

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6178 HOUSE TRANSPORTATION

582

	Past Year	Current Year
<u>CLIENT CHARACTERISTICS</u>		
Sex:		
Male	90	64
Female	23	8
Race:		
Caucasian	16	15
Black	0	0
Native	95	49
Other	0	1
Unknown	2	7
Employment Status:		
Employed	68	27
Unemployed	41	37
Unknown	4	8

CLIENT CHARACTERISTICS CONT.:

	Past Year	Current Year
Age:		
Under 19	3	9
20 - 29.	74	34
30 - 39.	22	19
* 40 - 44.	12	4
44 - 49.		5
** 50 - 59.	12	1
60 and Older		—
 Marital Status:		
Married.	16	8
Divorced	7	4
Separated.	4	4
Widowed.	1	1
Single	81	44
Unknown.	4	11

* past year's figure only includes 40-49

** past year's figure only includes 50 and above

	Past Year	Current Year
<u>CLIENT CHARACTERISTICS CONT.:</u>		
Family Income:		
\$45,000 +		1
\$40,000 - 45,000.		1
\$35,000 - 40,000.		1
\$30,000 - 35,000.		3
\$25,000 - 30,000.		3
* \$20,000 - 25,000.	24	5
\$15,000 - 20,000.	10	5
\$10,000 - 15,000.	10	11
\$5,000 - 10,000	19	7
\$5,000 or less.	46	21
Unknown	4	14
Education:		
0-11.	28	17
12 or GED	64	33
12+	14	7
College Degree.	2	7
Unknown	5	8

* past year's figure only includes \$20,000+

KETCHIKAN ALCOHOL SAFETY ACTION PROGRAM

ANNUAL REPORT

1986

RECEIVED
ASAP

JAN 19 1987

KETCHIKAN OVERVIEW

1986 PROGRAM STATISTICS

NEW CASES

During 1986, there were 410 new cases opened, an increase of 20% over 1985. A total of 328 screenings were completed.

REFERRAL SOURCES

This year, reports showed that 100% of all referred cases originated in the Ketchikan District Court. This increase reflects a change in court procedure in the event a case is heard in Craig or another out-lying area. These cases are being referred directly to programs near the city in which they are being heard.

STATE/MUNICIPALITY CASES

In 1986, the City of Ketchikan Police Department made 76 arrests for DWI, while the Alaska State Troopers made 98 similar arrests, for a total of 174 DWI arrests. This reflects a decrease of 30% over last year's DWI arrests.

CHARGE WHEN REFERRED TO KETCHIKAN ASAP

DWI charges made up 47% of the caseload in the Ketchikan ASAP office in 1986. There were 154 other alcohol related charges as compared to 186 in 1985. The DWI charges reflected a 10% decrease in comparison to 1985. The other alcohol related offenses represented 53% of the cases screened in 1986 compared to 57% in 1985.

CLIENT CHARACTERISTICS

PERSONAL CHARACTERISTICS

Approximately 84% of the 328 clients screened in the Ketchikan ASAP office were males and 16% were females. The racial origin consisted of 64% Caucasian, 35% Alaska Native, and 1% Other or Unknown. The highest concentration in the Age Category was found in the 20-29 Group, with 38% of the total falling into this category. The next highest concentration was found in the 19/Under Group, with 77 or 23% falling into this bracket, and the third highest concentration was in the 30-39 Group, with 75 or 22% of the clients screened.

Employment status questionnaires revealed 56% Employed, 42% Unemployed, and 2% Unknown. The number of clients earning between \$5,000 and \$45,000 per year reflected only 29% of the total clients screened while the number of clients earning less than \$5,000 or whose income was unknown represented 71% of the clients screened.

It is this preparer's conclusion that these employment statistics represent or closely parallel the continuing downturn in the economy in and around Ketchikan.

The marital status questionnaire revealed that 20% of the clients screened were married-equal to the 1985 stats, 15% were divorced-a 2% decrease over 1985, 6% were separated or widowed-consistent with last year, and 59% were single-and increase of 2% over last year.

PRIOR CRIMINAL RECORD

Over all the cases screened, 70% of the clients had no prior DWI conviction, 22% had one prior, 7% had two priors, and 1% had three priors. No one screened had more than three. These statistics were parallel to the ones reported in 1985.

SCREENING AND DRINKER CLASSIFICATION

Screenings were completed on 328 cases. Classified according to established procedures, approximately 66% were placed in the Problem or Presumptive Problem category. 34% were in the Non-Problem category.

This compares to 62% in the Problem category in 1985, and 37% in the Non-Problem category in the report.

EDUCATION AND TREATMENT REFERRALS

In keeping with established referral procedures, 111 clients classified as Non-Problem were assigned to Substance Abuse Information School. 158 clients classified as Problem Drinkers were referred to outpatient counseling while 20 were referred to inpatient treatment. The remaining clients were referred to Alcohol Education Correspondence Courses (2), AA(4), further evaluation (9), or other (1). Twenty-three were given no assignment. The majority of the 23 receiving no assignment were assigned to ASAP as a result of Minor Consuming arrests and were in for "Screening Only" at a judge's request.

CLIENT MONITORING AND FOLLOW-UP

In 1986, the Ketchikan ASAP office processed 889 follow-up reports to agencies providing services in the area of treatment. Other than standard forms, 21 written reports were filed. There were 606 letters written to clients to accomplish the desired results, an increase over 1985 but demonstrative of the difficulties encountered with notifying clients who are frequently working out of town and unable to be contacted otherwise. Affidavits were filed for 159 cases in 1986, an increase of 67% over 1985.

ASSIGNMENT COMPLETED/FOLLOW-UP

In 1986, the Ketchikan ASAP office closed 242 cases as successful completions, a 10% decrease from last year. Thirty-five cases were closed because they were opened for "Screening Only" or for other reasons.

KETCHIKAN ALCOHOL SAFETY ACTION PROGRAM

BRIEF SUMMARY

In February of 1986, the Ketchikan ASAP office received an on-site visit by Diana Mulholland of the Anchorage ASAP office. While in Ketchikan, Ms. Mulholland met with Assistant Chief of Police Ben Neff, Public Defender Carmen Gutierrez, State Trooper John Glass, District Court Magistrate Susan E. Thomsen, Area Court Administrator Kristen Carlisle and Assistant District Attorney Mark Ellis. An exit interview was held at Gateway Mental Health Center with GMH Director Wes Terwilliger and Alcohol Program Coordinator Charlie Laub present, as well as Ken Goodrich, ASAP Administrator and GMH Administrative Assistant Ann Graham.

Quarterly reports were distributed April 14, 1986, to the District Attorney's office, District Court, and the City Attorney's office. In that same month, Ken Goodrich gave a presentation to the U. S. Forest Service explaining the function of the Alcohol Safety Action Program.

For a two week period during the month of May, the KASAP office hours were reduced to four hours a day in the absence of the Administrator. Mr. Goodrich was in Anchorage attending the University of Alaska for the Annual School of Alcohol Studies and a subsequent vacation. During that period, Beth Dexter was in charge.

In June of this year, Beth Dexter resigned and was replaced the following month by Kathy Lux. During June, an ASAP Systems Conference was also conducted. Emily McKenzie of the Anchorage ASAP office held the conference. Attending were Ketchikan District Court Magistrate Susan E. Thomsen, District Court Judge G. L. Gucker, Asst. D. A. Steve West, a representative of the City of Ketchikan Police Department Patrick Orten, KADAS Coordinator Charlie Laub, Area Court Administrator Kristen Carlisle, Structured Residential Center Administrator Arlene McCary, K.I.P. Counselor, KADAS Harry Day, KADAS Outpatient Counselor Supervisor Tom Coyne, COHO-Craig Alcohol Program Counselor Dick Puckett, KADAS Board Member James Galley, KASAP Data Coordinator Beth Dexter, a representative of Families in Action Betty Wilson, Public Defender Kevin Callahan, and SOADA representative George Mundel

In November, another on-site visit was conducted by Pat Smith from the Anchorage ASAP office. No major problems were encountered but Ms. Smith gave some guidelines on client flow and suggested we implement a more formal method of reporting from treatment to KASAP on client status. While in Ketchikan, Ms. Smith met with Dan Anslinger of the Ketchikan Police Dept., Assistant D.A. Mark Ellis, John Glass of the Alaska State Troopers, and Judge G. L. Gucker of the Ketchikan District Court.

	Past Year	Current Year
<u>CASELOAD SUMMARY</u>		
New Cases Added	340	410
Screenings Completed	435	328
Screenings Transferred	21	6
Case Management Only/No Screening	0	0
Bench Warrant Reassignment to ASAP	45	14
Agency Reassignment by ASAP	86	35
Cases Closed	271	242
Affidavits Filed	95	159
<u>CASELOAD ACTIVITIES</u>		
Total Follow-Up Reports Processed	710	889
Written Reports Filed	71	21
Court Appearances	104	68
Letters Sent	148	606
<u>CLASSIFICATION SUMMARY</u>		
Screenings Completed	435	328
Problem Drinker	261	206
Presumptive Problem Drinker	8	12
Non-Problem Drinker	164	110
Unidentified/Pending	2	0
<u>STAGE OF CASE</u>		
Post Sentence	308	218
Pre-Sentence	127	104
Deferred Prosecution	0	3
Suspended Imposition of Sentence	0	2
Other	0	0

<u>SOURCE OF REQUESTED SCREENING:</u>	Past Year	Current Year
<u>KETCHIKAN Court</u>	433	328
Other Trial Courts (Alaska)	1	0
Out-of-State	1	0
Prosecution	0	0
Other	0	0

CHARGE AT TIME OF ASAP REFERRALS

	Past Year	Current Year
City DWI	72	76
State DWI	177	98
Disorderly Conduct	26	25
Mal. Destruction of Property	1	0
Shoplifting/Removal of Merchandise	0	0
Trespass	12	11
Assault	18	15
Reckless Driving (Original Charge)	3	0
Careless Driving (Original Charge)	0	0
Reduced from DWI	0	0
Drunk on Roadway	0	0
Drinking in Public	0	0
Others	126	103
No Charge	0	0

PRIOR DWI CRIMINAL CONVICTIONS

No Prior DWI	310	227
One Prior DWI	96	73
Two Prior DWIs	21	23
Three Prior DWIs	5	5
More than Three Prior DWIs	1	0
Information Not Available	2	0

<u>TREATMENT REFERRALS</u>	Past Year	Current Year
Alcohol Information School/Education	136	111
Outpatient Counseling	229	158
Inpatient Treatment	28	20
Correspondence	7	2
Alcoholics Anonymous	6	4
Evaluation	9	9
Assignment Pending	1	0
No Assignment	18	23
Other	1	1

	Past Year	Current Year
<u>CLIENT CHARACTERISTICS</u>		
Sex:		
Male	371	276
Female	64	52
Race:		
Caucasian	300	209
Black	1	0
Native	123	113
Other	10	5
Unknown	1	1
Employment Status:		
Employed	240	183
Unemployed	187	138
Unknown	8	7

	Past Year	Current Year
<u>CLIENT CHARACTERISTICS CONT.:</u>		
Family Income:		
\$45,000 +	11	6
\$40,000 - 45,000.	12	4
\$35,000 - 40,000.	5	3
\$30,000 - 35,000.	20	11
\$25,000 - 30,000.	19	8
\$20,000 - 25,000.	29	14
\$15,000 - 20,000.	24	10
\$10,000 - 15,000.	48	18
\$5,000 - 10,000	58	23
\$5,000 or less.	79	41
Unknown	132	190
Education:		
0-11.	66	76
12 or GED	232	209
12+	41	42
College Degree.	2	1
Unknown	3	0

CLIENT CHARACTERISTICS CONT.:

Past Year

Current Year

Age:

Under 19	80	77
20 - 29.	175	125
30 - 39.	104	75
40 - 44.	32	31
44 - 49.	20	14
50 - 59.	22	12
60 and Older	2	5

Marital Status:

Married.	90	68
Divorced	76	48
Separated.	16	14
Widowed.	4	3
Single	247	195
Unknown.	2	0

SEWARD ASAP
ANNUAL REPORT - 1986

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ASAP
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SEWARD ASAP
ANNUAL REPORT - 1986

NEW CASES

A total of one hundred and forty four cases were referred to the Seward ASAP office during 1986. This figure represents a 9 month total rather than a 12 month total as the Seward ASAP office was closed for 2 months during the summer due to the absence of the ASAP Administrator for maternity leave. In addition, the Seward District Court did not hold court during the month of December. The referral rate, therefore, averaged 16 new cases per month for 1986.

