

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**6922 HOUSE JUDICIARY**

HOUSE COMMITTEE REPORT

3-26-91

Date Referred: February 4, 1991

FURTHER REFERRALS:

Judiciary  
Finance

Date of Committee Action: 3-25-91

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 101

HOUSE BILL NO. 101

PROSECUTION OF JUVENILE FELONS

"An Act relating to criminal charges brought against minors, and providing that minors convicted as adults may be confined in juvenile facilities."

RECOMMENDATIONS:

be replaced with CS HB 101 (HES)  the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact DHSS

fiscal note(s) \_\_\_\_\_

(2)  zero fiscal note D.O.C. + D.O.L.

zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS: (Lincoln)

SIGNING OTHER RECOMMENDATIONS:

Lincoln	Check appropriate column:	Do Not	No Rec	Amend
		Pass		
<i>[Signature]</i> (CARNER)	Cheri Davis		X	
J. G. Gonzales (GONZALES)				
Mark Hambley (HAMBLEY)				

*[Signature]* Lincoln  
CO-Chairman's Signature

Executive Branch  
Proposed Amendment to CSHB 101(HES)  
April 3, 1991

Page 1, line 7, following "attempted,"

insert: "or solicited"

Page 1, lines 13-14, and page 2, lines 1-2,

delete: (A) twice adjudicated as a delinquent in  
this or another jurisdiction as a result of  
violating a criminal law that would have been  
a felony under the laws of this state if  
committed by an adult; or

(B)

Page 2, lines 13-14, following "(e)(2),"

delete: or (3)

Page 3, lines 9-19, rewrite Sec. 2 as follows:

\* Sec. 2. AS 47.10.080 is amended by adding new  
subsections to read:

(o) If a minor is charged and prosecuted as an  
adult under AS 47.10.010(e) - (g) and the most  
serious offense for which the minor was convicted  
is a misdemeanor, the minor shall be treated as  
though the charges had been heard under this  
chapter, and the court shall order disposition of

the charges of which the minor is convicted under the provisions of (b) of this section.

(p) If a minor is charged and prosecuted as an adult under AS 47.10.010(e) - (g) and the most serious offense for which the minor is convicted is a felony with which the minor could not be charged under AS 47.10.010(e) and the minor did not file a petition under AS 47.10.010(h)(1), the minor may within 10 days of the date that the minor is convicted file a petition for disposition of the charges under (b) of this section. The petition shall allege that the minor is amenable to treatment under this chapter before the minor's 20th birthday. A hearing on the petition shall be governed by the provisions of AS 47.10.010(i)-(j).

Page 3, lines 20-21, renumber Sec. 3 as Sec. 4 and add a new Sec. 3 to read as follow:

\* Sec. 3. AS 47.10.060 is amended by renumbering subsection (e) as subsection (f) and adding a new subsection (e) to read:

(e) At a hearing on a petition under this section, the minor may introduce as evidence the testimony or the report of a qualified psychiatrist or psychologist on the minor's amenability to treatment before reaching 20 years of age. Notice

of intent to introduce this evidence shall be given to the court by the minor at least 20 days before the hearing. If the minor gives this notice and the state requests that the minor be examined by another psychiatrist or psychologist, the court shall order that the minor be examined by a qualified psychiatrist or psychologist selected by the state. A report by a psychiatrist or psychologist that either the minor or the state intends to introduce as evidence at the hearing shall be filed with the court and served on the opposing party at least 48 hours before the hearing.

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

Bill Version: CSHB 101(HES)  
(H) Publish Date: 3/26/91

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to criminal charges brought against minors..." BRU: Prosecution/Legal Services  
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation  
 Requestor: House Judiciary Legal Services/Operations  
 COMPONENT SERIAL NO. 

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		9	3

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)  
  
Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: February 19, 1991  
 Approved by Commissioner: Richard I. Pegues /FOIC/  
Charles E. Cole Attorney General  
 Agency: Department of Law Date: February 19, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

COMMITTEE COPY.  
FN 0 D.O.L.

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 101

This bill provides the framework for a major departure from the way that the state adjudicates minors charged with serious criminal offenses.

Historically, the state has used the Children's Proceedings process provided in AS 47.10 to handle delinquent behavior unless the court found that the minor was not amendable to treatment as a juvenile. In such cases, the state has been required to petition the court for a waiver of jurisdiction so that the minor may be prosecuted as an adult in the superior court. In determining whether or not a minor is amendable to treatment, the court considers the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available for treating the minor.

While still retaining the waiver of jurisdiction provision, AS 47.10.060, HB 101 also provides that Children's Proceedings under AS 47.10.020 -47.10.090 may not be followed when a minor is fourteen years of age and older and is charged with the following crimes:

- (1) the offense of murder in the first degree or attempted murder in the first degree;
- (2) an unclassified or a class A felony, and the minor has been previously adjudicated as a delinquent for conduct that would have been a felony if committed by an adult;
- (3) a felony of any degree, and the minor has been previously twice adjudicated as a delinquent for conduct that would have been a felony if committed by an adult; or
- (4) previously prosecuted and convicted as an adult for a felony.

Consequently, a minor accused of the above listed offenses would be charged, prosecuted, and sentenced in the superior court in the same manner as an adult.

The bill does provide that if a minor is charged under these provisions, the minor may petition the court seeking to have the charges handled as a Children's Proceeding under AS 47.10.020 - 47.10.090. The effect of these changes is to shift the burden of proof from the prosecution to the defense in determining whether a minor charged with a serious crime should be tried in children's court or as an adult in superior court.

Finally, the bill amends AS 12.55.015 to provide that a minor under the age of 18 who has been convicted under the foregoing provisions, or following a waiver of juvenile jurisdiction under AS 47.10.060, may be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday. A minor thus committed would be placed in a secure facility, could not be released except upon an order of the court, and would be transferred to the custody of the Department of Corrections when reaching 18 years of age.

Because of its effect, transferring the responsibility for bringing most waiver hearings from the prosecution to the defense, the bill will not have a fiscal impact on the Department of Law. The department currently handles about twelve waivers of jurisdiction under the existing statute.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "An Act relating to criminal charges brought against minors..." BAU: Prosecution/Legal Services  
 Sponsor: Representative Donley Component: Prosecution/Criminal Justice Litigation  
 Requestor: House Judiciary Legal Services/Operations  
 COMPONENT SERIAL NO. 

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							9	3	

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>						

POSITIONS:

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

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis.

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: February 19, 1991  
 Approved by Commissioner: Richard I. Pegues / R/I/C  
Charles E. Cole, Attorney General  
 Agency: Department of Law Date: February 19, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 101

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Finally, the bill amends AS 12.55.015 to provide that a minor under the age of 18 who has been convicted under the foregoing provisions, or following a waiver of juvenile jurisdiction under AS 47.10.060, may be committed to the custody of the Department of Health and Social Services until the minor's 18th birthday. A minor thus committed would be placed in a secure facility, could not be released except upon an order of the court, and would be transferred to the custody of the Department of Corrections when reaching 18 years of age.

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# FISCAL NOTE

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO. CSHB101**

Revision Date: \_\_\_\_\_ Dept. Affected Health & Social Services  
 Title: An Act relating to criminal charges brought BRU: Youth Services  
against minors and providing that minors convicted... Component: To be established  
 Sponsor: Representative Donley  
 Requestor: \_\_\_\_\_ **COMPONENT SERIAL NO.** \_\_\_\_\_

**Expenditures/Revenues**

(Thousands of Dollars)

OPERATING	FY92	FY93	FY94	FY95	FY96	FY97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>CAPITAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
<b>REVENUE</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**FUNDING:**

(Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

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

Estimate of current year impact:

**ANALYSIS:** (Attach a separate page if necessary)

The zero fiscal note assumes that waived minors will be housed in secure facilities operated by the Department of Corrections

Prepared by: Michael L. Price, Director  
 Division: Division of Family and Youth Services

Phone: 465-3170  
 Date: \_\_\_\_\_

Approved by Commissioner: Theodore A. Mala, MD, MPH Date: \_\_\_\_\_  
 Agency: Department of Health and Social Services

Distribution (by preparer):

Legislative Finance            OMB  
 Legislative Sponsor        Impacted Agency(ies)  
 Requestor

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 101

Revision Date: \_\_\_\_\_  
Title: "An act relating to criminal charges brought against minors."  
Sponsor: Rep. Donley  
Requestor: Sponsor

Department Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments

COMPONENT SERIAL NO. 

