(d); and providing for an
12 effective date."

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

14 * Section 1. AS 28.05.011 is amended to read:

15 Sec. 28.05.011. DUTY OF COMMISSIONER TO ADOPT REGULATIONS. The
16 commissioner shall, unless otherwise provided by statute, adopt regu-
17 lations in compliance with the Administrative Procedure Act (AS 44.62)
18 necessary to carry out the provisions of this title and other statutes
19 the administration of which is vested in the department. The regula-
20 tions must include, but are not limited to:

21 (1) rules of the road relating to the driving, stopping,
22 standing, parking, and other conduct of vehicles, to pedestrians, and
23 to official traffic control devices;

24 (2) minimum equipment for vehicles, including, but not
25 limited to, minimum standards of compliance to be met by manufacturers
26 and vehicle sales and repairs businesses;

27 (3) inspection of vehicles, and the removal of vehicles
28 from areas of public use when they are found to be in a defective or
29 unsafe condition;

1 (4) registration, titling, transfer, and abandonment of
2 vehicles;

3 (5) licensing of drivers of vehicles and procedures for
4 obtaining limited license privileges;

5 (6) financial responsibility relating to vehicles;

6 (7) management of records of the department required for
7 the administration of this title and regulations adopted under this
8 title, including provisions for ensuring the accuracy of information
9 contained in automated and manual information retrieval systems;

10 (8) [REPEALED;

11 (9)] definitions of words and phrases used in this title
12 and in regulations adopted under this title unless otherwise provided
13 by statute;

14 (9) [(10)] registration of motor vehicle, trailer, and
15 semi-trailer dealers; and

16 (10) [(11)] certification and regulation of junk yards.

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

18 (a) If a chemical test administered under AS 28.35.031(a) to a
19 person operating [DRIVING] a motor vehicle or aircraft [FOR WHICH A
20 DRIVER'S LICENSE IS REQUIRED] produces a result described in AS 28.-
21 35.030(a)(2) or if a person under arrest for operating [DRIVING] a
22 motor vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED]
23 refuses to submit to a chemical test under AS 28.35.031(a), a law
24 enforcement officer shall read a notice and deliver a copy to the
25 person. The notice must advise that

26 (1) the department intends to revoke the person's driver's
27 license, [OR NONRESIDENT] privilege to drive or privilege to obtain a
28 license, or refuse to issue an original license to the person;

29 (2) the person has the right to administrative review of

1 the revocation or determination not to issue an original license;

2 (3) if the person has a driver's license or a nonresident
3 privilege to drive, the notice itself is a temporary driver's license
4 that expires seven days after it is delivered to the person;

5 (4) revocation of the person's driver's license, [OR NON-
6 RESIDENT] privilege to drive, or privilege to obtain a license, or a
7 determination not to issue an original license takes [SHALL TAKE]
8 effect-seven days after delivery of the notice to the person [UPON
9 EXPIRATION OF THE TEMPORARY DRIVER'S LICENSE] unless the person,
10 within seven days, requests an administrative review.

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

12 (c) The department shall revoke the person's license, privilege
13 to drive, or privilege to obtain a license, or refuse to issue an
14 original license, effective seven days after delivery to the person of
15 the notice required under (a) of this section, upon receipt of a sworn
16 report of a law enforcement officer

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

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

22 (3) describing the circumstances surrounding the arrest and
23 the grounds for the officer's belief that the person was intoxicated
24 while operating a motor vehicle or aircraft.

25 * Sec. 4. AS 28.15.165(d) is amended to read:

26 (d) The period of revocation of a driver's license, privilege to
27 drive, or privilege to obtain a license by the department under this
28 section shall be for the appropriate minimum period for court revoca-
29 tions under AS 28.15.181(c). A department hearing officer may grant

1 limited license privileges in accordance with the standards set out in
2 AS 28.15.201 to a person whose driver's license or nonresident privi-
3 lege to drive was revoked under this section.

4 * Sec. 5. AS 28.15.166(a) is amended to read:

5 (a) A person who has received a notice under AS 28.15.165(a) may
6 make a written request for administrative review of the department's
7 action under AS 28.15.165(c) or for limited license privileges under
8 AS 28.15.165(d). If the person's driver's license has not been previ-
9 ously surrendered to the department, it shall be surrendered to the
10 department at the time the request for review is made.