REFERRAL SOURCES

The main referral source for the Seward ASAP office is the Seward District Court. A few referrals come from other ASAP offices in the state, other trial courts in Alaska, and some are probation referrals that the ASAP office monitors. Ninety nine percent of the referrals are post sentence.

The Seward ASAP office and the Seward District Court continue to coordinate very smoothly. The ASAP office also monitors community work service referrals for the court. Meetings are held on an as-needed basis between the ASAP Administrator and the District Court magistrate and clerk in regards to any policy change or refinements.

CHARGES

Seventy five percent of the cases referred were for DWI charges. Three percent of the charges were for Trespass and Assault, six percent were for Reckless Driving charges (reduced from DWI) and the remaining sixteen percent were Minor Consuming, Disorderly Conduct, and Minor in Possession. Approximately forty nine percent were first offenders.

CLIENT CHARACTERISTICS

Eighty five percent of the clients screened were caucasian. Seventy four percent of these were male clients. The majority of clients were between 30 and 39 years of age and single. Sixty percent were employed, but the average wage earned was \$5,000 per year or less. Fifty six percent of those screened had a high school diploma and twenty seven percent had some college or training beyond the twelfth grade.

SCREENING AND DRINKER CLASSIFICATION

Sixty five percent of the clients screened out as problem drinkers. Thirty two percent were classified as non-problem drinkers, and three percent were unidentified. Forty two percent of the clients had previous DWI offenses.

EDUCATION AND TREATMENT REFERRALS

Twenty seven percent of those screened were referred to Alcohol Information School. Sixty five percent were referred to outpatient counselling and three percent were scheduled for an evaluation by the treatment agency to determine the degree of alcohol abuse.

CLIENT MONITORING AND FOLLOW-UP

538 follow-up reports were processed during 1986. 331 letters were sent out as part of the tracking system, and 78 affidavits were filed with the District Court. 20 cases were monitored for community service assignments for the Court as well.

ASSIGNMENT COMPLETED/TERMINATED

A total of 134 cases were closed by the ASAP office during 1986. Many of these cases were old cases that had been screened by Seward Life Action Council prior to the opening of the ASAP office and had been set up as monitor only by the ASAP administrator.

	Past Year	Current Year
<u>CASELOAD SUMMARY</u>		
New Cases Added	164	144
Screenings Completed	127	85
Screenings Transferred	7	9
Case Management Only/No Screening	37	20
Bench Warrant Reassignment to ASAP	32	16
Agency Reassignment by ASAP	9	3
Cases Closed	89	134
Affidavits Filed	118	78
<u>CASELOAD ACTIVITIES</u>		
Total Follow-Up Reports Processed	656	538
Written Reports Filed	210	340
Court Appearances	19	13
Letters Sent	486	331
<u>CLASSIFICATION SUMMARY</u>		
Screenings Completed	127	85
Problem Drinker	87	53
Presumptive Problem Drinker	6	2
Non-Problem Drinker	27	28
Unidentified/Pending	7	2
<u>STAGE OF CASE</u>		
Post Sentence	115	84
Pre-Sentence	5	1
Deferred Prosecution	1	0
Suspended Imposition of Sentence	1	0
Other	5	0

SOURCE OF REQUESTED SCREENING:

	Past Year	Current Year
<u>Seward Court</u>	110	75
Other Trial Courts (Alaska)	16	10
Out-of-State	1	0
Prosecution	0	0
Other	0	0

<u>CHARGE AT TIME OF ASAP REFERRALS</u>	Past Year	Current Y
City DWI	0	1
State DWI	85	64
Disorderly Conduct	0	0
Mal. Destruction of Property	0	0
Shoplifting/Removal of Merchandise	0	0
Trespass	0	1
Assault	0	1
Reckless Driving (Original Charge)	0	0
Careless Driving (Original Charge)	0	0
Reduced from DWI	2	5
Drunk on Roadway	0	0
Drinking in Public	0	0
Others	40	13
No Charge	0	0
<u>PRIOR DWI CRIMINAL CONVICTIONS</u>		
No Prior DWI	86	49
One Prior DWI	27	30
Two Prior DWIs	7	5
Three Prior DWIs	2	1
More than Three Prior DWIs	1	0
Information Not Available	4	0

<u>TREATMENT REFERRALS</u>	Past Year	Current Yea
Alcohol Information School/Education	27	27
Outpatient Counseling	73	40
Inpatient Treatment	0	0
Correspondence	0	0
Alcoholics Anonymous	0	0
Evaluation	25	15
Assignment Pending	2	0
No Assignment	0	2
Other	0	1

Past Year

Current Y

CLIENT CHARACTERISTICS

Sex:

Male	99	65
Female	28	20

Race:

Caucasian	109	72
Black	1	0
Native	16	11
Other	0	2
Unknown	1	1

Employment Status:

Employed	71	51
Unemployed	56	34
Unknown	0	0

CLIENT CHARACTERISTICS CONT.:

Family Income:

\$45,000 +	2	3
\$40,000 - 45,000.	2	1
\$35,000 - 40,000.	0	0
\$30,000 - 35,000.	3	0
\$25,000 - 30,000.	4	7
\$20,000 - 25,000.	8	8
\$15,000 - 20,000.	5	7
\$10,000 - 15,000.	12	13
\$5,000 - 10,000	24	18
\$5,000 or less.	28	21
Unknown	39	7

Education:

0-11.	18	9
12 or GED	44	48
12+	39	23
College Degree.	4	5
Unknown	22	0

CLIENT CHARACTERISTICS CONT.:

	Past Year	Current Yc
Age:		
Under 19	8	12
20 - 29.	50	26
30 - 39.	44	29
40 - 44.	14	5
44 - 49.	4	7
50 - 59.	5	4
60 and Older	2	2
Marital Status:		
Married.	27	24
Divorced	30	20
Separated.	9	2
Widowed.	1	0
Single	47	32
Unknown.	13	7

TO:

ELLEN MOORE

465-4362

for Sherry P...
Rep. Koppen...

1986 Democratic State Ins. (DUI's)

Anchorages District Court Only

Ketchikan

+

NOME

+

Homer

Seward

1st 9 pages

17 A.S.A.P
EM...
EMMY MCKENZIE
264-0735
FOR FBX

of DWI (primes)
growing
- more change of lienholders -

Governors Rep. for Highway
Safety
BL-MONEY 9/19 -

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I GUIDELINES FOR PROSECUTING FORFEITURE ACTIONS :
FISH, GAME AND GUIDING

A. Statutory Authority: Forfeiture in Fish, Game and Guiding Violations

Several statutes provide authority for forfeiture of equipment and illegally taken fish and game; these include AS 16.05.190, AS 16.05.195, and AS 08.54.210. The statute primarily used as a basis for in rem forfeiture of illegally used equipment is AS 16.05.195, enacted in 1974. That statute provides, in relevant part:

(a) Guns, traps, nets, fishing gear, vessels, aircraft, other motor vehicles, sleds, and other paraphernalia or gear used in or in aid of a violation of this title, or regulation promulgated under this title, be forfeited to the state

(1) upon conviction of the offender in a criminal proceeding ...or

(2) upon judgment of a court of competent jurisdiction in a proceeding in rem that an item specified above was used in or in aid of a violation of this title or regulation promulgated under it.

(b) Items classified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action.

(c) An action for forfeiture under this section may be joined with an alternative action for damages brought by the state to recover damages for the value of fish and game or parts of them...transported or possessed contrary to the provisions of this title or a regulation promulgated under it.

- (d) It is no defense that the person who had the items specified in (a) of this section in possession at the time of its use and seizure has not been convicted or acquitted in a criminal proceeding resulting from or arising out of its use.
- (e) No forfeiture may be made of an item subsequently sold to an innocent purchaser in good faith. The burden of proof as to whether the purchaser purchased the item innocently and in good faith shall be on the purchaser.
- (f) An item forfeited under this section shall be disposed of at the discretion of the department.

The legislature passed this statute partly in response to procedural questions that arose in the case State v. Graybill, 545 P.2d 629 (Alaska 1976), where forfeiture was demanded by the state in a criminal case involving illegal possession and transportation of a bear hide. Graybill had argued that it was mandatory for the state to initiate a separate in rem civil proceeding in order to seek forfeiture of the airplane used in the violation. The supreme court rejected this argument and held that under AS 16.05.190, which was the only fish and game forfeiture statute at the time, an aircraft could be forfeited in a criminal proceeding.

AS 16.05.190, which was not repealed or replaced by AS 16.05.195, provides authority for the state to seize guns, traps, nets, aircraft, etc., and provides that upon conviction of the offender of a violation of the fish and game code, the

equipment may be forfeited by court order. AS 16.05.190 differs from AS 16.05.195 in that it does not address civil in rem procedures, and it specifies that illegally taken fish and game shall be forfeited by the court upon conviction; it does not, however, address the disposition of vessels, aircraft or other equipment forfeited by a court. In contrast, AS 16.05.195 establishes that forfeited equipment "shall be disposed of at the discretion of the department" [of Fish and Game].

Generally, when bringing an in rem forfeiture action, AS 16.05.195 is the appropriate statutory authority; use AS 16.05.190 for obtaining a search and seizure warrant or for obtaining a court order disposing of illegally taken fish or game in a criminal proceeding.

In addition to the forfeiture authority provided in Title 16 for fish and game violations, AS 08.54.210(b) provides in pertinent part:

[A] person who engages in guiding or transporting activity during the period his license is suspended or revoked under this chapter [guiding chapter, Title 8, Alaska Statutes] is guilty of a felony punishable, upon conviction, by a fine or not more than \$5,000 and by imprisonment for not less than one year nor more than 3 years. In addition to punishment for a felony, all guns, fishing tackle, boats, aircraft, automobiles or other vehicles, camping gear and other equipment and paraphernalia used in, or in aid of, guiding or transporting activity engaged in during the period of suspension or revocation shall be confiscated by persons authorized to enforce this chapter. [Emphasis added]

This statute uses the term "confiscate" rather than "forfeit" but the terms have been used synonymously, State, Conservation Department v. Brown, 53 N.W.2d 859 (Mich. 1952), and thus the statute provides a separate forfeiture authority for guiding violations.

It is clear, both from the statutes discussed above and from case law, that the state has the authority to seek forfeiture of vessels, aircraft and other equipment used in violation of fish and game and some guiding statutes or regulations both in a criminal case brought against the individual or in a civil in rem action brought against the vessel or airplane itself. State v. Graybill, 545 P.2d 629 (Alaska 1976).