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

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

Estimate of current year impact \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact anticipated.

Prepared by: Francis C. Allan Phone: 269-5691  
Division: Alaska State Troopers Date: 02/07/91

Approved by Commissioner: *[Signature]* Richard Burton  
Agency: Department of Public Safety Date: 2/14/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

Bill No. CSHB 101 (HES)

Revision Date: \_\_\_\_\_ Department Affected: Alaska Court System  
 Title: An Act relating to criminal charges BRU: Trial Courts  
           brought against minors Components: \_\_\_\_\_  
 Sponsor: Donley  
 Requestor: Judiciary COMPONENT SERIAL NO. 

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**EXPENDITURES/REVENUES: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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

GENERAL FUNDS	0.0	0.0	0.0	0.0	0.0	0.0
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS: (Attach a separate page if necessary)**

No fiscal impact.

Prepared by: C. S. Christensen III, Staff Counsel Phone: 264-8228  
 Division: Alaska Court System Date: 04/03/91

Approved by: Arthur H. Snowden, II, Administrative Director Date: 04/03/91  
 Agency: Alaska Court System

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB 101 (JUD)

Revision Date: 5/1/91 Department Affected: Administration

Title: Prosecution of Juvenile Felons BRU: Public Defender Agency

Component: Third Judicial District

Sponsor: Rep. Donley

Requestor: (H) Judiciary COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	54.6	56.6	58.8	61.0	63.3	65.6
TRAVEL	5.0	5.2	5.4	5.6	5.8	6.0
CONTRACTUAL	15.0	15.0	15.0	15.0	15.0	15.0
SUPPLIES	1.0	1.0	1.0	1.0	1.0	1.0
EQUIPMENT	2.0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	77.6	77.8	80.2	82.6	85.1	87.6

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	77.6	77.8	80.2	82.6	85.1	87.6
FEDERAL FUNDS						
OTHER						
TOTAL	77.6	77.8	80.2	82.6	85.1	87.6

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	2.0	2.0	2.0	2.0	2.0	2.0
TEMPORARY						

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.)

(See attached.)

Prepared By: John B. Salemi, Director Phone: 279-7541

Division: Public Defender Agency Date: 5/1/91

Approved by Commissioner: Millett Keller

Agency: Department of Administration Date: 5/1/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 101

Under the current juvenile delinquency laws the prosecuting authorities of this state have full discretion with respect to deciding which juvenile offenders should be transferred out of the juvenile courts and into adult court for prosecution. Traditionally there has been little if any quarrel as to how this judgment has been exercised. There is a general perception that the juvenile authorities and state prosecutors petition for waiver in those cases where it is appropriate. Furthermore the courts have been more than willing to accede to the request for waiver. In other words, currently the state of Alaska has a juvenile waiver law which works well.

The changes proposed by CSHB 101 will remove some of the discretion of the state prosecuting authority in that some juvenile offenders will automatically be transferred to adult court unless said offender petitions the court for treatment as a juvenile delinquent and subsequently proves up his/her amenability to treatment. Under current law no child is automatically waived into adult court. Additionally, when waiver is requested the state has the modest burden (as opposed to the child) of establishing by preponderance of the evidence that the minor is not amenable to treatment.

While there is some suggestion that less than ten children would be affected statewide by this change in the law (in other words, ten additional kids will be waived into adult court) this writer is very skeptical of those estimates. The changes proposed not only automatically set in motion waiver for children accused of murder, attempted murder and/or solicited murder, but also for any charged unclassified or Class A felony where the minor has previously been adjudicated as a delinquent in this or another jurisdiction for felony level conduct. There will be more than ten cases in Anchorage alone that will trigger this waiver provision if the new law is enacted.

What will be the result of changing this law? Besides violating the "if it ain't broke don't fix it" principle, the change will create more litigation in juvenile court and thus create some congestion in the juvenile court system, delay the conclusion of court proceedings, and cost the state money. Furthermore it will take away discretion from prosecuting authorities who traditionally have exercised extremely good judgment with respect to this waiver issue.

The increase in litigation will occur mainly because this bill sets up the equivalent of a presumptive waiver law for kids who have previously been adjudicated delinquents for felony level conduct. In the current system most kids plead guilty or no contest (in the juvenile system it is called an "admission") once formally charged in the delinquency courts. This 'fessing up is seen as theraputic and rehabilitative. It is often encouraged by their lawyers because it is consistent with achieving a positive and good result at the disposition phase of the proceeding. Under the proposed bill both juveniles and defense lawyers will take a very different approach. Lawyers will have to advise juveniles that if they admit to felony level conduct they may be setting themselves up to be automatically prosecuted in adult court if they commit a subsequent serious felony as a juvenile. With the stakes for a first felony offense in

# CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CS HB 101

juvenile court changing this dramatically defense lawyers will be ethically bound to discuss the down side of entering an admission.

Currently very few trials are held in juvenile court. The number of trials in situations where a juvenile is being processed in juvenile court for felony level conduct will dramatically increase. This will entail additional investigative resources and attorney time, not to mention court time. Because the juvenile system at this point in time encourages pleas (admissions) the Public Defender Agency has been able to process these cases with minimal commitment of resources. That will all change.

Under the present system a juvenile in a typical case can be in treatment within 30 days of the filing of a petition for adjudication as a delinquent. But if cases must be contested in juvenile court, or start out in adult court, as many more would under the new proposal, lengthy procedures will precede any disposition. Parties will litigate pre-trial and trial issues in the courts as is deemed appropriate. Delays will necessarily occur. The current system makes far more sense, is less expensive and expedites the processing of juvenile cases.

It should be noted that additional litigation and the consequent delay is not good for victims either, who have to live with more trials, greater uncertainty and the inevitable postponements of court proceedings.

Considering the fiscal impact on the Public Defender Agency it appears that one attorney with felony level experience will be required as well as the commitment of a half-time investigator. This attorney and half-time investigator will likely be sited in the Anchorage office but will be called on to handle waiver petitions in Anchorage, Fairbanks and certain Bush areas. It is the understanding of this writer that other affected agencies have submitted zero fiscal notes. It is believed that such a position is unrealistic, at least as to the Public Defender Agency. As previously mentioned, this agency has very little resources devoted to juvenile delinquency cases. In Anchorage for example juvenile delinquency matters are handled by the family court lawyers, who spend most of their time processing Child in Need of Aid cases. Waiver cases, when they do occur, are often absorbed by the Anchorage appellate section. The family law section is already "maxed out" due in large part to the burgeoning C.I.N.A. caseload. Even though the family court system has reported increases in C.I.N.A. cases as high as 40% over the last two fiscal years, the Public Defender Agency has consistently been turned down when it has asked for additional resources. In summary, the impact of CSHB 101 on the family law lawyers will mandate additional resources for that section. See below:

CONTINUATION OF FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB101(JUD)

BUDGET ANALYSIS

Personal Services		
Attorney III (1/2)	35.6	
Paralegal I	19.0	
		54.6
Travel		
Professional and Experts		5.0
Contractual		
Expert Witnesses	10.0	
Office Space	3.5	
Utilities	2.5	
		15.0
Supplies		1.0
Equipment		
Office (one time only)		<u>2.0</u>
	TOTAL	77.6

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

**BILL NO.** CSHB 101(JUD)

Revision Date: \_\_\_\_\_ Department Affected: ADMINISTRATION  
 Title: PROSECUTION OF JUVENILE FELONS BRU: PUBLIC DEFENDER AGENCY  
 Component: \_\_\_\_\_  
 Sponsor: REP. DAVE DONLEY  
 Requestor: House Judiciary Committee COMPONENT SERIAL NO. 

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**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>						
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<b>REVENUE</b>						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

Estimate of current year impact:

**ANALYSIS: (Attach a separate page if necessary.)**

See Attached

Prepared By: Chairman Dave Donley *Dave Donley* Phone: 465-4990  
 Division: House Judiciary Committee Date: 5/6/91  
 Approved by Commissioner: Chairman Dave Donley *Dave Donley*  
 Agency: House Judiciary Committee Date: 5/6/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Continuation of Fiscal Note Analysis  
For Bill No. CS HB 101 (Jud)

The Department of Law, the Department of Health and Social Services, and the Legislative Research Agency have all analyzed data available for 1990, and agree that in 1990 no more than six (6) minors would have been affected by CS HB 101 (Jud). The minors in these cases were appointed a public defender who represented them during the juvenile proceedings. Given the small number of cases affected by CSHB 101 (Jud), and given that the affected cases are already being handled by the Public Defender Agency, there will not be a fiscal impact on the Public Defender Agency.