11 * Sec. 6. AS 28.15.166(b) is amended to read:

12 (b) A request for review of the department's revocation under
13 AS 28.15.165 shall be made within seven days after receipt of the
14 notice under AS 28.15.165 or the right to review is waived and the
15 action of the department under AS 28.15.165(c) is final. If a written
16 request for a review is made after expiration of the seven-day period,
17 and if it is accompanied by the applicant's verified statement ex-
18 plaining the failure to make a timely request for a review, the de-
19 partment shall receive and consider the request. If the department
20 finds that the person was unable to make a timely request because of
21 lack of actual notice of the revocation or because of factors of
22 physical incapacity such as hospitalization or incarceration, the
23 department shall waive the period of limitation, reopen the matter,
24 and grant the review request. An initial request for limited license
25 privileges may be made at any time. Subsequent requests for limited
26 license privileges may not be made unless the applicant demonstrates a
27 significant change in circumstances.

28 * Sec. 7. AS 28.15.166(g) is amended to read:

29 (g) The hearing for review of a revocation by the department

1 under AS 28.15.165 [UNDER THIS SECTION] shall be limited to the issues
2 of whether the arresting officer had reasonable grounds to believe
3 that the person was operating [DRIVING] a motor vehicle or aircraft
4 while intoxicated and whether

5 (1) the person refused to submit to a chemical test under
6 AS 28.35.031(a) after being advised that refusal would result in the
7 suspension, revocation, or denial of the person's license, [OR NON-
8 RESIDENT] privilege to drive, or privilege to obtain a license, and
9 that the refusal is a misdemeanor; or

10 (2) the chemical test authorized under AS 28.35.031(a) and
11 administered to the person produced a result described in AS 28.35.-
12 030(a)(2).

13 * Sec. 8. AS 28.15.166(j) is amended to read:

14 (j) If the issues set out in (g) of this section are determined
15 in the affirmative by a preponderance of the evidence, the hearing
16 officer shall sustain the action of the department. If one or more of
17 the issues is determined in the negative, the department's revocation
18 action shall be rescinded.

19 * Sec. 9. AS 28.15.166(n) is repealed and reenacted to read:

20 (n) The filing of an appeal under (m) of this section or a
21 petition for review does not automatically stay the department's order
22 or revocation. The court may grant a stay of the order or revocation
23 only upon a motion and hearing, and upon a finding that there is a
24 reasonable probability that the petitioner will prevail on the merits
25 and that the petitioner will suffer irreparable harm if the order is
26 not stayed.

27 * Sec. 11. AS 28.15.181(a) is amended to read:

28 (a) Conviction of any of the following offenses is grounds for
29 the immediate revocation of a driver's license, privilege to drive, or

1 privilege to obtain a license:

2 (1) manslaughter or negligent homicide resulting from
3 driving a motor vehicle;

4 (2) a felony in the commission of which a motor vehicle is
5 used;

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

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

11 (5) operating [DRIVING] a motor vehicle or aircraft while
12 intoxicated;

13 (6) reckless driving;

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

16 (8) refusal to submit to a chemical test under AS 28.35.032
17 while under arrest for operating a motor vehicle or aircraft while
18 intoxicated;

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

21 * Sec. 11. AS 28.15.181(b) is amended to read:

22 (b) A court convicting a person of an offense described in
23 (a)(1) - (4), (6), or (7) of this section shall revoke that person's
24 driver's license, privilege to drive, or privilege to obtain a license
25 for not less than 30 days for the first conviction, unless the court
26 determines that the person's ability to earn a livelihood would be
27 severely impaired and a limitation under AS 28.15.201 can be placed on
28 the license that will enable the person to earn a livelihood without
29 excessive danger to the public. If a court limits a person's license

1 under this subsection, it shall do so for not less than 60 days. Upon
2 a subsequent conviction of a person for any offense described in
3 (a)(1) - (4), (6), or (7) of this section occurring within 10 years
4 after a prior conviction, the court shall revoke the person's license,
5 privilege to drive, or privilege to obtain a license and may not grant
6 the person limited license privileges for the following periods:

- 7 (1) not less than one year for the second conviction; and
8 (2) not less than three years for a third or subsequent
9 conviction.