B. Civil In Rem Actions.

In contrast to a criminal action, which is prosecuted by the district attorney's office, a civil in rem action is brought by the attorney general. An in rem proceeding is substantially different from a criminal action, and provides certain strategic advantages. First, the in rem complaint is brought against the aircraft or vessel itself as the defendant, and no individual people need be named as defendants in the case.

Service is effected on a vessel or aircraft by actual or constructive seizure of the equipment (with a warrant), by posting the item with a copy of the complaint, and by filing notice of forfeiture by publication. The warrant should be

obtained under Alaska Rule of Criminal Procedure 37. See F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980). The registered owner and any known claimants should be notified of the action, but need not be made parties. United States v. Pollastrine, 8 Alaska 104 (D. Alaska 1929); United States v. Bleasby, 257 F.2d 278 (3d Cir. 1958); People v. One 1971 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Secondly, the in rem proceeding is a civil action and therefore the rules of evidence, burden of proof, and discovery provisions for civil cases are applicable. Civil rules provide considerably more expansive discovery than criminal rules, and the civil burden of proof by a preponderance of the evidence applies. Case law shows that in rem forfeitures are considered, although civil actions, "quasi criminal in nature". Graybill v. State, 545 P.2d 629 (Alaska 1976). This holding does not, however, mean that a criminal burden of proof applies. Judge Madsen, who rendered the superior court decision in F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___, 71, L. Ed.2d 284 (1982), stated in his decision granting forfeiture of a fishing vessel:

The court, after having heard and weighing the testimony of the witnesses and the exhibits, finds that the state has met its burden by clearly and convincingly proving by a preponderance of the evidence.

See also, State v. Rice, 626 P.2d 104 (Alaska 1981); U.S. v. Twelve Ermine Skins, 78 F. Supp. 734 (D. Alaska 1948).

Because the in rem action is civil rather than criminal, the case must be filed within two years (AS 09.10.070); in rem civil actions are not bound by the criminal procedure four-month rule.

Most forfeiture statutes, like AS 16.05.195, are silent on the question of whether a jury trial is of right. The opportunity for a jury trial will probably be favored in Alaskan courts, but because of the complexity and nature of civil forfeiture proceedings, judge trials are preferable, as is the practice in admiralty. In general, courts look to admiralty procedures in handling forfeitures, U.S. v. \$5,372.85 U.S. Coin and Currency, 283 F. Supp. 904 (D.N.Y. 1968); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). Also see, F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L. Ed.2d 284 (1982). As a general rule, admiralty cases are tried by a court, not a jury. The Paolina S., 11 F. 171 (_____ 1880); Clark v. U.S., 5 F. Case No. 2, 837 (C.C. Pa. 18__); see also, Humble Oil & Refining Co. v. Philadelphia Ship Maintenance Co., 342 F. Supp. 786 (D. Pa. 1972); American of Puerto Rico, Inc. v. Transocean Tankers Corp., 317 F. Supp. 798 (D. Puerto Rico 1969); Texas Menhaden Co. v. Palermo, 328 F.2d 579 (6th Cir. 1964).

Some courts refuse to apply admiralty procedure that denies a trial by jury in civil forfeitures for state or federal

drug violations. This position is based on the argument that although admiralty forfeitures are prosecuted in rem according to admiralty practice, seizures on land are not admiralty cases but "common law informations," in which a jury trial is demandable. People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951); One Plymouth Automobile v. U.S., 165 F.2d 186 (5th Cir. 1947). The court in People v. One 1941 Chevrolet Coupe, 231 P.2d 832 (Cal. 1951) distinguishes between forfeitures of contraband, where there is no right to trial by jury, and forfeitures of otherwise lawful instrumentalities, where trial by jury is a constitutional right. The court in State Conservation Dept. v. Brown, 55 N.W.2d 859 (Mich. 1952) held that forfeiture actions are statutory and not founded in the common law, and claimants therefore are not accorded a right to a jury trial.

Another important distinction between a criminal case and an in rem civil action, is that the in rem civil forfeiture is not considered strictly a punishment or penalty, but rather is a deterrent and remedial, i.e., it is a way to remove an instrumentality from the hands of one using it improperly, in order to protect the state's resources. Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663 (1974); Gulp v. U.S., 523 F.2d 557 (8th Cir. 1975). A court may be more willing to order forfeiture in a civil in rem proceeding than in a criminal action where there may be a large disparity between the maximum fine or penalty (generally, the maximum fine for fish and game violations is \$1,000 and one year in jail) and the value of the vessel or

aircraft that is seized and forfeited, which may be in excess of \$1,000,000. However, many courts, while recognizing the deterrent and remedial aspects, still view forfeitures as primarily a punishment or penalty and not favored in the law. See One Cocktail Glass v. State, 565 P.2d 1265 (Alaska 1977).

Because the value of property subject to forfeiture may be so great, some courts favor granting partial forfeiture of the equipment, or ordering forfeiture of a bond or other security in lieu of the item itself. F/V American Eagle v., State, 620 P.2d 657 (Alaska 1980), cert. denied, ___ U.S. ___ 71 L.Ed.2d 284 (1982).

Neither AS 16.05.195 nor the rules of civil procedure in Alaska provide specific guidelines for the procedure to be followed in an in rem action. The closest rules or guidelines are, as discussed above, the Federal Admiralty Rules that relate to bringing a complaint or libel against a vessel, and Alaska Rules of Civil Procedure 4 and 5; courts will look to these procedures as guidelines for the action.

C. Guidelines for Bringing Civil In Rem Actions.

An action for forfeiture of valuable equipment such as a vessel or airplane is an extreme measure and represents the harshest penalty for a fish and game violation. On the other hand, vessels and airplanes provide a unique opportunity to

deplete the fish and game populations of the state, and it is for this reason that special consideration has been given to the matter by the legislature, which granted broad authority for forfeiture under AS 16.05.195.

In determining whether to prosecute in rem a boat or aircraft used in a fish and game violation, one should keep in mind that forfeiture actions are difficult and time-consuming to prosecute and may take up to three to five years attorney commitment time. Therefore, the following is an outline of the criteria to assess before bringing a civil forfeiture action:

1. Does the violation involve a substantial commercial benefit to the violator, i.e., a "windfall profit"? E.g., big game guiding, commercial fishing, fish guiding.
2. Is the violation, even if committed by a sport hunter or fisherman, egregious? Is there any intent involved or was the crime a mistake that would be excused if strict liability did not apply to fish and game violations? E.g., herding and harassing game, grossly over limit on fish or game, waste, inhumane kill, destruction of significant breeding stock, hunting in closed area. In particular, is there a likely detriment to the species or stock?

3. Is the equipment, vessel, vehicle, or aircraft an integral part of the violation? E.g., spotting from aircraft, using boat for access to closed area.
4. Is this the second or third similar violation by the offender?
5. Is there a significant need to deter the public that necessitates bringing a case to civil trial on evidence that would not support a criminal action? E.g., violation occurring on identified vessels but crewmen now known.
6. What is the value of the equipment, vessel, vehicle, or aircraft relative to the commercial profit or damage to the resource?

If the violation does not fit one or more of these categories, civil forfeiture is probably not appropriate.

D. Relationship Between Civil and Criminal Actions.

A criminal case against an individual for a fish or game violation is an action independent of any in rem proceeding for forfeiture. Haas v. One 1965 Ford Auto, 529 P.2d 410 (Or. App. 1974). See also State v. Graybill, 545 P.2d 629 (Alaska 1976). A judge in a criminal action has authority to forfeit, as part of the criminal sentencing procedure, the equipment, aircraft, vessels, etc. used in or in aid of a violation of the

fish and game statutes or regulations, under AS 16.05.190; whether a prosecuting attorney in a criminal case will ask for forfeiture is a decision to be made by the district attorney. Many cases will involve a criminal prosecution only, for example, where a private sport hunter flies his aircraft to an open hunting area where he is then involved in a minor game violation not related to the use of the airplane; here the attorney general would not bring a civil in rem proceeding because the case does not fall within the category of cases outlined above.

Because an action in rem for forfeiture is independent of any criminal prosecution, a forfeiture action may be brought even though the individual defendant in the underlying criminal case was acquitted. United States v. One 1961 Cadillac Hardtop, 207 F. Supp. 693 (D. Tenn. 1962); U.S. v. Three Thousand Two Hundred Thirty Six Dollars, 167 F. Supp. 495 (D. Alaska 1958). Also, there may be situations where no criminal case can be brought, yet where there is sufficient evidence to proceed with a civil in rem action (for example, when there is no positive identification of the pilot or passengers of an aircraft, but there is a clear description of the aircraft used in a violation). Cases resting on circumstantial evidence are particularly appropriate for civil action because the extensive discovery procedures available can identify critical evidence.

If both civil and criminal actions are contemplated, it is best to bring both cases simultaneously, or as near to the same time as possible. If the cases are brought simultaneously,

and if the criminal case, which will probably be heard first, is dismissed or if the defendants are acquitted, the defendants will not be in a position to argue that the in rem case was brought merely because the criminal case was lost and the state is "out to get" the defendants. Furthermore, it is very helpful for an assistant attorney general to attend a criminal case before trying the same general issues in a subsequent civil in rem action. The criminal court might decline to grant forfeiture, even if the case were won by the district attorney, and the attorney general in that situation would be in a position to continue with the in rem action against the aircraft or vessel itself. This may be particularly appropriate in cases, such as fishing in closed areas, where a maximum criminal penalty is insufficient to deter the conduct, because the value of the harvest far exceeds the criminal fine. In some instances the criminal court may choose not to order forfeiture because of the pending civil action.

If a criminal case is won and forfeiture is granted but the judgment is appealed, the attorney general may wish to proceed with an action in rem on the theory that if the criminal conviction were overturned on appeal, the in rem action would still be valid. Although the attorney general need not wait for the final outcome of a criminal action before proceeding in rem, strategy may favor staying action in the civil case until the criminal action is over. The primary advantage of this sequence is that it will preclude the criminal defendant's resort to the

fifth amendment right to remain silent which might hinder evocation of pertinent evidence in the civil suit.

II MECHANICS OF BRINGING CIVIL FORFEITURE ACTIONS

A. Notification.

As mentioned above, it is important that the district attorney's office notify the attorney general's office (and vice versa) of any fish and game violation that involves a possible forfeiture, if the violation falls within the guidelines for civil prosecution in rem as outlined above. It is essential for the attorney general's office to become involved in the case from the very beginning, so that the attorney general's office can review the evidence and make a determination as to whether there is sufficient basis to proceed with a civil in rem case.

If there is a stipulation to release the vessel or airplane in the criminal action, the attorney general's office has a strong interest in making sure that the release will cover the subsequent civil in rem action, i.e., the release must provide for a sufficient bond or other security for the equipment, and include an agreement that the vessel or aircraft is properly insured and will not leave the state or be sold or encumbered. The release agreement should also obviate the need to re seize the vessel or aircraft for the civil in rem action in order to "serve" the item.

B. Seizure and Service of Process.

A.S. 16.05.195 provides: "Items specified in (a) of this section may be forfeited under this section regardless of whether they were seized before instituting the forfeiture action." At least one superior court judge in Anchorage has ruled that, notwithstanding this language, the state must actually or constructively seize the equipment in order to bring it within the court's jurisdiction; merely filing a notice of lis pendens was held insufficient to obtain jurisdiction. State v. One Blue and White PA-18 Airplane, No. 3AN-78-900 Civ. (Super. Ct. Third Jud. Dist. Alaska, Sept. 1978). There are several other reasons why actual seizure may be appropriate. First, looking to the Rules of Admiralty for guidance in bringing an in rem action, seizure is the means for bringing the action, and the libel must be posted on the vessel. (Supplemental Rule C, FRCP provides that the clerk of court issue an arrest warrant when a verified complaint is filed.) Since an action in rem is brought against the item itself, it may be necessary to "serve" the aircraft or vessel while it is within the jurisdiction of the court; due to the high mobility of aircraft and vessels, seizure may be the only way to assure that the res will be within or remain within the jurisdiction of the court. It would be pointless to bring a forfeiture action against an aircraft or vessel that may subsequently disappear from the jurisdiction of the court or be sold or otherwise encumbered.