The Alaska Court System and all other executive branch agencies impacted by CSHB 101 (Jud) have submitted zero fiscal notes.

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. CSHB 101(jud)

Revision Date: \_\_\_\_\_ Department Affected: Corrections  
 Title: "An Act relating to criminal charges brought against minors." BRU: Statewide Operations  
 Component: \_\_\_\_\_  
 Sponsor: Rep. Donlev  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

--	--	--	--

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	-0-	-0-	-0-	-0-	-0-	-0-

<b>CAPITAL</b>	-0-	-0-	-0-	-0-	-0-	-0-
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<b>REVENUE</b>	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director *Tom Sutton* Phone: (907) 465-3376  
 Division: Administrative Services Date: 04/04/91  
 Approved by Commissioner: *[Signature]*  
 Agency: Department of Corrections Date: 04/04/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

No. 2  
 Bill Version: CSHB 101(HES)  
 (H) Publish Date: 3/26/91

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Corrections  
 Title: "An Act relating to criminal charges brought against minors..." BRU: \_\_\_\_\_  
 Sponsor: Rep. Donley Component: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

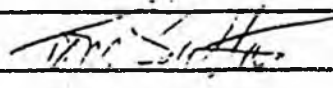
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Tom Sutton, Director  Phone: 465-3376  
 Division: Administrative Services Date: 03-21-91

Approved by Commissioner: \_\_\_\_\_  
 Agency: Department of Corrections Date: 03-21-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

HOUSE COMMITTEE REPORT

5/9/91

(7)  
Date Referred: March 26, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 5-6-91

The JUDICIARY Committee considered:

HB 101

HOUSE BILL NO. 101

PROSECUTION OF JUVENILE FELONS

"An Act relating to criminal charges brought against minors, and providing that minors convicted as adults may be confined in juvenile facilities."

RECOMMENDATIONS:

be replaced with CSHB 101 (Jud)  the same title  a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: House Judiciary letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact

fiscal note(s)

(5)  zero fiscal note <sup>H. Jud. Cmte</sup> for Admin/Corrections, Hess  
Pub. Safety, Courts

zero fiscal note(s) LAW 3/26/91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Perry Martin</i> Martin	<input checked="" type="checkbox"/>	<i>Robert Gruzberg</i> Gruzberg		<input checked="" type="checkbox"/>	
<i>David Parnell</i> Parnell	<input checked="" type="checkbox"/>				
<del>XXXXXXXXXXXXXXXXXXXX</del>	<input checked="" type="checkbox"/>				
<i>Mike Miller</i> Miller	<input checked="" type="checkbox"/>				
<i>Mark Hanley</i> Hanley	<input checked="" type="checkbox"/>				

*Mark Hanley*  
CHAIRMAN'S SIGNATURE

II. *DID THE COURT ERR IN HOLDING THAT FRANCIS HAS A BIVENS REMEDY FOR DAMAGES AGAINST THE STATE?*

[2] The trial court held that the state was liable for damage pursuant to *Bivens*. The trial court concluded that

because Francis has been denied a fundamental right guaranteed every citizen by the privileges and immunities clause of the United States Constitution, he has a remedy against the state for damages he has suffered. Under the Supremacy Clause, Article IV of the United States Constitution, this court is bound by the provisions of the United States Constitution; any laws of the state to the contrary notwithstanding.

The state makes three arguments. First, the state argues that it is not a proper defendant in a *Bivens* action. Next, it argues that a *Bivens* action should not extend to violations of the privileges and immunities clause of the United States Constitution. Finally, the state argues that special factors in this case counsel hesitation in the creation of a *Bivens* remedy.

In *Vest v. Schafer*, 757 P.2d 588 (Alaska 1988), this court examined the law surrounding *Bivens*-type damage remedies in depth.

We hold that a *Bivens*-type action, brought in state court against the state, cannot be allowed to stand when it is grounded on a claim that the legislature enacted a law later found to violate the equal protection clause of the Fourteenth Amendment of the Constitution.

*Id.* at 598. This court did not decide whether other unconstitutional behavior by the state can ever give rise to a federal *Bivens*-type action against the state in a state court. *Id.* at n. 36.

This case, like *Vest*, asks this court to hold the state liable for damages for unconstitutional legislation. Unlike *Vest*, however, the legislation violated the privileges and immunities clause of the Constitution,

2. We are aware of no *Bivens*-type case at the Supreme Court level involving a violation of the privileges and immunities clause.

rather than the equal protection clause. In *Vest* this court analyzed the appropriateness of awarding *Bivens* damages against the state. We noted that:

When a court finds a statute unconstitutional, the traditional remedy is declaratory or injunctive relief. Professor Davis stated: "Neither the United States nor any state has ever been liable for damages because its legislative body has enacted legislation that is later held unconstitutional."

*Id.* at 594 (quoting K. Davis, *Administrative Law Treatise* § 25.00-4, at 400 (Supp. 1982)).

Although the *Vest* case involved a statute which violated the fourteenth amendment rather than the privileges and immunities clause, the primary focus of *Vest* was on the general appropriateness of *Bivens* remedies against the state.<sup>2</sup>

For the reasons expressed in *Vest* we hold that the state may not be held liable for damages arising from the passage of unconstitutional legislation.<sup>3</sup> Therefore, the decision of the trial court concerning the damage remedy is reversed.

AFFIRMED in part and REVERSED in part.



R.H., A Minor, Appellant,

v.

STATE of Alaska, Appellee.

No. 942.

Court of Appeals of Alaska.

July 7, 1989.

Hearing was held to determine whether juvenile should be tried as adult for

3. Because there is no damage remedy, injunctive relief may be regarded as particularly appropriate in cases of this nature.

murder. The Superior Court, Fourth Judicial District, Fairbanks, Jay Hodges, J., waived children's court jurisdiction, and juvenile appealed. The Court of Appeals, Bryner, C.J., held that juvenile's privilege against self-incrimination was violated by court order compelling him to submit to psychiatric evaluation in order to determine his mental ability to treatment as minor.

Vacated and remanded.

### 1. Infants $\S$ 205

Court-ordered psychiatric evaluations of juvenile, for purpose of determining his mental ability to treatment, did not violate his right to counsel in that his counsel was permitted to accompany him and consult with him throughout course of evaluations. U.S.C.A. Const.Amend. 6; Const. Art. 1,  $\S$  11.

### 2. Criminal Law $\S$ 393(1)

Juvenile's privilege against self-incrimination was violated by court order compelling him to submit to psychiatric evaluation in order to determine his mental ability to treatment as minor, though court adopted safeguards to assure that no directly inculpatory statements would be divulged to prosecution or court, where juvenile had not affirmatively raised any issue pertaining to his psychological condition, and State was allowed to rely on evaluation at waiver hearing to establish future dangerousness. U.S.C.A. Const.Amend. 5; Const. Art. 1,  $\S$  9.

### 3. Criminal Law $\S$ 393(1)

#### Infants $\S$ 253

Trial court's erroneous reliance, at juvenile waiver hearing, on psychiatric evidence obtained in violation of juvenile's right against self-incrimination necessitated reversal, notwithstanding existence of other evidence which independently may have justified waiver of children's court jurisdiction over juvenile; challenged evidence was given considerable prominence at hearing, and reviewing court could not say that it did not have appreciable effect on trial court's ultimate decision to waive jurisdiction. U.S.C.A. Const.Amend. 5; Const. Art. 1,  $\S$  9.

Nelson Traverso, Asst. Public Advocate, Fairbanks, and Brant McGee, Public Advocate, Anchorage, for appellant.

Cynthia M. Hora, Asst. Atty. Gen., Office of Sp. Prosecutions and Appeals, Anchorage, and Douglas B. Baily, Atty. Gen., Juneau, for appellee.

## OPINION

Before BRYNER, C.J., and COATS and SINGLETON, JJ.

BRYNER, Chief Judge.

R.H. appeals from an order entered by Superior Court Judge Jay Hodges waiving children's court jurisdiction and directing that R.H. be tried by the superior court as an adult for murder in the first degree, robbery in the first degree, and other related charges. R.H. contends that the court violated his privilege against self-incrimination and his right to counsel by compelling him to submit to a psychiatric evaluation in order to determine his amenability to treatment as a minor. R.H. additionally contends that the court erred in finding him unamenable to treatment and in failing to find that the state proceeded in bad faith in supervising him on juvenile probation. We find that the court erred in compelling R.H. to submit to a psychiatric evaluation.