10 * Sec. 12. AS 28.15.181(c) is amended to read:

11 (c) A court convicting a person of an offense described in
12 (a)(5) or (8) of this section arising out of the operation of a motor
13 vehicle or aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED] shall
14 revoke that person's driver's license, privilege to drive, or privi-
15 lege to obtain a license. The revocation may be concurrent with or
16 consecutive to an administrative revocation under AS 28.15.165. The
17 court may not, except as provided in AS 28.15.201 [(e) OF THIS SEC-
18 TION], grant limited license privileges during the minimum period of
19 revocation. The minimum periods of revocation are [FOR THE FOLLOWING
20 PERIODS]:

21 (1) at least 90 days if the person has not been previously
22 convicted;

23 (2) at least one year if the person has been previously
24 convicted once;

25 (3) at least five years if the person has been previously
26 convicted twice;

27 (4) at least 10 years if the person has been previously
28 convicted more than twice (NOT LESS THAN 90 DAYS IF, WITHIN THE PRE-
29 CEDING 10 YEARS, THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN

1 OFFENSE

2 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

3 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
4 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
5 (a)(5) OR (8) OF THIS SECTION;

6 (2) NOT LESS THAN ONE YEAR IF, WITHIN THE PRECEDING 10
7 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF ONE OFFENSE

8 (A) DESCRIBED IN (a)(5) OR (8) OF THIS SECTION; OR

9 (B) UNDER A LAW OR ORDINANCE IN ANOTHER JURISDICTION
10 WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN OFFENSE DESCRIBED IN
11 (a)(5) OR (8) OF THIS SECTION;

12 (3) NOT LESS THAN 10 YEARS IF, WITHIN THE PRECEDING 10
13 YEARS, THE PERSON HAS BEEN PREVIOUSLY CONVICTED OF MORE THAN ONE OF
14 THE FOLLOWING OFFENSES OR HAS MORE THAN ONCE BEEN PREVIOUSLY CONVICTED
15 OF ONE OF THE FOLLOWING OFFENSES:

16 (A) AN OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS
17 SECTION; OR

18 (B) AN OFFENSE UNDER ANOTHER LAW OR ORDINANCE IN
19 ANOTHER JURISDICTION WITH ELEMENTS SUBSTANTIALLY SIMILAR TO AN
20 OFFENSE DESCRIBED IN (a)(5) OR (8) OF THIS SECTION].

21 * Sec. 13. AS 28.15.181(d) is amended to read:

22 (d) A court convicting a person of an offense described in
23 (a)(9) of this section shall revoke that person's driver's license,
24 privilege to drive, or privilege to obtain a license for not less than
25 the minimum period under AS 28.15.291(b)(4) [AS 28.15.291(c)].

26 * Sec. 14. AS 28.15.181(f) is amended to read:

27 (f) In [FOR PURPOSES OF] this section, "previously convicted"
28 means having been convicted in this or another jurisdiction, within 10
29 years preceding the date of the present offense, of operating a motor

1 vehicle, aircraft, or watercraft while intoxicated under AS 28.35.030
2 or another law or ordinance with substantially similar elements, or of
3 refusal to submit to a chemical test under AS 28.35.032 or another law
4 or ordinance with substantially similar elements; convictions for both
5 operating a motor vehicle, aircraft, or watercraft [DRIVING] while
6 intoxicated and for refusal to submit to a chemical test of breath
7 [UNDER AS 28.35.031(a)], if arising out of a single transaction and a
8 single arrest, are considered one previous conviction.

9 * Sec. 15. AS 28.15.201(a) is amended to read:

10 (a) A court of competent jurisdiction, or a hearing officer
11 under AS 28.15.165, may, for good cause, impose limitations upon the
12 driver's license of a person that will enable the person to earn a
13 livelihood without excessive risk or danger to the public. However,
14 no limitation may be placed upon a driver's license until after a
15 review has been made of the person's driving record and other relevant
16 information, nor may a limitation be imposed when a statute specifi-
17 cally prohibits the limitation of a license for a violation of its
18 provisions. In determining whether to grant limited license privi-
19 leges, a court or hearing officer may consider all the relevant facts,
20 including whether the person

21 (1) is enrolled in an alcoholism treatment program in which
22 the person receives antabuse or a similar chemical substance intended
23 to produce an aversion to alcohol in the treatment of alcoholism;

24 (2) is ordered to operate a motor vehicle only with an
25 ignition interlock device or similar equipment designed to prevent a
26 motor vehicle from being operated by a person who has consumed an
27 alcoholic beverage;

28 (3) is participating in a program of random testing de-
29 signed to detect the presence of alcohol.