Seizure for an in rem civil case should be made upon a warrant issued by a superior court judge. Evidence obtained as the result of an illegal search may not be admissible in a civil in rem action. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965). However, as long as the evidence supporting the forfeiture is not tainted, it can be argued that an illegal seizure of the defendant's property is not a basis for dismissal of the case. See, The Ship Richmond v. United States, 9 Cranch 102, 3 L.Ed. 670 (1815); United States v. One Chevrolet Sedan, 7 Alaska 605 (D. Alaska 1927). The court in Boyd v. United States, 116 U.S. 616 (1886) distinguished between a search for and seizure of a man's private books and papers for the purpose of obtaining information or using them as evidence against him, and seizure for the purpose of forfeiture. In United States v. One Ford Coupe Auto, 272 U.S. 321 (1926), the court held that where property declared forfeit by a federal statute is seized by one having no authority to do so, the United States may "adopt" the seizure with the same effect as if it originally had been made by a duly authorized officer.

C. Release.

Depending on the circumstances, it may be desirable to allow the defendant property to be released pending trial.

If an aircraft or vessel is released on stipulation, it is important that the agreement provide either a bond or

promissory note or at least insurance coverage for the value of the vessel or aircraft. If a bond is secured, it should cover at least the full value of the vessel, with a provision for alteration of the stated value in the event that the property increases in value during the pendency of the litigation. It may be impossible to accomplish this as a practical matter. In that event, it is best to establish the security or bond in much the same manner as bail. Any stipulation for release should also include a provision that the owner not sell or otherwise encumber the property, and that the owner will produce the item upon demand.

D. Service and Parties.

In accordance with admiralty procedure, service on a ship (or airplane) can be effected by posting a copy of the complaint on the property and leaving a copy with the person having control of it, and by publication of a notice of filing a forfeiture complaint.

Alaska courts may require personal service of the notice of filing a forfeiture action on all ascertainable owners or claimants, so a title search should be made in connection with service of process. The U.S. Supreme Court has ruled that where the government knew that the owner of a forfeited car was not at the address to which notice was sent, the service was inadequate. Robinson v. Hanrahan, 409 U.S. 38 (1972).

Because the action is in rem, there are no "necessary" parties to the action, other than the "res" and the state. Utah Liquor Control Comm'n. v. Wooras, 93 P.2d 455 (Utah 1939). For a case contra this general rule, see People v. Broad, 12 P.2d 941 (Cal. 1932). The presence of the owner or claimant is not necessary for the action to proceed. The owner of the item, or anyone claiming an interest in it, although not named as a party, may appear and make a defense, either by filing a claim and answer or by moving to intervene. People v. One 1941 Mercury Sedan, 168 P.2d 443 (Ct. App. Cal. 1946).

Because of AS 16.05.195(e), a lis pendens giving notice of the forfeiture action must be filed against the ship or aircraft, with the U.S. Coast Guard, FAA, or local recording district, as appropriate. In the case of vessels, the U.S. Coast Guard will file the notice, with the vessels documentation papers.

III DISPOSITION OF FORFEITED EQUIPMENT

AS 16.05.195 provides that equipment, including aircraft and boats, forfeited for a fish and game violation is to be disposed of at the discretion of the Department of Fish and Game. The statute does not require that the department sell the equipment at public auction, nor does it specify that the department pay off liens or mortgages on the forfeited equipment. However, the Alaska Supreme Court, in State v. Rice, 626 P.2d 104

(Alaska 1981) held that where a third party (in that case, a financial institution) had done all it reasonably could be expected to do to avoid illegal use of equipment in which it had an interest, it was entitled to remission of its interest in the forfeited equipment.

FORFEITURE CHECKLIST: INITIATING THE ACTION

1. Seizure Warrant, Affidavit of Return. (n.b. - separate court number and file for the seizure warrant).
2. Receipt and Inventory of aircraft/floats/skis, or vessel and gear.
3. Civil Complaint for Forfeiture, Summons (post on vessel or airplane), Return.
4. Title Search.
5. Notice of Filing Complaint - send to owner and lienor.
6. Motion for Service by Publication, Affidavit, Order.
7. Notice of Filing Complaint (for publication in newspaper).
8. Affidavit of Publication.
9. Lis Pendens (file in Oklahoma City, for aircraft, or State Recording Office further equipment).
10. Stipulation for Release, bond, insurance coverage, etc.

OPERATOR'S
SEIZURE INFORMATION
(AIRCRAFT)

1. Make of aircraft _____
2. Model of aircraft _____
3. Official F.A.A. Registration No. _____
4. Engine Serial No(s). _____
5. Airframe Serial No. _____
6. Floats (Skiis) type _____
7. Floats (Skiis) - Serial No. _____
8. Floats (Skiis) - Estimated value today _____
9. Description of aircraft, (wheels, STOL kits, stall fences,
types of fabric, color scheme, etc.)

10. Value when purchased \$ _____
11. a. Date of last reappraisal _____, 19____
b. Value at last reappraisal \$ _____
c. Name and address of appraiser _____

12. Estimated value today \$ _____
13. Place and date of most recent overhauls or repairs
_____, 19____
_____, 19____
14. a. Name of owner(s) _____
b. Address of owner _____

Tele. () _____ - _____

15. Liens. _____

Name & Address	Balance	Date Incurred	Payment Schedule
a. _____	_____	_____, 19__	\$_____ per mo.
b. _____	_____	_____, 19__	\$_____ per mo.
c. _____	_____	_____, 19__	\$_____ per mo.

16. Insurance coverage.

Names of	Insurance Company	Type of Insurance	Amount of Insurance	Premium Amount and Due Date
a. _____	_____	_____	_____	\$___ per ___; Due _____
b. _____	_____	_____	_____	\$___ per ___; Due _____
c. _____	_____	_____	_____	\$___ per ___; Due _____

17. Description of instruments, radios, and appurtenant equipment and other paraphernalia.

Item	Model No.	Serial No.	Date of Purchase	Condition
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____

DATED this ___ day of _____, 19__, at _____, Alaska.

Signature of Operator(Owner)

OPERATOR'S
SEIZURE INFORMATION
(VESSEL)

1. Name of vessel _____
2. Kind of vessel _____
3. Official U.S.C.G. No. _____
4. Port of Registry _____
5. ADF&G No. AK _____
6. Value when purchased \$ _____
7. a. Date of last reappraisal _____, 19__
 b. Value at last reappraisal \$ _____
 c. Name and address of appraiser _____
8. Estimated value today _____
9. Place and date of most recent overhauls or repairs
 _____, 19__
 _____, 19__
10. a. Name of owner _____
 b. Address of owner _____
 Tele. () ____ - ____

11. Names of others with a right, title or interest in vessel
 (e.g. Banks, NOAA, state, materialmen, supplies, crews wages, etc.)

Name & Address	Balance	Date Incurred	Payment Schedule
a. _____	_____	_____, 19__	\$ _____ per mo.

b. _____	_____	_____, 19__	\$ _____ per mo.

12. Insurance coverage.

FORM NO. 2 (cont.)

Names of	Insurance Company	Type of Insurance	Amount of Insurance	Premium Amount and Due Date
a. _____	_____	_____	_____	\$ ___ per ___ ; Due _____
b. _____	_____	_____	_____	\$ ___ per ___ ; Due _____
c. _____	_____	_____	_____	\$ ___ per ___ ; Due _____

13. Description of navigational equipment, fishing gear and other paraphernalia.

Item	Model No.	Serial No.	Date of Purchase	Condition
a. _____	_____	_____	_____	_____
b. _____	_____	_____	_____	_____
c. _____	_____	_____	_____	_____
d. _____	_____	_____	_____	_____
e. _____	_____	_____	_____	_____
f. _____	_____	_____	_____	_____
g. _____	_____	_____	_____	_____
h. _____	_____	_____	_____	_____
i. _____	_____	_____	_____	_____
j. _____	_____	_____	_____	_____
k. _____	_____	_____	_____	_____
l. _____	_____	_____	_____	_____

Alaska. DATED this _____ day of _____, 19__ at _____,

Signature of Operator

Operator's Printed Name

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
ONE RED AND WHITE PIPER)
airplane, _____, Serial)
Number _____ and)
contents thereof, including)
appurtenant instruments,)
radios, and floats,)
Serial No.s _____ and _____,)
JOHN DOE and JANE DOE,)
)
Defendants.)
_____)

Civil No. _____

COMPLAINT FOR FORFEITURE AND DAMAGES
(AS 16.05.195)

The State of Alaska, through its Attorney General,
alleges as follows:

First Cause of Action

1. This is an action for forfeiture of Piper
N_____ [describe] and the contents of the aircraft,
including appurtenant instruments and radios. This action is
brought under AS 16.05.195.

2. On or about _____, 19____, in the
vicinity of _____,
Judicial District, State of Alaska, the above-described aircraft
was used by defendants _____
to [describe violation]

These actions constitute violations of fish and game regulations

3. AS 16.05.195 provides that aircraft and other paraphernalia or gear may be forfeited to the state upon judgment of a court of competent jurisdiction in an action in rem that the aircraft and paraphernalia or gear were used in or in aid of a violation of a fish or game statute or regulation.

4. On _____, 19____, pursuant to a seizure warrant issued on _____, 19____, the above-described aircraft, its floats and equipment were seized at _____, Alaska, _____ Judicial District, and the aircraft, floats and equipment are or will be within the jurisdiction of this court during the pendency of the proceedings in this matter.

WHEREFORE, the State of Alaska prays for:

I. Judgment forfeiting the above-described aircraft, floats, and equipment to and for the use of the State of Alaska.

II. Costs, attorney fees and such further relief as the Court may deem appropriate.

Second Cause of Action

1. The State of Alaska realleges and reaffirms the allegations of paragraphs 1 through 4 above.

2. This is an action for damages, for the value of [describe resource] taken in violation of Alaska fish and game statutes and

regulations. . This action is brought under AS 16.05.195, which provides that an action for damages may be joined with an action for forfeiture of aircraft and equipment used in or in aid of a violation of an Alaska fish and game statute or regulation.

3. The defendants _____ are, and at all times relevant to this action have been, residents of _____, Alaska, _____ Judicial District.

4. On or about _____, 19____, in the vicinity of _____, _____ Judicial District, State of Alaska, defendant _____

[describe violation]

in violation of Alaska Fish and Game regulation _____

- the offense being [describe]

5. As a result of the actions of defendants _____ described above, the State of Alaska has been irreparably damaged by the illegal appropriation of _____ in an amount no less than \$ _____.

WHEREFORE the State of Alaska prays for relief as follows:

I. Damages in an amount not less than \$ _____ said damages to be proven more specifically at trial.

II. Costs, attorney fees and such further relief as

this Court may deem appropriate.

DATED at Anchorage, Alaska this _____ day of
_____, 19____.