The facts are undisputed. On the night of March 31, 1988, R.H. and another minor, P.K.M., burglarized a Fairbanks office and stole a pistol, the owner's manual to the pistol, some ammunition, and an extra clip. By reading the owner's manual, R.H. and P.K.M. learned how to operate the gun. They then decided to rob a taxicab driver in order to obtain money for drugs; the boys made plans to kill the driver of the cab.

In the early morning hours of April 1, R.H. and P.K.M. flagged down a cab driven by Dale Baurick and asked to be taken to McGrath road in Fairbanks. Baurick drove the boys there and stopped the cab. R.H., who was seated behind Baurick, fired four shots into Baurick's back. As R.H. fired the shots, Baurick threw a wad of money into the back seat.

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statute unconstitutional remedy is declaratory relief. Professor the United States er been liable for legislative body has t is later held un-

Davis, *Administrative* 10-4, at 400 (Supp.

se involved a state-fourteenth amendment privileges and immunity focus of *Vest* propriateness of *Bi* the state.<sup>2</sup>

essed in *Vest* we not be held liable on the passage of tion.<sup>3</sup> Therefore, l court concerning reversed.

and REVERSED in



Appellant,

a, Appellee.

12.

s of Alaska.

989.

o determine whether tried as adult for mage remedy, injunction as particularly appropriate nature.

After firing the shots, R.H. searched Baurick's pockets, taking a knife from one of them. R.H. then pulled Baurick out of the cab onto the road. Baurick apparently moaned. P.K.M. told R.H. to shoot Baurick, to make sure that he died. R.H. fired another shot into Baurick's head as Baurick lay on the road. R.H. and P.K.M. left the scene, driving Baurick's cab.

Alaska State Troopers investigating the case interviewed R.H. two days later, on April 3, 1988. R.H. gave a videotaped statement confessing to the murder and to the prior burglary in which he stole the murder weapon. The state thereafter petitioned for waiver of children's court jurisdiction over R.H., charging him with murder in the first degree, robbery in the first degree, and other offenses stemming from the burglary and shooting of March 31 and April 1.

R.H. was born on May 22, 1971. At the time of the offenses in this case, he was less than two months away from his seventeenth birthday. R.H.'s parents were divorced in 1979. R.H. first became involved in delinquent behavior in 1977, when he was charged with destroying mail from mailboxes. In 1983, at age twelve, R.H. was charged with harassment and disorderly conduct. The following year, he was involved in a shoplifting.

The 1983 and 1984 offenses apparently occurred when R.H. was living with his mother. In 1985, while living with his father in Delaware, R.H. was charged with possession of marijuana. Later in 1985, after turning fourteen, R.H. was charged with robbery and conspiracy. In early 1986, while awaiting disposition on the robbery charge, R.H. was charged with consuming alcohol, criminal trespass, and criminal misrepresentation. In an apparent effort to avoid Delaware delinquency proceedings, R.H.'s father sent R.H. to live with relatives in California.

Within a short time, in April of 1986, R.H. robbed a woman in California. R.H.'s father evidently misled California authorities, telling them that, for the most part, R.H. had never been in trouble with the law. R.H. was eventually released on pro-

bation on condition that he not return to California without being accompanied by a parent.

From California, R.H. was sent to live with his mother in North Pole, Alaska. In March of 1987, while fifteen years old, R.H., in the company of two adults, broke into Moose Creek Lodge and stole alcohol, food, money, and stereo equipment. At sixteen years of age, in August of 1987, R.H. was stopped while driving a stolen pickup truck. An Intoximeter test indicated a breath alcohol level of .08.

The state filed a delinquency petition charging R.H. with burglary, theft, criminal mischief, and consumption of alcohol. On December 4, 1987, R.H. admitted the allegations of the petition. The superior court released him to the custody of his mother pending a disposition hearing. Six days later, R.H. was arrested for shoplifting. Upon arrest, he appeared to have been drinking; a pipe containing marijuana residue was found on his person.

A disposition hearing was held in superior court in Fairbanks on January 12, 1988. R.H. was placed on probation, on condition that he remain in the custody of his mother, participate in a substance abuse counseling program, and refrain from consuming alcohol or controlled substances.

On March 30, 1988, R.H.'s mother reported to R.H.'s juvenile probation officer that R.H. had stolen \$4,000 worth of coins from her boyfriend and had sold them. Less than two days later, R.H. engaged in the fatal shooting of Dale Baurick.

Following R.H.'s arrest for the shooting, the state filed a petition for waiver of children's court jurisdiction, pursuant to AS 47.10.060(a). In support of its petition, the state requested a psychiatric evaluation of R.H., arguing that expert testimony concerning R.H.'s psychological condition would be relevant in determining his amenability to treatment. R.H. opposed the state's motion, arguing that a court order requiring him to submit to a psychiatric evaluation would violate his privilege against self-incrimination. R.H. pointed out that he had not affirmatively raised

ion that he not return to it being accompanied by a

ia, R.H. was sent to live in North Pole, Alaska. In while fifteen years old, pany of two adults, broke : Lodge and stole alcohol, d stereo equipment. At age, in August of 1987, l while driving a stolen n Intoximeter test indi- col level of .08.

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R.H. opposed the ig that a court order mit to a psychiatric iolate his privilege tion. R.H. pointed affirmatively raised

any issue pertaining to his psychological condition.

After hearing argument on the state's motion, Superior Court Judge Jay Hodges ordered R.H. to submit to psychiatric evaluation and substance abuse screening. In ordering the examinations, Judge Hodges took elaborate precautions to safeguard R.H.'s privilege against self-incrimination and his right to counsel. The judge directed that R.H.'s attorney have the right to be present with R.H. during the examinations. Additionally, Judge Hodges ordered that R.H.'s examiners be precluded from discussing their findings with the state, and he directed that their written reports be submitted to the court under seal for an initial screening by R.H.'s counsel. R.H.'s counsel was to be given an opportunity to raise self-incrimination objections to any specific information in the reports dealing with the facts of the case. Defense objections were to be ruled upon by a judge other than the judge presiding over the waiver hearings. By this process, a "sanitized" report was to be generated for disclosure to the court and the state for use in the waiver proceedings. No further use of the report, beyond the waiver stage, was to be allowed.

While preserving his original objections, R.H. submitted to the court-ordered examination; he was evaluated by a psychologist and two psychiatrists. All three examiners prepared written reports, which were eventually presented to the court and to the state in sanitized form.

A waiver hearing was subsequently held to determine R.H.'s amenability to treatment, pursuant to AS 47.10.060(a) and (d), which provide:

*Waiver of Jurisdiction.* (a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

....

(d) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching twenty years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the division of youth and adult authority for treating the minor.

R.H.'s waiver hearing was conducted in two stages. The initial stage focused on whether, under AS 47.10.060(a), there was probable cause to believe that R.H. had committed the delinquent acts alleged. At this hearing, R.H. conceded that the state had probable cause to establish that he had committed the alleged misconduct. R.H. likewise conceded the seriousness of the offenses, a factor specified in AS 47.10.060(d) as bearing on the issue of amenability to treatment.

The second stage of the waiver proceedings focused on the remaining aspects of R.H.'s amenability to treatment under AS 47.10.060(d). R.H. did not dispute his history of delinquency. To establish the probable cause for R.H.'s delinquent behavior and the adequacy of existing facilities to provide treatment to R.H., the state presented, *inter alia*, testimony from the three experts who had examined R.H. pursuant to the court's order. The upshot of the expert testimony was that R.H. suffered from a serious conduct disorder, that he exhibited traits commonly associated with adults suffering from antisocial personalities, that there were no facilities capable of providing him with treatment, and that he was not amenable to rehabilitation as a child.

Upon conclusion of the waiver hearings, Judge Hodges issued a written order waiving jurisdiction over R.H.'s case. The order found probable cause to believe that R.H. had committed the alleged offenses. With respect to the seriousness of the offenses, Judge Hodges found that first-de-

gree murder was the most serious of crimes and that R.H.'s offense qualified among the most serious of first-degree murders. Judge Hodges additionally found that R.H.'s history of delinquency was extensive and would in itself have supported the conclusion that R.H. was not amenable to treatment as a child. Concerning the probable cause for R.H.'s delinquent behavior, the judge found that R.H.'s delinquent problems apparently grew out of his dysfunctional home life and his addiction to drugs; the judge also found that R.H. had become self-indulgent and narcissistic and had developed the characteristics of an antisocial personality. Finally, Judge Hodges found that there was no available juvenile facility capable of addressing R.H.'s psychological or substance abuse problems. Based on these findings, Judge Hodges concluded that R.H. was not amenable to treatment by his twentieth birthday and directed that he be tried as an adult.