1 * Sec. 16. AS 28.15.201(b) is amended to read:

2 (b) A court or hearing officer imposing a limitation under this
3 section shall

4 (1) require the surrender of the driver's license; and

5 (2) issue to the licensee a certificate valid for the
6 duration of the limitation.

7 * Sec. 17. AS 28.15.201 is amended by adding new subsections to read:

8 (d) A court revoking a driver's license under AS 28.15.181(c),
9 or a hearing officer revoking a driver's license under AS 28.15.-
10 165(c), may grant limited license privileges (1) only if the court or
11 the hearing officer determines that the person's ability to earn a
12 livelihood would be severely impaired and a limitation under (a) of
13 this section can be placed on the license that will enable the person
14 to earn a livelihood without excessive danger to the public; (2) to
15 the person (A) for the final 60 days during which the license was
16 revoked if the person has not been previously convicted more than
17 once; (B) for the final two years during which the license was revoked
18 if the person has not been previously convicted more than twice; (C)
19 for the final five years during which the license was revoked if the
20 person has not been previously convicted more than five times, and the
21 court determines that the person has successfully completed an alco-
22 holism education and rehabilitation treatment program. The court may
23 not grant limited license privileges if the person has been previously
24 convicted more than six times.

25 (e) In this section, "previously convicted" means having been
26 convicted in this or another jurisdiction, within 10 years preceding
27 the date of the present offense, of operating a motor vehicle,
28 aircraft, or watercraft while intoxicated under AS 28.35.030 or
29 another law or ordinance with substantially similar elements, or of

1 refusal to submit to a chemical test under AS 28.35.032 while under
2 arrest for operating a motor vehicle, aircraft, or watercraft or
3 another law or ordinance with substantially similar elements.

4 * Sec. 18. AS 28.15.211(a) is amended to read:

5 (a) Except for a point system suspension or revocation under
6 AS 28.15.221 - 28.15.241 and unless provided otherwise by law, and
7 unless the suspension or revocation was for a cause that has been
8 removed, a person whose driver's license, [OR] privilege to drive, or
9 privilege to obtain a license [A MOTOR VEHICLE IN THIS STATE] has been
10 suspended or revoked may not apply for a new license, and [NOR MAY]
11 the person's driving privilege may not be restored, until the expira-
12 tion of

13 (1) one month from the date on which the license, privilege
14 to drive, or privilege to obtain a license was suspended or revoked
15 for a first conviction of the particular offense from which the sus-
16 pension or revocation resulted;

17 (2) three months from the date on which the license, privi-
18 lege to drive, or privilege to obtain a license was suspended or
19 revoked for a second conviction within 12 consecutive months of the
20 same offense from which the suspension or revocation resulted;

21 (3) one year from the date on which the license, privilege
22 to drive, or privilege to obtain a license was suspended or revoked
23 for a third or subsequent conviction within 12 consecutive months of
24 the same offense from which the suspension or revocation resulted.

25 * Sec. 19. AS 28.15.211(b) is amended to read:

26 (b) A limitation, suspension, or revocation of a driver's li-
27 cense, privilege to drive, or privilege to obtain a license imposed by
28 a court takes effect on the date of final judgment, except that if
29 another limitation, suspension, or revocation [OF LICENSE] is in

1 effect on the date of final judgment, the effective date of the last
2 imposed limitation, suspension, or revocation is at the end of the
3 last day of the previous limitation, suspension, or revocation unless
4 the court specifies otherwise.

5 * Sec. 20. AS 28.15.221 is amended to read:

6 Sec. 28.15.221. POINT SYSTEM. (a) For the purpose of identify-
7 ing habitually reckless or negligent drivers and habitual or frequent
8 violators of traffic laws, the commissioner shall adopt regulations
9 establishing a uniform system for the suspension, revocation, limita-
10 tion, or denial of a driver's license, privilege to drive, or privi-
11 lege to obtain a license [OR DRIVING PRIVILEGE] by assigning demerit
12 points for convictions for violations of traffic laws that are re-
13 quired to be reported to the department under AS 28.15.191 and AS 28.-
14 37.130.