ATTORNEY GENERAL

By:

Assistant Attorney General

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

DIRECTIONS FOR SERVICE

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)
 ONE RED AND WHITE _____)
 airplane, N _____, Serial)
 Number _____ and contents)
 thereof, including appurtenant)
 instruments and radios, and floats,)
 Serial Nos. _____ and _____, and)
 _____,)
)
 Defendants.)
 _____)

DATE:
 COURT NO.:
 SERVICE NO.:

Nature of Writ: COMPLAINT FOR FORFEITURE AND DAMAGES
 (AS 16.05.195) and SUMMONS

SERVE: One red and white _____
 airplane, N _____ Serial
 Number _____ and contents
 thereof, including appurtenant
 instruments and radios, and floats,
 Serial Nos. _____ and _____, by
 posting a copy of this complaint
 and summons upon said aircraft,
 located at the Fish and Wildlife
 Protection hangar, State of Alaska,
 Department of Public Safety, Lake
 Hood, Anchorage, Alaska.

Please make return of service to:

Clerk of the Superior Court
 303 K Street
 Anchorage, Alaska 99501

with copy to:

Office of the Attorney General
1031 4th Avenue, Suite 200
Anchorage, Alaska 99501

ATTORNEY GENERAL

By: Assistant Attorney General

SEIZURE WARRANT FORMS

A civil forfeiture action must be coupled with actual or constructive seizure of the res. At least one state superior court judge has ruled that filing a notice of seizure and a lis pendens in the appropriate recording office is not sufficient constructive seizure. Physical seizure or chaining or immobilizing the equipment and attaching a copy of the complaint is appropriate. An item may be seized without a warrant under AS 16.05.190, but a subsequent seizure warrant should be obtained even in such a case in order to obtain judicial approval.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

Warrant to Seize

IN THE NAME OF THE STATE OF ALASKA

TO ANY PEACE OFFICER AUTHORIZED TO EXECUTE WARRANTS

Sworn testimony has been given by _____,
Alaska Fish and Wildlife Enforcement Officer, on _____,
19____, that he has reason to believe that a [describe item]
registration number _____, is at this time at or near
_____, _____ Judicial District,
State of Alaska. Pursuant to AS 16.05.170, AS 16.05.190, and
AS 16.05.195, the aircraft:

1. Is evidence of the particular crime of _____
in violation of _____ and _____.
2. Is evidence of the particular crime of _____
in violation of _____.
3. May be forfeited to the State of Alaska under
AS 16.05.195, upon determination by a court of
competent jurisdiction, in a proceeding in rem,
that the aircraft was used in or in aid of a
violation of an Alaska Fish and Game statute or
regulation.

I am satisfied that there is probable cause to believe that the
aircraft so described above was used in or in aid of a violation
of _____

I am satisfied that there are grounds for issuance of a warrant
to seize the aircraft described above under AS 16.05.170 et seq.,
and AS 16.05.195, as well as on the other foregoing grounds.

I am satisfied that seizure of the above-described aircraft is
necessary in order to insure that the aircraft will come within
the jurisdiction of this court.

YOU ARE HEREBY COMMANDED to seize the aircraft designated in this warrant above, registration number _____, serving this warrant between 7:00 a.m. and 10:00 p.m. Upon seizing said aircraft, you are commanded to hold it secure pending further court order, leaving a copy of this warrant, a copy of the supporting affidavits, if any, and a receipt for the property taken, and to prepare a written inventory of the property seized and to return this warrant and bring the property before me (or a receipt thereof) within ten (10) days of this date, as required by law.

(SEAL)

DATED: _____, 19____. _____
Judge/Magistrate

RETURN

I received the attached Warrant to Seize on _____,
19__, and have executed it as follows:

On _____, 19__, at _____ (a.m.)(p.m.),
I seized the property described in the warrant, and I left a copy
of the warrant (with) (at) _____.

The following is an inventory of the property taken pursuant to
the warrant:

This inventory was made in the presence of _____
_____ and of _____.

I swear that this inventory is a true and detailed account of all
property taken by me on the authority of this warrant.

Name and Title

SIGNED and SWORN to before me this _____, day of _____,
19__.

(SEAL)

Judge/Magistrate

NOTICE OF FORFEITURE

Vessels, airplanes, vehicles, fishing gear, hunting equipment, fish and game or parts of fish and game, including aquatic plants subject to civil forfeiture under AS 16.05.190 and .195 are typically subject to various claims of interest. To avoid allegations that persons claiming an interest in objects have been denied due process, a notice of forfeiture should be signed by the clerk of court and served upon all persons known to have an interest in the items. In addition, publication in local or industry newspapers giving notice of the criminal or civil forfeiture action provides further compliance with judicial due process standards of notice. Notice to lienholders or owners of record must also be provided before forfeiture in a criminal action, and the interest of an "innocent" lienholder who has taken all reasonable steps to insure that the item was not used illegally cannot be forfeited, State v. Rice, No. 13969 BE, (Superior Ct, Fairbanks May 16, 1979). A joint venture, however, may not be deemed an "innocent" third party. F/V American Eagle v. State, 620 P.2d 657 (Alaska 1980).

The Notice of Forfeiture summarizes the complaint and advises interested parties how to obtain copies of the complaint and how to file a claim to the res. This notice is a substitute for the more costly publication of the entire complaint.

Each Notice of Forfeiture should allow an opportunity for the interested party to obtain a hearing for release of the res. Several state supreme courts have decided the state must

take the initiative to set up this hearing. Other states conclude the hearing is not mandatory. Alaska law does not require such a hearing (the omission is a major point on appeal in the F/V American Eagle v State, 620 P.2d 105 (Alaska 1980) cert denied, and State v. Rice, 626 P.2d 104 (Alaska 1981). Because petitions for release will always be entertained by our courts, the opportunity for a hearing should be confirmed.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
Plaintiff,)
)
vs.)
)
THE F/V MR. WONDERFUL, its)
paraphernalia and gear, the)
proceeds of 52,349 pounds of)
king crab delivered pursuant)
to ADF&G Fish Ticket)
No. E 534219, LARRY EDFINGER)
and PAUL TATUM,)
)
Defendants.)
_____)

No. 3AN__ - __ CIV

NOTICE OF FORFEITURE

TO: The above-named defendants and all other persons claiming any right, title or interest in the F/V Mr. Wonderful, its paraphernalia and gear.

On _____, 19__ an action under AS 16.05.105. **

The complaint alleges the illegal taking, possession and transportation of king crab in waters subject to the jurisdiction of the State of Alaska on or about September 16, 1978.

You must file claim to the defendant items with the clerk of this court and with the Attorney General's Office on or

** For the forfeiture of the F/V Mr. Wonderful, its paraphernalia and gear and proceeds of 52,349 pounds of Alaska king crab landed on September 16, 1978 under ADF&G ticket No. E 534219 was commenced in the Superior Court in Anchorage.

before 20 days after service by mail or personal delivery or within 30 days after the last date of publication of this notice whichever is sooner. After filing your claim you must, within twenty (20) days after receiving a copy of the complaint, file with the court and serve on the Office of the Attorney General, State of Alaska, 420 J. Street, Suite 100, Anchorage, Alaska, 99501, Telephone (907) 276-3550, your answer. If you fail to do so judgment will be entered for the relief demanded in the Complaint.

DATED this _____ day of _____, 19__ at Anchorage, Alaska.

Clerk of the Courts
303 K Street
Anchorage, Alaska 99501

RELEASES

A. AIRCRAFT.

In general, it is simpler not to release seized aircraft pending litigation unless directed otherwise by the court; however, if the case is likely to take a long time to resolve, or state storage facilities are full, it may be advisable to release under appropriate terms. A bond or other security, preferably in twice the value, should be posted in order to cover unforeseen problems and potential losses or liabilities. If an aircraft is not released, it should be carefully stored with the engine "pickled", and be kept under adequate custodial care.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
JUDICIAL DISTRICT AT _____

STATE OF ALASKA,)
)
 Plaintiff,)
)
 vs.)
)

No. 3AN _____ - _____ CIV.

STIPULATION FOR RELEASE OF AIRCRAFT

I

This is an action for forfeiture of the above-described defendant items.

II

The known parties with an interest, right or title to the defendant items are:

1. (State of Alaska) _____
2. (Government bureaus) _____
 - a. Taxes _____
 - b. Loans _____
3. (Owner/Operator) _____
4. (Bank) _____
5. (Lienor or Mortgagor) _____
6. (Materialmen and Mechanics) _____
7. (Other) _____

III

The above-described aircraft was seized on _____, 19____, under (a warrant issued on _____ in the _____ court of _____ Alaska).

IV

It is presently in the best interests of all parties that the defendant items name in Exhibit A to this agreement be provided an opportunity to engage in lawful activities until _____, 19____, (or such time as a [district or superior] court decision on forfeiture is rendered).

THEREFORE the parties agree as follows:

1. Plaintiff, which has limited storage facilities, agrees to release, under the terms and conditions of this stipulation, the described aircraft with appurtenant instruments and radios, to the control and custody of _____, hereinafter referred to as "custodian", or his agent or designated employees. The aircraft is subject to and remains under the state's constructive seizure.

2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments presently known are:

	<u>Lender</u>	<u>Total</u>	<u>Monthly Payments</u>	<u>Due Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

3. Each lender shall confirm receipt of each required payment in writing within five days of due date.

4. Custodian _____ as registered/joint-owner of the aircraft in _____, agrees to keep and maintain the aircraft within the State of Alaska and neither sell, dispose, nor otherwise encumber or diminish his ownership or equity in the aircraft unless specifically authorized by order of the court or upon stipulation with the state.

5. Custodian agrees to hold the state harmless for any damages or obligations which may occur after delivery to custodian under this agreement. Custodian agrees to abide by all orders of this court or any appellate court, interlocutory or final, and will deliver the aircraft to the state at such place and such time as may be directed to this court or any appellate court in the same or better condition as received from the state by virtue of this order, ordinary wear and tear excepted.

6. Custodian agrees to obtain insurance (hull and liability) on the items being delivered in an amount equal to their replacement value and to keep such a policy in force for the full replacement amount at all times.

7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

<u>Date of Seizure</u>	<u>Value \$</u>
_____	_____
_____	_____

8. To secure the state's interest in the aircraft, custodian shall (post a bond in the amount of _____) or (deposit the sum of \$ _____ in cashier's check with the clerk of the court, _____, court, State of Alaska).

9. (Bond/deposit) shall be increased whenever there is an assessed increase in value of the defendant items equal to twenty percent of the value given in item number 7 above. Custodian agrees that in the event of the accidental loss of the aircraft, or substantial loss to the aircraft, or loss of the aircraft by theft or act of God, or otherwise, or his failure to return the aircraft upon court order forfeiting his interest in the aircraft, the (stipulated value of the aircraft on deposit as set forth in paragraph 7 or (bond) shall be forfeited to the State of Alaska. The state shall retain the accrued interest on the amount deposited. In the event of partial damage to the

aircraft, custodian shall either repair the damage, and restore the aircraft to the same or better condition which existed prior to the damage, to the satisfaction to the state, or forfeit that percent of the stipulated value required to restore the aircraft to the same condition which existed before the damage.

10. Custodian shall be penalized as follows for delay in delivery from the time custodian or his representative receives oral or written notice of a decision of forfeiture.

<u>Delay (Days)</u>	<u>Penalty</u>
a. 0-1	None
b. 2-3	5% of the value of paragraph _____ or the value of the returned items at time of delivery, whichever is higher.
c. 4-5	10%
d. 6-7	50%
e. More than 7	Forfeiture of bond/value on deposit.