[1] On appeal, the primary contention raised by R.H. is that the superior court erred in compelling him to submit to psychiatric evaluations. R.H. claims that the court-ordered evaluations infringed his right to be free from compelled self-incrimination, as guaranteed by the fifth amendment to the United States Constitution and article 1, section 9, of the Alaska Constitution.<sup>1</sup>

In response to R.H.'s claim, the state argues that the superior court took adequate steps to protect R.H.'s privilege against self-incrimination. The state maintains that the fact that the court restricted the use of the evaluations to the determination of R.H.'s amenability to treatment and precluded their use in subsequent phases of his case satisfied the requirements of the constitution.

In our view, the propriety of the superior court's order compelling R.H. to submit to psychiatric evaluation hinges upon the validity of either of two alternative ratio-

1. R.H. separately argues that the court-ordered psychiatric evaluations deprived him of his constitutional right to counsel, as provided for in the sixth amendment to the United States Constitution and article 1, section 11, of the Alaska Constitution. To the extent that this argument

nales—one apparently adopted by the trial court, and the other espoused by the state on appeal. The first is Judge Hodges' tacit assumption that the privilege against self-incrimination covers only directly inculpatory statements and that, consequently, R.H.'s rights could therefore be protected by adopting safeguards to assure that no directly inculpatory statements would be divulged to the prosecution or to the court at any stage of the proceedings. The second is the state's belief that the privilege simply does not attach in a juvenile waiver proceeding to the determination of amenability to treatment. The state contends that the issue of amenability to treatment does not entail the adjudication of guilt but involves only a selection of the forum in which R.H.'s case will be handled. Thus, according to the state, R.H.'s fifth amendment rights would have been adequately protected by providing R.H. with immunity against disclosure of his statements at any stage of proceeding after the waiver hearing. In the state's view, the precautions that the court took to prevent disclosure of directly incriminating statements at the waiver hearing stage were simply unnecessary.

We conclude, however, that reliance on either or both of these rationales is foreclosed by the United States Supreme Court's decision in *Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981). In that case, the defendant, Smith, was charged with murder. The trial court issued a *sua sponte* order directing that Smith be examined by a psychiatrist in order to determine his competency to stand trial. Pursuant to the order, a psychiatrist visited Smith in jail and conducted a brief examination. Smith was not informed of his right to remain silent, and his attorney was not notified of the examination.

Smith was found to be competent and was eventually tried and convicted by a jury. At his sentencing hearing, the prose-

is not derived from R.H.'s self-incrimination claim, it is without merit; the superior court expressly ordered that R.H.'s counsel be permitted to accompany R.H. and to consult with him throughout the course of the psychiatric evaluations.

cution was allowed to call the psychiatrist Smith prior to trial, the psychiatrist testified that Smith was : and he predicted t to present a dang lying on this tes mended the death

The Supreme ( Smith had not be remain silent befo court-ordered psy of the expert testi tencing hearing though the court stitutional problem had the court-ord tion been used s determining Smith prior to trial, the liance on the evid of Smith's case re fifth amendment crimination.

In reaching this Court made it cle ment privilege is inculpatory staten type of proceedin

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The Court has ty of the [Fift does not turn v ing in which its upon the natur mission and th vites." In this of death was a what [Smith] to trist. Just as tl vents a crimina

cution was allowed, over defense objection, to call the psychiatrist who had examined Smith prior to trial. Based on his examination, the psychiatrist expressed the view that Smith was an antisocial personality, and he predicted that Smith would continue to present a danger to the community. Relying on this testimony, the jury recommended the death sentence in Smith's case.

The Supreme Court held that, because Smith had not been advised of his right to remain silent before being subjected to the court-ordered psychiatric examination, use of the expert testimony during Smith's sentencing hearing was impermissible. Although the court emphasized that no constitutional problem would have been raised had the court-ordered psychiatric evaluation been used solely for the purpose of determining Smith's competency to proceed prior to trial, the court concluded that reliance on the evidence in the penalty phase of Smith's case resulted in a violation of his fifth amendment privilege against self-incrimination.

In reaching this conclusion, the Supreme Court made it clear that the fifth amendment privilege is not confined to directly inculpatory statements or to any particular type of proceeding.

The Fifth Amendment ... commands that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." The essence of this basic constitutional principle is "the requirement that the State which proposes to convict *and punish* an individual produce the evidence against him by the independent labor of its officers, not by the simple, cruel expedient of forcing it from his own lips."

The Court has held that "the availability of the [Fifth Amendment] privilege does not turn upon the type of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites." In this case, the ultimate penalty of death was a potential consequence of what [Smith] told the examining psychiatrist. Just as the Fifth Amendment prevents a criminal defendant from being

made "the deluded instrument of his own conviction," it protects him as well from being made the "deluded instrument" of his own execution.

We can discern no basis to distinguish between the guilt and penalty phases of [Smith's] capital murder trial so far as the protection of the Fifth Amendment privilege is concerned. . . . Any effort by the state to compel [Smith] to testify against his will at the sentencing hearing clearly would contravene the Fifth Amendment. Yet the State's attempt to establish [Smith's] future dangerousness by relying on the unwarned statements he made to [the examining psychiatrist] similarly infringes Fifth Amendment values.

*Estelle v. Smith*, 451 U.S. at 462-63, 101 S.Ct. at 1872-73 (citations and footnotes omitted).

[2] In the present case, as in *Estelle v. Smith*, the prosecution was allowed to use a court-ordered psychiatric evaluation against the accused by relying on the evaluation to establish future dangerousness. The only significant distinction between the two cases is that Smith's statements to his examiner were used to influence the outcome of his sentencing hearing; R.H.'s statements to his examiner were used to influence the result of his waiver hearing.

The state contends that this distinction is crucial. Emphasizing *Estelle v. Smith's* conclusion that no fifth amendment violation occurs when a court-compelled psychiatric evaluation is used for the limited purpose of determining an accused's competency for trial, the state likens the determination of amenability to treatment in a juvenile waiver proceeding to the determination of competency in a criminal case:

Like the issue of competency to stand trial, the issue of a minor's unamenability to treatment does not go to the issue of guilt. Rather, the probable success or failure of juvenile treatment in the years remaining before the minor turns twenty is an issue which affects only the forum where the issue of guilt will be adjudicated.



The state expresses concern that a prohibition against court-compelled psychiatric evaluations would adversely impact the superior court's ability to reach an informed decision on the issue of amenability to treatment. A virtually identical argument, however, was squarely rejected by the United States Supreme Court in *Estelle v. Smith*, 451 U.S. at 472-73, 101 S.Ct. at 1877-78.

The argument is no more persuasive in the context of the present case than it was in *Estelle v. Smith*. Although the Alaska Supreme Court has noted the possible desirability of psychiatric examinations in waiver proceedings, see *D.H. v. State*, 561 P.2d 294, 299 n. 12 (Alaska 1977), modified on other grounds, *Matter of F.S.*, 586 P.2d 607 (Alaska 1978), it has never suggested that an examination may be conducted against the wishes of a child, nor has it held that expert testimony is a necessary precondition of waiver. To the contrary, the Alaska Supreme Court has expressly recognized that the state need not present any psychiatric evidence to meet its burden of proving that a child needs psychiatric treatment. See, e.g., *J.R. v. State*, 586 P.2d 865, 867 (Alaska 1980). Moreover, there appears to be good reason for caution to protect against excessive reliance on such evidence. As noted by the United States Supreme Court in *Estelle v. Smith*:

Indeed, some in the psychiatric community are of the view that clinical predictions as to whether a person would or would not commit violent acts in the future are "fundamentally of very low reliability" and that psychiatrists possess no special qualifications for making such forecasts.

argued in the Arizona case. Arizona court rules expressly authorized court-ordered psychiatric evaluations in waiver proceedings. See *Pima County*, 679 P.2d at 93. It appears that the court of appeals was concerned with emphasizing that its decision did not affect the validity of the rule. In reaching its conclusion, the court apparently tacitly assumed that a waiver proceeding could be likened to a hearing on the issue of competency to proceed. The court made no effort to explain or justify its conclusion. Given these circumstances, although the decision in *Pima County* does support the state's argument in the present case, we do not find that decision persuasive.