15 (b) The regulations adopted under (a) of this section shall
16 include a designated level of point accumulation which identifies
17 drivers who are habitually reckless or negligent or who are habitual
18 or frequent violators of traffic laws, so as to show a disrespect for
19 traffic laws and a disregard for the safety of other persons. In
20 formulating the point system authorized by this section, the commis-
21 sioner shall, in the interest of interstate uniformity, provide for
22 suspension, revocation or denial of a driver's license, privilege to
23 drive, or privilege to obtain a license [OR PRIVILEGE] for an accumu-
24 lation of 12 or more points as a result of offenses committed during
25 any consecutive 12-month period or 16 or more points as a result of
26 offenses committed during any 24-month period.

27 * Sec. 21. AS 28.15.291 is repealed and reenacted to read:

28 Sec. 28.15.291. DRIVING WHILE LICENSE CANCELED, SUSPENDED,
29 REVOKED, OR IN VIOLATION OF A LIMITATION. (a) A person is guilty of

1 a class A misdemeanor if the person

2 (1) drives a motor vehicle on a highway or vehicular way or
3 area at a time when that person's driver's license, privilege to
4 drive, or privilege to obtain a license has been canceled, suspended,
5 or revoked in this or another jurisdiction; or

6 (2) drives in violation of a limitation placed upon that
7 person's license or privilege to drive in this or another jurisdic-
8 tion.

9 (b) Upon conviction under (a) of this section, the court

10 (1) shall impose a minimum sentence of imprisonment

11 (A) if the person has not been previously convicted,
12 of not less than 10 days with 10 days suspended, including a
13 mandatory condition of probation that the defendant complete not
14 less than 80 hours of community work service;

15 (B) if the person has been previously convicted, of
16 not less than 10 days;

17 (C) if the person's driver's license, privilege to
18 drive, or privilege to obtain a license was revoked under circum-
19 stances described in AS 23.15.181(c)(1), or if the person was
20 driving in violation of a limited license issued under AS 28.15.-
21 201(d) following that revocation, of not less than 20 days with
22 10 days suspended, and a fine of not less than \$500, including a
23 mandatory condition of probation that the defendant complete not
24 less than 80 hours of community work service;

25 (D) if the person's driver's license, privilege to
26 drive, or privilege to obtain a license was revoked under circum-
27 stances described in AS 28.15.181(c)(2), (3), or (4) or if the
28 person was driving in violation of a limited license issued under
29 AS 28.15.201(d) following that revocation, of not less than 30

1 days and a fine of not less than \$1,000;

2 (2) may impose additional conditions of probation;

3 (3) may not

4 (A) suspend execution of sentence;

5 (B) grant probation except on condition that the
6 person serve the minimum imprisonment provided in (1) of this
7 subsection;

8 (C) suspend imposition of sentence; and

9 (4) shall revoke the person's license, privilege to drive,
10 or privilege to obtain a license, and the person may not be issued a
11 new license nor may the privilege to drive or obtain a license be
12 restored for an additional period of not less than 90 days after the
13 date that the person would have been entitled to restoration of driv-
14 ing privileges.

15 (c) In this section, "previously convicted" means having been
16 convicted in this or another jurisdiction, within 10 years preceding
17 the date of the present offense, of a violation of this section or
18 another law or ordinance with substantially similar elements.

19 * Sec. 22. AS 28.35.030(b) is repealed and reenacted to read:

20 (b) Driving while intoxicated is a class A misdemeanor. Upon
21 conviction

22 (1) the court shall impose a minimum sentence of imprison-
23 ment of

(A) not less than 72 consecutive hours and a fine of
not less than \$250 if the person has not been previously convict-
ed;

(B) not less than 20 days and a fine of not less than
\$500 if the person has been previously convicted once;

(C) not less than 60 days and a fine of not less than

1 \$1,000 if the person has been previously convicted twice;

2 (D) not less than 120 days and a fine of not less than
3 \$2,000 if the person has been previously convicted three times;

4 (E) not less than 240 days and a fine of not less than
5 \$3,000 if the person has been previously convicted four times;

6 (F) not less than 360 days and a fine of not less than
7 \$4,000 if the person has been previously convicted more than four
8 times;

9 (2) the court may not

10 (A) suspend execution of sentence;

11 (B) grant probation except on condition that the
12 person serve the minimum imprisonment under (1) of this subsec-
13 tion;

14 (C) suspend imposition of sentence;

15 (3) the court shall revoke the person's driver's license,
16 privilege to drive, or privilege to obtain a license under AS 28.15.-
17 181, and may order the motor vehicle, aircraft, or watercraft that was
18 used in commission of the offense to be forfeited under AS 28.35.036.