11. Custodian shall do no act with the aircraft, nor permit nor allow any act to be done by his agents or employees that could subject it to forfeiture or seizure by this state, any other state, federal or private authorities, and agrees to keep the aircraft current in annual inspections, and to keep and maintain the aircraft in accordance with all Federal Aviation Administration regulations and directives.

12. Custodian absolves the State of Alaska, its agents and employees, of any liability for damage that might have

occurred while the aircraft was in state custody, and further agrees to receive the aircraft as is and where is at the time of release.

13. In the event that improvements are made to the aircraft during the aircraft's release, including but not limited to the addition of avionics, overhauling or replacing the engine(s), repairing or replacing mechanical parts of the aircraft, refabricating, etc., beyond ordinary maintenance including annual and 100 hours inspections, the state will reimburse the custodian for any additional fair market value over that at the time of seizure, which is directly attributable to the improvements in the aircraft at the time of forfeiture, if the aircraft is forfeited in this action. If the parties cannot agree, the fair market value for the improvements shall be determined by the court.

14. This Stipulation and Release of the aircraft becomes effective only upon two days written notice to the undersigned Assistant Attorney General and to the Department of Public Safety, Fish and Wildlife Protection, the two days to be counted excluding legal holidays and weekends. After two days' notice, the aircraft shall be released only between the hours of 8 a.m. and 4 p.m., Monday through Friday.

DATED at _____, Alaska this _____ day of
_____, 19__.

Custodian

Plaintiff

Custodian Representative

Interested Parties

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

_____ JUDICIAL DISTRICT AT _____

State of Alaska,)
)
 Plaintiff,)
)
 vs.)
)
 F/V MR. WONDERFUL, its)
 paraphernalia and gear, the)
 proceeds of 52,349 pounds of)
 king crab delivered pursuant)
 to ADF&G Fish Ticket)
 No. E 534219, LARRY EDFINGER)
 and PAUL TATUM,)
)
 Defendants.)

No. 3AN - - - CIV

STIPULATION FOR RELEASE OF VESSEL

I

This is an action for damages and forfeiture of the above-named defendant items.

II

The known parties with an interest, right, or title to the defendant items are:

1. State of Alaska _____
2. U.S. Government, NOAA _____
 - a. Taxes (fed. state) _____
 - b. Loans _____
 - c. etc. _____
3. (Owner/Operator) _____
4. (Bank) _____

- 5. (Crewmember's wage claims) _____
- 6. (Materialmen and suppliers) _____

III

It is presently in the best interest of all parties that the defendant items named in Exhibit A to this agreement have an opportunity to engage in lawful activities until _____, 19__ (or such time as a [district or superior] court decision on forfeiture is rendered).

Therefore the parties agree as follows:

- 1. The defendant items named in Exhibit "A" are released to the control and custody of _____, hereinafter referred to as "Custodian".
- 2. Custodian shall meet all obligations on the defendant items without delay. The obligations and dates of payments include:

	Lender	Total	Monthly Payment	Due Date
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____
c.	_____	_____	_____	_____

- 3. Each lender shall confirm receipt of each required payment in writing to the state within five days of the due date.

- 4. No additional obligation may encumber the vessel without written permission of the state.
- 5. Custodian agrees to hold the state harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
- 6. Custodian agrees to obtain insurance on the items being delivered in an amount equal to their full replacement value and to keep such a policy in force at all times.
- 7. The parties agree upon the following value of the defendant items listed in Exhibit A at the time of seizure.

Date of
Seizure

Total
Value

_____, 19__ \$ _____

- 8. Custodian posts a bond in the amount of \$ _____ to protect the interests of the state during the period of release.
- 9. Bond shall be increased whenever there is an increase in value of the defendant items equal to 20% of the value given in No. 7.
- 10. Upon a superior (district) court decision favorable to the plaintiff, the released items shall be immediately delivered to _____, Alaska within thirty (30) days of the date of the

10. court's decision. If the value of the released items exceeds the value given in paragraph 7, the bond less any penalty shall be exonerated upon delivery. If the value of the returned items is less than the value given in paragraph 7, the bond only in amount equal to the value of the returned items shall be exonerated.

11. Custodian shall be penalized as follows for delays in delivery:

	Delay (days)	Penalty
a.	0-3	None
b.	4-7	5% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher.
c.	7-14	10% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher.
d.	14-30	50% of the value of paragraph 7 or 5% of the value of the returned items at time of delivery, whichever is higher.
e.	More than 30	Forfeiture of bond in addition to defendant items.

12. Upon a judgment in favor of the defendant items, the bond shall be exonerated and any remaining defendant items returned to the custodian.

13. Custodian shall keep, maintain, and preserve the defendant items in accordance with applicable laws, regulations, and ordinances and generally accepted standards of the industry. The items shall be maintained in at least as good a condition as when seized. Improvements made with written approval of the state shall be credited to defendants and the agreed amount shall be paid or credited defendants upon a decision of forfeiture by the court.
14. In the event Custodian fails to maintain the vessel in as good a condition as when seized, the state shall repossess the vessel with or without notice. Custodian shall reimburse state for all repossession costs and maintenance, upkeep, or refurbishing costs.
15. Custodian shall keep the defendant items in the Third Judicial District unless otherwise authorized by order of this court or agreement of the parties.
16. On the first day of every month Custodian shall prepare a monthly summary, stating the location of the vessel and the activities of the defendant items, and deliver the summary to plaintiff and each interested party.

17. On the first day of every month Custodian shall prepare a proposed itinerary for that month and deliver the itinerary to plaintiff and each interested party.
18. The bond securing the release of the defendant items shall be forfeited to the plaintiff upon: 1) failure to deliver in accordance with paragraph 9; 2) loss or destruction or disability to use the defendant items for a period exceeding 30 days.

Forfeiture of bond is not cause for dismissal of the lawsuit.

1(a) _____
Custodian

2. _____
Plaintiff

1(b) _____
Custodian Representative

3(a) _____
Interested Parties

3(b) _____

3(c) _____

3(d) _____

MEMORANDUM

State of Alaska

TO: Cusan S. McLean
Assistant District Attorney
Kodiak

DATE: April 26, 1983

FILE NO:

TELEPHONE NO:

FROM: Sarah Elizabeth McCracken ^{SEM}
Assistant Attorney General
Natural Resources-Anchorage

SUBJECT: Release of Crab
Pots

This is a somewhat tardy response to your February 23, 1983 memo requesting a form for the release of crab pots.

It is difficult to develop a universal agreement for release of crab pots or other gear, because the circumstances of the seizure, the nature of the gear seized and other matters may differ from case to case and require special tailoring. However, the form that is enclosed should be a good general guideline for release of crab pots and other gear (including vessels) seized in connection with district court criminal matters. It could also be modified to address civil seizure and forfeiture actions. A few comments are in order:

1. In general, when we seize a fishing vessel we do not wish to enter into a stipulation "for value" whereby the stipulation would result in substitution of the bond or other security for the vessel itself. This is because the value of a fishing vessel is likely to increase during the pendency of the action. However, crab pots and other gear are likely to depreciate in value, particularly if released and subjected to use and deterioration from the elements. Therefore, we would probably wish to enter into a stipulation for value with respect to depreciating goods such as crab pots so that we would have the benefit of the value of the crab pots when seized, rather than be left with what might be virtually worthless equipment at the end of a criminal trial or appeal. Whether equipment for which you would like to use the stipulation appreciates or depreciates should determine whether to call it a stipulation for value and whether to use the language suggested in paragraph 11.

2. Depending on the nature of the goods, you may or may not need the language in paragraph 13 (that the items will be maintained in as good a condition as when seized.) If we intend to substitute the bond anyway, that language would not be necessary. I have attempted to cover both situations in paragraph 11 by allowing the state to have the option of either retaining the goods or accepting the bond or other security as a substitution.
3. Other paragraphs in this draft may or may not be applicable, given the particular facts of a specific case. For example, there may be no need for paragraph 5 relating to obligations if it is clear that none exist for the equipment. In other cases, there may be very complicated financing, particularly if you have seized expensive gear.

I hope this will be of some use to you, and I reiterate that we would be glad to assist you as necessary in implementing these kinds of release agreements.

You may also be interested to know that the Alaska Board of Fisheries (and also the Alaska Board of Game) adopted regulations during the last regulatory meeting in March and April specifying that fish and game regulations are intended to be strict liability offenses unless otherwise provided by the regulations or statute. The Board of Fisheries regulation should be sent to the Lt. Governor's office for filing sometime within the next week or two, and hence would be in effect 30 days thereafter. We are hopeful that this action by the boards will remedy some of the problems created by the Reynolds decision.

Best regards.

SEM/jmo

cc: John Gissberg
Kathleen McGuire
Larri Spengler /

IN THE DISTRICT COURT FOR THE STATE OF ALASKA

JUDICIAL DISTRICT AT _____

STATE OF ALASKA)

v.)

Case No. _____

STIPULATION FOR VALUE AND AGREEMENT
FOR RELEASE OF [CRAB POTS]

The State of Alaska, through [DA/AG], and
[claimant/defendant] hereby stipulate and agree as follows:

1. [Claimant/defendant] is the owner of the
[vessel/gear/crabpots], ADF&G No. [_____].
2. On or about [_____, 19__], officers of the State
of Alaska, Department of Public Safety, Division of Fish
and Wildlife Protection, (hereinafter F&WP) observed
[describe violation, location, storage depth], a violation
of 5 AAC [____] and AS 16.05.920.
3. On or about [_____, 19__], officers of the F&WP
seized the [crab pots/gear] referenced in paragraph 1 of
this agreement [under authority of a seizure warrant
issued on _____/ under authority of a warrantless
search under AS 16.05.180]. The [crab pots/gear] are
presently in the state's custody at [_____,
Alaska.
4. For the mutual convenience of the parties to this
agreement, the parties desire to release [crab pots/gear,
ADF&G No.] to the care and custody of [_____] (hereinafter "Custodian") upon the terms and conditions of

this agreement. This release agreement shall become effective when signed by the parties.

5. Custodian shall meet all obligations on the [crab pots/gear], which include:

	<u>Lenders</u>	<u>Total</u>	<u>Monthly Payment</u>	<u>Due Date</u>
a.	_____	_____	_____	_____
b.	_____	_____	_____	_____

6. Custodian may not further encumber the [crab pots/gear]
7. Custodian shall hold the State harmless for any damages or obligations that may occur after delivery to custodian under this agreement.
8. The stipulated value of the [crab pots/gear] at the date of seizure [_____, 19__], is [_____].
9. Custodian shall post [with the court], at the time this agreement is executed, a [cash bond/other security] in the amount of \$[_____] to protect the State's interests during the period of release.
10. Upon a court judgment forfeiting the [crabpots/gear] to the State, custodian shall deliver the [crab pots/gear] as soon as possible, and in no event more than 30 days after forfeiture is ordered, to [_____], Alaska.
11. If the [crab pots/gear] are returned in substantially the same condition as when released, so that their value is equal to or exceeds that set in paragraph 8 of this agreement, the bond shall be exonerated. If the value of the [crab pots/gear] at the time forfeiture is ordered is

less than the amount set in paragraph 8 of this agreement, the State may, at its option, retain the bond and any interest as a substitution for the [crab pots/gear].