*Estelle v. Smith*, 451 U.S. at 472, 101 S.Ct. at 1878 (citations omitted).

As we have already observed, a juvenile waiver hearing is not a neutral and benevolent process designed for the protection of children. Instead, children are presumptively protected against criminal prosecution. Juvenile waiver has been established as the adversary process through which the state may override that presumption. The legislature has placed the burden of proof squarely on the state. By filing a petition seeking waiver, the state formally alleges that it can meet its statutory burden and that it has the proof to support its claims. In some situations, the lack of information concerning the psychiatric condition of the accused child will undoubtedly make the state's burden more difficult to meet. Nevertheless, the state's interest in lightening its burden can hardly be viewed as justification for subverting the established burden of proof or for infringing the basic and constitutionally protected privilege against self-incrimination. Accordingly, we conclude that the superior court erred in compelling R.H. to submit to a psychiatric evaluation for the purpose of determining his amenability to treatment as a child.

We emphasize, however, that the same conclusion would not be warranted had R.H. sought to present psychiatric evidence in his own behalf at the waiver hearing or had he otherwise affirmatively placed his mental condition in issue. It is well established that, under those circumstances, the superior court could have properly found that R.H. waived his fifth amendment privilege, and that the state was entitled to an

The state has also cited *Ramona R. v. Superior Court*, 210 Cal.Rptr. 204, 693 P.2d 789, to support its argument. *Ramona R.*, however, is inapposite. In that case, the California Supreme Court held only that use immunity was both necessary and sufficient to protect the fifth amendment interests of a child who desired to present psychiatric evidence in her own behalf at a waiver hearing but who was reluctant to undergo an evaluation because of possible use of the evaluation in subsequent criminal proceedings. Nothing in *Ramona R.* establishes the adequacy of use immunity in the context of an involuntary psychiatric evaluation.

independent psychiatric evaluation for its own use. See, e.g., *Estells v. Smith*, 451 U.S. at 465-66, 101 S.Ct. at 1874-75; *Schade v. State*, 512 P.2d 907 (Alaska 1973). See also *United States v. Halbert*, 712 F.2d 988, 389-90 (9th Cir.1983); *State v. Nuss*, 52 Wash.App. 795, 763 P.2d 1249, 1251-53 (1988). In the present case, it is sufficient to note that R.H. did not obtain a psychiatric evaluation for his own use in the waiver proceedings, and he disavowed any intent to affirmatively place his own mental condition in issue.

[3] We must next consider whether the superior court's erroneous reliance on the challenged psychiatric evidence amounted to harmless error. The state argues that any error is rendered harmless because waiver would clearly have been appropriate in view of the seriousness of R.H.'s offense and in view of R.H.'s extensive history of delinquency. There is considerable merit to the state's argument.

In its written findings, the superior court expressly indicated that waiver of children's court jurisdiction over R.H. was justified without reference to the disputed psychiatric evidence. After considering the factual circumstances surrounding R.H.'s delinquent behavior and R.H.'s extensive record of delinquency, Judge Hodges concluded: "Based on [R.H.'s] prior criminal history of delinquency alone the court can find that he should be waived." The superior court's conclusion finds strong support in the record.

The state presented evidence establishing probable cause to believe that R.H. committed a first-degree murder by repeatedly shooting an innocent victim at point blank range. The killing was planned and appears to have been motivated only by R.H.'s desire to obtain money for drugs. As stated by the superior court: "The murder was either a result of extreme unexplained and unprovoked violence or was deliberate and premeditated."

In addition to the seriousness of R.H.'s crime, the superior court properly considered that R.H. was only two months away from his seventeenth birthday at the time of the offense; consequently, only

three years of treatment could be provided for R.H. in the juvenile system. In conjunction with R.H.'s age and the seriousness of his crime, the court also properly considered his lengthy history of delinquent behavior and the fact that he was on juvenile probation when he committed the current offense. Finally, the court properly took note of R.H.'s lengthy history of substance abuse.

The evidence relating to the circumstances surrounding the offense and to R.H.'s history of delinquent behavior would certainly be sufficient, standing alone, to support the superior court's decision to waive children's court jurisdiction. In fact, this evidence may be far more compelling than the predictions expressed by the expert witnesses. As we have noted in prior cases, an offender's past conduct can be a more reliable indicator of future behavior than psychological prognostication. See, e.g., *Skrepich v. State*, 740 P.2d 950, 954 (Alaska App.1987); *Maal v. State*, 670 P.2d 708, 711-12 (Alaska App.1983).

This court has consistently upheld superior court orders waiving juvenile jurisdiction in cases of murder involving extreme and unprovoked violence. In such cases, even when a child's amenability to treatment has been supported by strong psychiatric evidence, we have been reluctant to reverse a trial court's determination that waiver is appropriate. See, e.g., *W.M.F. v. State*, 723 P.2d 1298, 1304-05 (Alaska App.1986) (affirming waiver of jurisdiction over a fifteen-year-old girl); *C.G.C. v. State*, 702 P.2d 648 (Alaska App.1985) (affirming waiver of jurisdiction over a fourteen-year-old boy whose amenability to treatment was supported by the testimony of a psychiatrist at the waiver hearing). In one case of extreme, unprovoked violence, the Alaska Supreme Court has actually reversed a trial court order declining to waive jurisdiction, despite the presence of abundant psychiatric testimony indicating that the child was capable of being rehabilitated. See *Matter of F.S.*, 586 P.2d 607, 613-15 (Alaska 1978), *overruled on other grounds*, *State v. F.L.A.*, 608 P.2d 12 (Alaska 1980). These cases indicate that,

apart from the money, the evidence is sufficient to justify the waiver order.

Nevertheless, evidence was presented by the state in support of its significant part of its findings and conclusions. It is possible for us to submit the evidence and its effect on the court's decision to waive jurisdiction to be reconsidered in light of the evidence that was presented and disregarding psychiatric testimony. In light of the considerations presented, it is in the best interest of justice to affirm the state's decision and by reversal of the error and by reversal of the decision.

Upon remand, allow the parties to present their cases, it is in the best interest of justice and may result in a reevaluation of the evidence that was presented and its effect on the court's decision to waive jurisdiction.

The superior court's decision is VACATED.

3. R.H. has raised a question which requires only brief comment.

First, R.H. argues that the superior court's exercise of discretion in failing to waive jurisdiction over R.H. was an error in predicting his amenability to treatment. It is certain that a period of preliminary proceedings would result in a definitive conclusion as to R.H.'s amenability to treatment. The decision on a waiver petition is a discretionary procedure for waiving jurisdiction clearly contemplated by the superior court's roughly contemporaneous waiver petition. In light of the evidence then available, it is in the best interest of justice to affirm the child's amenability to treatment. This involves an element of delay in waiver.

apart from the disputed psychiatric testimony, the evidence in this case was fully sufficient to justify the superior court's waiver order.

Nevertheless, the challenged psychiatric evidence was given considerable prominence by the parties below and played a significant part in the superior court's written findings and conclusions. It is impossible for us to say that the erroneously admitted evidence did not have an appreciable effect on the court's ultimate decision to waive jurisdiction. Moreover, it would be a relatively simple task for the superior court to reconsider its original decision based on the evidence that was properly presented, and disregarding the improperly admitted psychiatric testimony and reports. These considerations persuade us that the interest of justice will be best served by rejecting the state's invitation to find harmless error and by remanding this case for reconsideration.

Upon remand, although the court should allow the parties an opportunity to argue their cases, it need not receive new evidence and may base its decision upon a reevaluation of the previously presented evidence that remains after deletion of the evidence stemming from R.H.'s psychiatric evaluation.

The superior court's order waiving jurisdiction is VACATED, and this case is RE-

3. R.H. has raised two additional issues that require only brief consideration.

First, R.H. argues that the court abused its discretion in failing to allow an extended period of treatment and observation in order to assist in predicting his amenability to treatment as a child. It is certainly true that a substantial period of preliminary treatment and observation would result in a more accurate prediction of amenability in many waiver cases. Indeed, a definitive conclusion on the issue of amenability could be achieved by routinely postponing the decision on waiver until the accused child's twentieth birthday. However, the established procedure for waiver of children's court jurisdiction clearly contemplates a hearing that is roughly contemporaneous with the filing of the waiver petition and that is based on the best evidence then available. The prediction of a child's amenability to treatment inevitably involves an element of uncertainty. Yet protracted delays in waiver proceedings would be injuri-

MANDED for reconsideration in conformity with this opinion.<sup>3</sup>



Michael Alan WENTZ, Appellant,

v.