19 * Sec. 23. AS 28.35.030(h) is amended to read:

20 (h) In this section,

21 (1) "operate an aircraft" means to use, navigate, pilot, or
22 taxi an aircraft in the airspace over this state, or upon the land or
23 water inside this state;

24 (2) "operate a watercraft" means to navigate or use a
25 vessel used or capable of being used as a means of transportation on
26 water for recreational or commercial purposes on all waters, fresh or
27 salt, inland or coastal, inside the territorial limits or under the
28 jurisdiction of the state;

29 (3) "previously convicted" means having been convicted in

1 this or another jurisdiction, within 10 years preceding the date of
2 the present offense, of operating a motor vehicle, aircraft, or water-
3 craft while intoxicated under this section or another law or ordinance
4 with substantially similar elements, or of refusal to submit to a
5 chemical test under AS 28.35.032 or another law or ordinance with
6 substantially similar elements; convictions for both operating a motor
7 vehicle, aircraft, or watercraft while intoxicated and for refusal to
8 submit to a chemical test of breath, if arising out of a single trans-
9 action and a single arrest, are considered one previous conviction.

10 * Sec. 24. AS 28.35.030 is amended by adding new subsections to read:

11 (i) The court shall order a person convicted under this section
12 to satisfy the screening, evaluation, referral, program, and fee
13 requirements of an agency authorized by the court to make referrals
14 for rehabilitative treatment.

15 (j) A program of inpatient treatment may be required by the
16 referral agency under (i) of this section only if authorized in the
17 judgment, and may not exceed the maximum term of inpatient treatment
18 specified in the judgment. A person who has been referred for inpa-
19 tient treatment under this subsection may make a written request to
20 the sentencing court asking the court to review the referral. The
21 request for review shall be made within seven days of the agency's
22 referral, and shall specifically set out the grounds upon which the
23 request for review is based. The court may order a hearing on the
24 request for review.

25 (k) If a person fails to satisfy the requirements of an au-
26 thorized agency under (j) of this section, the court

27 (1) may impose any portion of a suspended sentence;

28 (2) may punish the failure as contempt of court under
29 AS 09.50.010 or as a violation of a condition of probation;

1 (3) shall order the revocation or suspension of the per-
2 son's driver's license, privilege to drive, and privilege to obtain a
3 license until the requirements are satisfied.

4 * Sec. 25. AS 28.35.032(a) is amended to read:

5 (a) If a person under arrest refuses the request of a law en-
6 forcement officer to submit to a chemical test under AS 28.35.031(a),
7 after being advised by the officer that the refusal will, if that
8 person was arrested while operating [OR DRIVING] a motor vehicle or
9 aircraft [FOR WHICH A DRIVER'S LICENSE IS REQUIRED], result in the
10 denial or revocation of the license or nonresident privilege to drive,
11 that the refusal may be used against the person in a civil or criminal
12 action or proceeding arising out of an act alleged to have been com-
13 mitted by the person while operating [OR DRIVING] a motor vehicle, [OR
14 OPERATING] an aircraft or a watercraft while intoxicated, and that the
15 refusal is a crime [MISDEMEANOR], a chemical test may not be given,
16 except as provided by AS 28.35.035.

17 * Sec. 26. AS 28.35.032(g) is repealed and reenacted to read:

18 (g) Upon conviction under this section

19 (1) the court shall impose a minimum sentence of imprison-
20 ment of

21 (A) not less than 72 consecutive hours and a fine of
22 not less than \$250 if the person has not been previously convict-
23 ed;

24 (B) not less than 20 days and a fine of not less than
25 \$500 if the person has been previously convicted once;

26 (C) not less than 60 days and a fine of not less than
27 \$1,000 if the person has been previously convicted twice;

28 (D) not less than 120 days and a fine of not less than
29 \$2,000 if the person has been previously convicted three times;