12. Upon judgment [of acquittal/denying forfeiture of crabpots/gear], the bond will be exonerated and the [crab pots/gear] will be returned to custodian.
13. Custodian shall keep, maintain, and preserve the [crabpots/gear] in accordance with all applicable laws, regulations, and ordinances, and generally accepted fishing industry standards. The items shall be maintained in as good a condition as when seized.
14. Custodian shall keep the [crabpots/gear] within the [_____] Judicial District unless otherwise agreed by the State.
15. This agreement is for the purpose of release of [crab pots/gear] only, and does not constitute an admission of liability or wrongdoing by either party.
16. This agreement contains the entire agreement between the parties, and its terms are contractual and not a mere recital.
17. This agreement shall be construed under the laws of the State of Alaska.
18. If custodian breaches the terms of this agreement, the custodian must deliver the items to the State immediately;

any failure to deliver within ten days after the breach of any terms of this agreement will automatically forfeit the bond to the State.

Dated: _____

Assistant District Attorney

Dated: _____

[Claimant/owner]

Deficiencies in Enforcement, Judicial, and Treatment Programs Related to Repeat Offender Drunk Drivers¹

National Transportation Safety Board

*Bureau of Safety Programs
Washington, D.C.*

ABSTRACT

The Report presents the findings and recommendations of the National Transportation Safety Board's study on "repeat offender" drunk drivers. It is organized in the chronological order of events which could be encountered by a drunk driver being processed through the several systems. A variety of weaknesses in the law enforcement, judicial, and treatment systems which contribute to the persistence of the repeat offender problem are documented, and steps are recommended to be taken by states, judicial training organizations, the Veterans Administration, and the National Highway Traffic Safety Administration to enhance the effectiveness of the enforcement, judicial, and treatment practices in reducing recidivism.

Methodology

The Safety Board began this Safety Study in September 1983. It is based on a literature search, research, and accident investigations conducted by the Safety Board's Atlanta, Chicago, Denver, Fort Worth, Los Angeles, and Kansas City field offices.

NTSB investigators reviewed State alcohol education and treatment systems in 10 States.² Local enforcement systems³ and local judicial systems⁴ were probed in selected counties and four cities within these States. In addition, the statewide enforcement system for two of these States⁵ and the State judicial system in one State⁶ were reviewed.

¹ This article presents highlights from a National Transportation Safety Board Safety Study. The information contained in this article complements that presented in the preceding paper, "Drunk Driving Laws & Enforcement: An Assessment of Effectiveness."

² California, Colorado, Georgia, Illinois, Kansas, Missouri, North Carolina, Utah, Washington, and West Virginia.

³ Adams County, Colorado; Hermosa Beach, Los Angeles, and Manhattan Beach, California; Gwinnett County, Georgia; Kanawha County, West Virginia; Kansas City, Missouri; King County, Washington; Raleigh, North Carolina; and Salt Lake City, Utah.

⁴ Dupage County, Illinois, Gwinnett County, Georgia; Johnson County, Kansas; Kanawha County, West Virginia; Kansas City, Missouri; King County, Washington; Los Angeles, California; Raleigh, North Carolina; and Salt Lake City, Utah.

⁵ Illinois and Kansas.

⁶ Colorado.

Thirty-eight of the accidents investigated by the Board involved known repeat offenders. Five other accidents involved at least one driver with a history of alcohol or drug abuse, and eight more involved juvenile drivers with no documented history of drunk driving. These investigations provided information to determine the probable causes of the accidents, as well as to develop a profile of each drunk driver, based on in-depth exploration of previous driving while intoxicated (DWI)⁷ arrests, convictions, and sentences. The Board also interviewed accident witnesses, family members, police officers, attorneys, and judges in the conduct of these investigations.

Finally, the Safety Board interviewed 40 convicted drunk drivers with previous alcohol-related convictions, seeking their views on what events might have been handled differently at the time of their first encounter with an alcohol-related offense to influence their behavior and perhaps prevent additional offenses. The interviews were conducted while offenders were in treatment, on probation, in jail, or after the sentence was completed.

First Stop or Arrest for Driving While Intoxicated

Detection

Many highway safety experts agree that many drunk drivers persist in their behavior because they believe there is a low risk of arrest and penalty. In a recent nationwide telephone survey, between one quarter and one-third of those interviewed who drink alcohol said they believe that the chances of being caught and punished for drinking and driving are not great enough to deter them from driving after drinking too much.⁸ Even though DWI arrests nationwide have increased steadily (from 561,000 in 1969 to more than 1,300,000 in 1981),⁹ the probability of arrest remains relatively low, with estimates ranging between 1 in 200¹⁰ drunk drivers to 1 in 2,000.¹¹

In an attempt to increase the real risk of detection and arrest, and drivers' perception of that risk, the Safety Board recommended on September 9, 1983, that the Governors of the States, and the Mayor of the District of Columbia:

Implement a citizen awareness and citizen drunk driver reporting program such as the [Report Every Drunk Driver Immediately-REDDI] programs now used by Colorado, Maryland, Nebraska, Utah, and Washington. (Class II, Priority Action) (I-82-35).

REDDI programs provide direct assistance in law enforcement efforts to detect and apprehend drunk drivers. With the aid of the motoring public who report drivers who appear to be driving while intoxicated, the detection capabilities of police have been expanded and the deterrent effect of DWI enforcement programs has been increased. Since the Safety Board made these recommendations, 12 States have adopted such programs. As of June 1, 1984, 32 States had established some type of citizen reporting program. Thirteen states that keep records of calls received, report receiving 63,055 citizen calls, resulting in 15,947 contacts with motorists, and leading to 10,120 DWI arrests (63.5% of the contacts).

The International Association of Chiefs of Police and the National Safety Council maintain systems of gathering information and disseminating it to both state and local law enforcement agencies. Therefore, the

⁷ A variety of terms are used in laws concerning drinking and driving, such as "driving while intoxicated" (DWI), "driving while alcohol impaired" (DWA), "driving under the influence" (DUI), and others. The distinctions among these terms are based primarily on the level of blood alcohol concentration (BAC) at the time of the offense. Some State laws use only one term, some use several. Because the fine distinctions are not pertinent in the context of this report, and for the sake of simplicity, this study report uses only DWI.

⁸ R. Compton and R. Engle, "Safety Checkpoints for DWI Enforcement," National Highway Traffic Safety Administration, July 1983.

⁹ John Volpe, Chairman, Presidential Commission on Drunk Driving, Statement Before the Subcommittee on Alcoholism and Drug Abuse, Senate Committee on Labor and Human Resources, August 5, 1982.

¹⁰ G. A. Beitel, M. C. Sharp, and W. D. Claus, "Probability of Arrest While Driving Under the Influence of Alcohol," *Journal of Studies on Alcohol* (1975), p. 76.

¹¹ R. F. Hoskenstein, "Efficacy of Law Enforcement Procedures," *Modern Problems in Pharmacopsychology* (1976), p. 11.

National Transportation Safety Board recommended that the International Association of Chiefs of Police and the National Safety Council:

Collaborate and act as focal points for gathering information on REDDI-type programs and provide information and assistance to the interested States and local communities. (Class II, Priority Action)(I-82-36).

In an effort to determine what more could be done to increase the risk of detection and the drunk driver's perception of the risk of detection, the Safety Board undertook a study of drunk driving deterrence measures and adopted a report on April 13, 1984.¹² One major finding was that sobriety checkpoints had the potential to be an effective means to achieve these goals. During a 1978 sobriety checkpoint campaign in Melbourne, Australia, significant decreases in nighttime fatal and injury crashes involving drivers with illegal blood alcohol concentrations were attained. In the United States, Delaware reported a 32% drop in alcohol-related injury accidents during an 8 1/2-month period from December 4, 1982, to August 13, 1983 when sobriety checkpoints were in use. The study found that sobriety checkpoints currently are in use or under consideration in twenty-one jurisdictions and in at least five foreign countries. The Board's study concluded that sobriety checkpoints should be an integral part of a State's comprehensive alcohol and highway safety program. On April 23, 1984, the Board recommended to the Governors of twenty States and three Territories that they:

Institute use of sobriety checkpoints on a periodic and continuing basis by the appropriate enforcement agencies under your jurisdiction as part of a comprehensive Driving While Intoxicated enforcement program. These checkpoints should be conducted according to accepted procedures and constitutional safeguards. (Class II, Priority Action) (I-84-11)

Encourage local law enforcement agencies within your State to institute sobriety checkpoints on a similar basis. (Class II, Priority Action) (I-84-12).

In addition, in order to provide all States and localities with current information on the effectiveness of sobriety checkpoints and other potential countermeasures, the Board recommended that the National Highway Traffic Safety Administration evaluate their effectiveness. (Safety Recommendation H-84-25.) As of September 1, 1984, sobriety checkpoints were in use by some police agencies in approximately 36 States.

Drivers Stopped While Intoxicated But Not Arrested

A study conducted recently by the Southern California Research Institute on a new standardized field sobriety test battery reinforced earlier studies which showed the inaccuracy of psychomotor (physical) tests in detecting drivers at legally intoxicating blood alcohol levels.¹³ Prior to training on the new test battery, the officers studied arrested only 69.2% of stopped drivers who had BAC levels greater than 0.10%. A new test, called "Horizontal Gaze Nystagmus", however, could significantly increase the probability of detecting lower BAC levels in the field. Van K. Tharp of the Southern California Research Institute describes the test:

[Its name] refers to a jerking of the eyes as they deviate to the side. The jerking has a slow and a fast phase, with the fast phase being in the direction of the gaze. The eyes of 50-60% of all individuals will show horizontal gaze nystagmus if they move to the lateral extremes of from 45 to 65 degrees, measured from the center of the nose. However, after a person has consumed alcohol, the onset of the gaze nystagmus occurs at a much smaller angle, depending upon the blood alcohol concentration (BAC). The relationship between the angle of onset of horizontal gaze nystagmus and the BAC is so precise that a properly trained police officer can estimate a driver's BAC at roadside within ± 0.02 percent of chemical test readings.¹⁴

¹² Safety Study, "Deterrence of Drunk Driving: The Role of Sobriety Checkpoints and Administrative License Revocations," NTSB/SS-84/R1, April 3, 1984.

¹³ Van K. Tharp, Marceline Burns, and Herbert Moskowitz, "Limited Field Testing of a Standardized Sobriety Test Battery," 25th Proceedings, American Association for Automotive Medicine, 1981.

¹⁴ Van K. Tharp, "Gaze Nystagmus as a Roadside Sobriety Test," Abstracts and Reviews in Alcohol and Driving, Vol. II, No. 2, UCLA Alcohol Research Center, February 1981.

The NHTSA has recognized the value of the gaze nystagmus test and, in January 1984, issued a report, *Improved Field Sobriety Testing*, which recommends a three-part field sobriety test. The test consists of horizontal gaze nystagmus, walk and turn, and one-leg stand.

Another valuable tool of the police officer is the Preliminary or Pre-arrest Breath Test (PBT). PBTs can establish the BAC to within 0.01%. The tests enable an officer in the field to determine easily, quickly, and accurately whether a person is under the influence of alcohol in marginal cases and whether an arrest is justified. The Presidential Commission on Drunk Driving views PBTs as a reasonable use of police authority when the officer has a reasonable suspicion that DWI laws have been violated. The Safety Board believes that methods to improve the accuracy of field testing should be made available to police officers to increase the likelihood an arrest will be made where warranted.

Evidentiary Problems

The results of breath tests can be introduced as evidence of illegal BAC. However, when a driver suspected of DWI is seriously injured in a crash, breath tests may not be possible.

The drawing of blood for DWI evidentiary purposes generally occurs only at the direction and in the presence of a police officer. State health regulations designate those professionals (physicians, nurses, physician's assistants, paramedics, etc.) allowed to draw blood. In order to meet important legal and scientific requirements, blood samples must be drawn and stored appropriately (e.g., skin cleaned with non-alcohol swabs; blood stored in sterile, tightly sealed vials, etc.); have a documented chain of custody; and be analyzed by State or State-approved laboratories, using specified analytic techniques. In many instances, police report that hospitals and physicians have refused to perform such tests, fearing legal liability or involvement in lengthy court litigation.