STATE of Alaska, Appellee.

No. A-2593.

Court of Appeals of Alaska.

July 14, 1989.

Defendant pleaded no contest to charge of assault in the first degree, and was sentenced by the Superior Court, Third Judicial District, Anchorage, Karl S. Johnstone, J., and he appealed. The Court of Appeals, Bryner, C.J., held that unsuspended term of 12 years to serve was excessive, and sentence should be reduced to 15 years with five years suspended.

Reversed and remanded.

#### 1. Criminal Law §986.2(1)

Finding that, because of her heart condition and deafness, defendant's wife was

ous to the interests of the state and the child alike. *W.M.F. v. State*, 723 P.2d at 1302. Absent unusual, case-specific circumstances precluding a meaningful determination of amenability to treatment, the superior court is under no obligation to order—and an accused child has no right to receive—a protracted period of prehearing treatment and observation. *Id.* We find no error in the superior court's failure to postpone the waiver decision in the present case.

R.H.'s remaining claim is that the state failed to provide him with adequate supervision or rehabilitation while he was on probation prior to committing the current offenses. R.H. maintains that the state should in effect be estopped from prosecuting him as an adult because it acted in bad faith in failing to supervise him. R.H. cites no authority for this proposition. Even assuming that R.H.'s factual assertions are well founded, we find no legal merit to his estoppel argument.

Dige

## More rights for victims

On Oct. 5, 1989, the lives of both my family and myself drastically and irreparably changed. That was the day my father, my brother-in-law and I found my murdered brother's body in a closet in his south Anchorage home. Since that time, we have had one agonizing lesson after another regarding our judicial and legislative systems. The man (and I refuse to use the word "boy") who murdered my brother was a juvenile. He was 16 years old when he forced his way into my brother's house to steal his car keys. He ended up shooting Duane three times with a .357 Magnum.

Current laws say that the prosecution (the DA) must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the DA cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the DA won the case, and the murderer should have to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals by saying that when the young man confessed to police, his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The accused criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and



less to the criminals.

Please send a Public Opinion Message (POM) to the legislators from your district and to the Health and Social Services committee. To send a POM, call the Legislative Information Office at 561-7007. Tell the committees that you support House Bills ~~103, 104, and 105~~. These bills all deal with victims' rights and work on giving more rights to the victims. Please call; you can make a difference.

— Ralph Samuels

HB 100  
101  
103

## Advocate victims' rights

Dear Editor:

My life and the lives of my family members were drastically and irreparably changed on Oct. 5, 1989 — the day my father, my brother-in-law and I found my murdered brother's body in a closet in his South Anchorage home. Duane had been shot three times with a .357-caliber magnum.

Since that time, we have had one agonizing lesson after another on our judicial and legislative systems. The man — and I refuse to use the word "boy" — who is accused of murdering my brother was 16 years old at the time of the murder.

Current laws say the prosecution — the district attorney — must prove that a juvenile cannot be rehabilitated before his 20th birthday. If the district attorney cannot prove this, the offender is sent to McLaughlin Youth Center until he turns 20, at which time he is released. In our case, the district attorney won the case and the accused should have had to stand trial as an adult. The public defenders, however, appealed this decision to the Court of Appeals, saying that when the young man confessed to police his parents weren't there, so the confession should not be allowed as evidence. The Court of Appeals has not made a ruling yet on this motion.

Currently, there is legislation being introduced to the House of Representatives that would, among other things, put the burden of proof in juvenile crimes such as murder on the side of the defense. The criminals would automatically be tried as adults unless they could prove that they could be rehabilitated by age 20. This gives more rights to the victims of crimes, where they belong, and less to the criminals.

If anyone has ever said to a crime victim, "If there is anything I can do, just call" — I am calling. Please send a "public opinion message" to the legislators from your district and to the Health and Social Services Committee. To send a message, you need only call the Legislative Information Office at 561-7007 for further instructions. In the message, tell the committee that you support House Bills 100, 101 and 103. These bills all deal with victims' rights and work on giving more rights to the victims. Please call. You can make a difference.

Ralph Samuels  
Anchorage



# Two charged in Zastrow murder

## Teens held in connection with student's disappearance



CARA ZASTROW

By ANNA FARNESKI  
Staff Writer

The five-month mystery of the disappearance of West Valley High School student Cara Zastrow began to unravel today with the announcement of the arrest of two teen-agers on murder charges.

Alaska State Troopers arrested the two teen-agers late Thursday in connection with a case that has gripped the public's attention like few others in the community's history.

Eric Hughes, 19, and Sergio Colgan, 18, were booked at the Fairbanks Correctional Center on charges of first-degree murder,

kidnapping and sexual assault. Arraignment was set for 1:30 p.m. today.

Troopers scheduled a press conference for noon to make the announcement of the arrests.

Zastrow was last seen at the Bentley Mall on Oct. 13. After her disappearance, troopers worked on the assumption that the dark-haired teen-ager was abducted.

On Oct. 13, Zastrow spent the day running errands. The 16-year-old was last seen at the mall at 4:15 p.m. She was reported missing after she failed to show up at her boyfriend's house as promised and at her part-time job at the Pizza Hut

restaurant on Geist Road.

Two days after she disappeared, Zastrow's car, a black 1982 Mazda, was found on the banks of the Tanana River. The car windows had been shot out, and Zastrow's jackets, her wallet, cassette tapes and amplifier were missing.

A sign outside the Pizza Hut where Zastrow worked still reads "Cara We Love You." The restaurant staff said the message, which was put up the day after the West Valley junior disappeared, would remain up until Zastrow returned home.

In the first weeks following Zastrow's disappearance, trooper in-

vestigators were flooded with phone calls and tips about what happened to the teen-ager.

Zastrow's stepmother and neighbors made buttons and friends continued to post fliers throughout northern Alaska. Crimestoppers posted a \$10,000 reward.

The community responded to Zastrow's disappearance by raising the reward to \$50,000. Recently, her father traveled to Anchorage, where he spoke to advertise the reward.

Last week, a banner was strung on Noble Street asking people to remember Zastrow.

In January, two Fort Wainwright

soldiers and one of their wives were indicted on charges they destroyed evidence in the case. Larry Stevens, 18, Sherman R. Lewis, 18, and Michelle Lewis, 18, were indicted.

Stevens and Lewis were charged with second-degree criminal mischief for allegedly shooting out the windows of the car the day after Zastrow disappeared. All three were charged with tampering with physical evidence.

After the news of Zastrow's abduction, an 18-year-old girl reported that a man had tried to (See ZASTROW, Page 6)

## Committee asks assembly OK base tax break

By WILDA WHITAKER  
Staff Writer

A committee of the borough assembly has recommended waiving taxes on an Eielson housing project for five years rather than lose the project altogether.

The assembly finance committee recommended the exemption by a 6-2 vote Thursday. The whole assembly will vote on the ordinance next



has passed its first

Legislature.  
The House Transportation Committee on Thursday unanimously approved the measure, which would lower the limit from 0.10 percent to 0.08 percent.

Supporters say other states, including California, Oregon and Utah, have lowered alcohol-related traffic deaths by reducing the blood-alcohol limit.

House Bill 102 is sponsored by Rep. Dave Donley, D-Anchorage, who saw a similar measure die last year. This time around, Donley said, he knows of no opposition to the bill.

"It's just something that's basically overdue," Donley said. "It's phenomenal the amount of public support for it."

The measure is supported by the departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General.

arrests in Oregon declined steadily after an initial surge when the lower limit took effect.

The only debate during Thursday's hearing focused on the \$500,000 price tag that the Department of Public Safety placed on the bill. The departments of Law and Corrections said the bill would not raise their costs.

Gayle Horetski, Public Safety deputy commissioner, said the lower limit would require the department to increase its staff and training.

The Public Safety fiscal note proposes spending money to add four state troopers to start a new program in the Southcentral region. Horetski said the new troopers would be trained to spot and arrest drunken drivers.

"It would be a roving drunkbusters team," she said.

Rep. Jerry Mackie, D-Craig, said he supports the troopers' new program, but that it should not be pin-

in northwestern Alaska, said Rep. Richard Foster, D-Nome.

"I figure about half the people in my district wake up in the morning with a 0.08," Foster said.