Where blood alcohol tests are performed on injured drivers for medical (rather than forensic) purposes, hospitals and physicians also commonly refuse to submit BAC test results without a court order (often citing the doctor-patient confidential relationship). Blood alcohol tests are, however, not universally performed on all injured drivers, even for medical purposes.

These requirements often have the effect of precluding the gathering of evidence necessary to convict drunk drivers. In those States in which these sorts of evidentiary requirements exist, there is a need to examine whether they can be better structured to facilitate the efficient collection of DWI evidence.

When the primary evidence of a defendant's BAC level consists solely of the results of a "breathalyzer" test performed at the time of the arrest, defense attorneys have often argued that the Constitutional guarantees of a right to a fair trial and due process require the preservation of the breath sample for independent testing. Most breathalyzers destroy the sample; even with those that do not, it is difficult to preserve a breath sample through the period between arrest and an opportunity for the defense to have it tested.

On June 11, 1984, the U. S. Supreme Court held that the due process clause of the 14th Amendment does not require preservation of breath samples.¹⁵ In most States at this time, this means that breath samples need not be preserved and breath test evidence cannot be excluded from the trial on the grounds that a sample was not preserved for testing by the defense. However, the Supreme Court noted that State courts and legislatures are free to adopt more rigorous rules on the admissibility of scientific evidence than those imposed by the U.S. Constitution. Vermont and Oklahoma statutes require preservation of breath samples. The Alaska State Supreme Court has held that the due process clause of the Alaska Constitution requires such preservation.¹⁶ Other States may adopt similar statutes or interpret their Constitutions similarly.

Court Proceedings

Delays Between Arrest and Adjudication

Continuances and crowded dockets are but two of many reasons for delays between arrest and trial. In drunk driving cases, one result of these delays may be that an offender awaiting trial is arrested for DWI again before the first case is tried. In these cases, both charges may be combined and the defendant may be viewed by the court to be a first offender.

One countermeasure that is receiving increased attention, and that may mitigate some of the negative effects of delays between arrest and trial, is administrative license revocation. In its study of drunk driving deterrence measures,¹⁷ the Safety Board found that although motor vehicle department administrators typically have statutory authority to suspend or even revoke drivers' licenses, this authority rarely has been exercised in the past against drivers who violate drunk driving laws without a court notice of the driver's conviction on these charges. Given the often long delays between the drivers' arrest and court conviction, a reluctance on the part of motor vehicle administrators to suspend or revoke on their own authority, permits the offenders to continue to drive on a legal license for long periods of time before trial. Furthermore, even drivers whose BAC levels were over the legal limit often succeed in having the charges reduced, so that their conviction did not result in a traditional license suspension or revocation. The Safety Board recommended that administrative license revocation be made an integral part of each State's comprehensive alcohol safety program. (Safety Recommendation H-84-13 and -17.) As of September 1, 1984, administrative license revocation procedures had been adopted in 23 States.

Generally, in a State which has administrative license revocation laws, a police officer with probable cause to arrest a driver for a drinking/driving offense may ask the driver to submit to a breath test. The driver is warned that the law provides that his or her license will be revoked for refusal to take the test or if the test results evidence a BAC level above the legal limit. In either case, the police officer will take physical possession of the license, and give the driver a written notice that the driver has the right to request both an administrative and a judicial review of the revocation. (The written notice also serves as a temporary driving permit, valid for up to 30 days, depending on the State.)

Since most repeat offenders are problem drinkers or alcoholics, they may be less influenced by administrative license revocation than non-repeat offenders. Characteristic of problem drivers is a relative lack of regard for legal sanctions and social norms: certainly, repeat offenders have, by definition, demonstrated a certain immunity to the influence of laws and sanctions. Thus, administrative license revocation is likely to be a more effective deterrent against those who are not "hard-core" repeat offenders, that is, against those who are more likely to take license revocation seriously, who may be deterred from driving after drinking by fear of arrest and immediate revocation, or who may at least forego driving (particularly driving after drinking) if their license is administratively revoked. However, it also has some advantages even in the case of the sorts of drivers this study addresses. At the very least, administrative revocation at the time of arrest makes it illegal for the driver to continue using his or her license during most of the long delay until the hearing or trial and any subsequent drunk driving offenses are not committed while the driver is legally licensed by the State. Furthermore, even some habitual drunk drivers may be influenced to drive less, or drive sober, during the revocation period.¹⁸ Finally, if a second offense is committed after administrative revocation, it will be much more difficult to present the second offense as a first offense, even if the first offense was plea bargained down and does not appear on the record as a drunk driving offense.

Administrative license revocation is essentially a variation of traditional license suspension or revocation. Because these license actions are known to be effective in reducing both crashes and violations, it is reasonable to believe that administrative revocation likewise will be effective. Furthermore, it meets all three criteria for effective sanctions postulated by drunk driving deterrence theory:¹⁹ it is viewed by drivers as a severe

¹⁵ *California v. Trombetta*, 104 S. Ct. 2528; 52 U.S.L.W. 4744 (June 11, 1984).

¹⁶ *Municipality of Anchorage v. Serrano*, 649P.2d 236 (Alaska App. 1982).

¹⁷ National Transportation Safety Board, *op. cit.*, p. 10.

¹⁹ H. L. Ross, *Detering the Drinking Driver: Legal Policy and Social Control* (Lexington, 1982).

sanction,²⁰ it can be invoked with certainty, and it goes into effect shortly after arrest. It also has the advantage of being a less costly sanction for society than other countermeasures such as jail sentences.²¹

Plea Bargaining

Plea bargaining not only reduces the sanctions on the drunk driver; it also distorts his or her offense record, particularly when an alcohol-related charge is reduced to a nonalcohol-related charge. When this happens, there is no record of the arrest involving alcohol, so that the next time the offender is arrested, his or her records lead the court to believe they are first-time offenders. Some States have taken steps to deal with this result. For example, the Colorado Revised Statutes require the Division of Motor Vehicles to record all dismissals of DWI charges on a driver's record. They further require that the record show if a DWI charge is amended to a lesser charge. Colorado law also places restrictions on plea bargaining in DWI cases to prevent reduction of DWI charges to nonalcohol-related charges.²²

Prosecutors plea bargain for various reasons—to avoid the difficulties of jury trials, to clear overcrowded dockets, or in many cases, because they do not give DWI cases a high priority. The Presidential Commission on Drunk Driving reported:

The public prosecutor is responsible for, among many other things, evaluating, charging and trying [DWI] cases. Historically, prosecutors have not given [DWI] cases a high priority; consequently, they frequently engage in plea bargaining the [DWI] case. This results in reduced or minimal sanctions and reinforces the social acceptability of drinking and driving.

Prosecutors have largely failed to recognize or appreciate the impact, good and bad, that their attitudes and policies can have on the problem of the drinking driver. It is time for the prosecutor to assume a leadership role in dealing with the problem.²³

Sentencing Process

Judicial Training

Those familiar with the State and local court systems agree that many judges lack the training necessary to permit them to adjudicate drunk driving cases in a way that helps to reduce this problem and to do justice to the interests of both the offender and the public. The Presidential Commission on Drunk Driving commented in its final report:

It should be kept in mind that the public, and not only the defendant, has certain rights. Thus, the judiciary plays a vital role in discouraging driving under the influence. There are about 21,000 judges hearing traffic cases in the nation's 17,000 courts.²⁴ [DWI] cases constitute a substantial portion of their caseload. Nonetheless, most of these judges have had little formal training in either the adjudication of these cases or in alcohol use and traffic safety. All too often, the judiciary fails to view driving under the influence as a serious offense meriting certain, swift, and appropriate punishment.²⁵

²⁰ F. Lowery, *Minnesota's Double-Barrelled Implied Consent Law* (draft), Minnesota Department of Public Safety (1983).
²¹ For further discussion of these points, see a paper by Patricia F. Waller, *Licensing and Other Controls of the Drinking Driver*, prepared for the North American Conference on Alcohol and Highway Safety, The Johns Hopkins University School of Medicine, Baltimore, MD (1984).

²² Colorado Revised Statutes 42-2-188 and 1202.

²³ Presidential Commission on Drunk Driving, *Final Report*, 1983, p. 16.

²⁴ The American Bar Association estimates that about 6,000 judges handle the bulk of these cases. However, given the relatively high rate of turnover among these judges, ensuring that they are appropriately trained in DWI adjudication is a fairly formidable task.

²⁵ Presidential Commission on Drunk Driving, *op. cit.*

The Commission noted that "new judges ... are generally assigned to the trial of DWI cases. They should receive entry level and annual in-service training in the trial of such cases, and in alcohol abuse and in its relation to highway safety."²⁶

Most State judges are afforded judicial training at the State level, and training is available at a national level. However, there are a number of obstacles that stand in the way of assuring that judges actually receive adequate training. Our court systems are generally so overburdened by their case backlogs that it is difficult for a judge to take a significant amount of time away from his or her courtroom for training. If a judge does find time for training, he or she is faced with the need to make an election from an enormous range of subjects, since most courts are of general jurisdiction, and not limited to a particular type of offense, such as traffic offenses. Even in courts of limited jurisdiction, such as traffic courts, a judge must have a wide range of legal expertise in order to perform well. Many courts are further hampered by inadequate funds to pay for thorough training programs, especially at the national level. In those jurisdictions which have courts of limited jurisdiction, there often is a problem with turnover, since most judges prefer to handle a broader variety of cases.

A 1981 survey found that only two States require some form of mandatory training for new judges, 17 States hold annual mandatory judicial conferences, and 26 States have mandatory judicial continuing education programs.²⁷ Each State sets its own standards; however the American Bar Association (ABA) adopted Standards for Education and Training of State Trial Judges at its 1982 annual meeting. These standards address the goal setting, planning, development, administration, curriculum, faculty selection, and other aspects of training programs appropriate for adoption by the States. Among the areas of emphasis which the standards recommend are:

- ◆ Comprehensive educational training for new judges covering major legal subjects and skills for everyday use on the trial bench;
- ◆ Periodic evaluation and training for all judges on the substantive procedural and evidentiary laws of the State;
- ◆ Advanced or specialized programs, attended by judges not less frequently than every three years, which stress detailed examination of specific judicial concerns;
- ◆ Continuing education and programs directed to new developments, both procedural and technological; and
- ◆ Independent learning opportunities for judges.²⁸

The National Advisory Commission on Justice Standards and Goals also has proposed a standard on judicial education. Although less specific than the ABA standard, it calls for every State to create and maintain a comprehensive program of continuing mandatory judicial education. Education on alcohol-related issues or DWI adjudication is not specifically mentioned in either of these standards. However, the standards do call for specialized subject matter programs which might include DWI adjudications.

Virtually every State court system has a judicial education administrator who is a part of the administrative office of the court. These officials are responsible for carrying out the education of a State's judges. In addition, there are State judicial organizations and professional associations which sponsor annual judicial conferences, often a significant source of judicial education. Traffic safety issues are only one of many competing topics which must be covered in the training and, therefore, often do not receive in-depth attention. The Safety Board

²⁶ *Ibid.*

²⁷ American University Criminal Courts Technical Assistance Project, *Survey of State Mandatory Judicial Education Requirements*, cited in American Bar Association, *National Conference of State Trial Judges, Standards for Judicial Education*, August 1982.

²⁸ ABA, *op. cit.*, Standard 3.B.