Rep. Loren Leman, R-Anchorage, said his only problem with the measure is that it doesn't go far enough.

# ZASTROW

(Continued from page 1)

abduct her in front of the mall Oct. 1.

The young woman struggled and escaped. The incident led troopers to believe that the incidents may have been related. Troopers released a composite sketch of the man, based on the young woman's description.

Three other attempted abductions occurred at the Bentley Mall last fall, and one was reported at Wedgewood Manor apartments on College Road.

When she disappeared Zastrow was wearing mustard-colored cotton slacks, a dark top with a black or navy-colored sweater or sweat-shirt, brown leather shoes and a gray/beige designer clutch handbag.

Cara Zastrow is survived by her father Tom, step-mother Julie, sister Michelle, step sister Megan, brother Zeb, and her mother.

Gov. Walter... cuts in state public schooling—especially the part about he wanted to build a railroad Yukon River and a port at Age's Fire Island.

So they fired off letters to J and they didn't mince words. "Wally Hickel is as dumb as spruce grouse," concluded...

"If Gov. Hickel wants to build a bridge to Fire Island, another," he has the brains to get the mosquito."

What followed was a free debate that is only now beginning to settle at the Aniak School after a resignation of the students' and run-ins between her, the principal and a state legislator the blunt comments.

The teacher, Natalie I... allowed students to write their letters in her language arts class before they were read. She said she decided she would read them before they were read. She said she decided she would read them before they were read. She said she decided she would read them before they were read.

The letters were mailed to the state representative... gianna Lincoln, R-Rampart school stamps and envelopes.

# EIELSON

(Continued from page 1)

federal government, but it's the private contractor's in housing built under section... borough has not calculated the new project, but taxes on the 801 housing on Eielson to about \$326,000 a year.

According to Assessor Hank Hove, that's the most compelling reason to approve the waiver.

"Eight-0-one housing in the way we can get there from the fact it is our goal to collect Hove said, "It's not whether we get empty taxes for the first five years, but whether we will collect taxes."

He was joined by Harlan Bonnie Williams, Walt Bob Coghill and John Davison for the waiver.



## ACCA AND PROJECT TEACH

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Project TEACH is the Fairbanks early Intervention program for the Fairbanks area. Twice each year we offer community-wide developmental screenings for young children if parents have concerns or questions about their child's development. Areas of concern could include social-emotional, problem solving, communication, or motor skills.

- March 26th and 27th from 9:30 a.m. until 2:30 p.m. Children will be seen by appointment only



A United Way Agency

Project TEACH is located at 1020 Barnette St. in the grey and blue ACCA building. Call 456-4003 and ask to schedule an appointment for a developmental screening.

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## \$50,000 REWARD

Offered for information leading to the discovery of the whereabouts of



### CARA ZASTROW

or the arrest and indictment  
of her abductors.

*Please contact:*

**Alaska State Troopers**

**452-2114**

or **Crime Stoppers**

**(907) 456-CLUE**

Age: 16

Eyes: Brown

Hair: Brown

Weight: 115

Height: 5'2"

Cara was last seen by friends at Bentley Mall in Fairbanks on Oct. 13, 1990. Confidential calls are accepted on Crime Stoppers phone (907) 456-CLUE, or information can be given directly to Sgt. Jim McCann at Alaska State Troopers 452-2114. Information may also be mailed to Crime Stoppers Box 75073 Fairbanks, AK 99707.

Reward offered by Crime Stoppers Cara Zastrow Fund. Additional details and conditions on file and can be obtained from Crime Stoppers.

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- Any Clear

- That means you'll get clearance priced items
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\*Does not include Value Price  
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102



# Association for the Advancement of Automotive Medicine

An international multidisciplinary organization for crash injury control

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Elaine Petrucelli

February 11, 1991

Representative Dave Donley  
Chairman  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Chairman Donley:

On behalf of the Membership of this Association (AAAM), I write to support enthusiastically H.B. 102, which proposes to reduce the level limit of blood alcohol concentration from 0.10 g/dl to 0.08 g/dl.

The AAAM, in 1987, adopted its position in support of .08 as illegal per se evidence to operate a motor vehicle, and .05 as presumptive evidence of driving impairment. This position was taken after a thorough review of both experimental and empirical data, and in recognition of the enforceability of laws reflecting this position. A copy of the position and its background statement are enclosed.

We commend you for your leadership in introducing this measure to reduce alcohol-impaired driving. If I can help your effort in any other way, please contact me.

Sincerely,

Elaine Petrucelli  
Executive Director

EP/bz/enclosure

MOTHERS AGAINST DRUNK DRIVING

TO: Fairbanks Daily News-Miner  
P.O. Box 70710  
Fairbanks, AK 99707

FROM: Peri-Ann McIlroy  
Mothers Against Drunk Driving  
227 Woodridge, #12  
Fairbanks, AK 99709

DATE: February 24, 1991

SUBJ: News Release - For Immediate Release

House Bill 102

The Fairbanks Chapter of Mothers Against Drunk Driving announces its support for House Bill 102 introduced by Representative Dave Donley, (D) Anchorage. This bill, designed to lower the blood alcohol standard for driving while intoxicated, is seen as a crucial link in the defense against DWI in Alaska.

Glenn Hackney, President of the Fairbanks Chapter of MADD said that passage of this bill will help deter drunken driving by making convictions easier to obtain and cases harder to lose through technicalities.

The bill would lower the per se standard for intoxicated driving from the current .10 to .08, a level at which it has been proven virtually everyone suffers dangerous driving impairment. At the current state level, law enforcement officials find it frustrating to arrest drivers with BACs of near .10 because convictions are difficult to obtain at such levels. However, experience in Oregon since passage of .08 per se there has shown that under the lower standard, both arrests and convictions have gone up, especially at .10 - .14 levels.

"Passage of this bill will make the state BAC legal limit more closely coincide with actual impairment and make Alaska highways safer," said Glenn Hackney.

SCOTT & WESLEY GERRISH  
MEMORIAL

# M A D D

ANCHORAGE, ALASKA  
CHAPTER

MAILING ADDRESS:  
733 West 4th Avenue, Box 821  
Anchorage, AK 99501

(907) 258-MADD

BUSINESS ADDRESS  
733 West 4th Avenue, Suite 304  
Anchorage, AK 99501

February 25, 1991

Representative Dave Donley  
P.O.Box V  
Juneau, Alaska 99811

Dear Representative Donley:

The Anchorage Chapter of Mothers Against Drunk Driving is pleased to support HB 102. As you know, a driver with a blood alcohol level of .08 is six times more likely to have an accident than a driver with a blood alcohol level of zero.

In 1989 there were a total of twenty traffic fatalities in Anchorage; six of those were alcohol-related. That same year there were a total of 371 alcohol-related traffic accidents which did not result in fatalities. By lowering the legal blood alcohol level to .08, we hope both of these statistics could be lowered significantly.

Nationwide, the chances of being a victim of a handgun-related crime are one in five; the chances of being a victim of an alcohol-related traffic accident are one in two, according to the National Highway Traffic Safety Administration.

Every 23 minutes, someone in the United States dies because of a drunk driver. Within the last decade, over 250,000 Americans have died because of drunk drivers. This is more than five times the number of U.S. combat deaths in Vietnam. Clearly, drunk driving is one of the major causes of accidental death in this country. MADD commends you in your efforts to reduce the impact of drunk driving here in Alaska.

A major issue in conjunction with this legislative change would be to provide a monetary incentive to municipalities to change their ordinances to conform with state law by increasing municipal assistance enough to cover the increased costs of the bill. I don't believe the costs would greatly increase, but I know, for example, that the municipality of Anchorage needs additional prosecutors now, and this change would only make that need more acute.

We urge the passage of this bill with the appropriate resources to ensure its enforcement.

Sincerely,

*Susan Humphrey-Barnett / by bc*  
Susan Humphrey-Barnett, President  
Anchorage Chapter MADD

MODIFYING  
ATTITUDES  
TOWARDS  
DRIVING AND  
DRINKING

# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

February 26, 1991

The Honorable Dave Donley, Chair  
House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: HB 102 (Reducing Necessary BAC for DWI Offenses)

Dear Representative Donley:

By letter dated January 31, 1991, you have asked whether we believe there are any problems with the above-referenced bill and whether we support it or not. Please be advised that we support this legislation and are not aware of any legal problems with it.

Alcohol-related offenses continue to dominate the dockets of our state courts. Any law that restricts alcohol consumption or penalizes its abuse will help make Alaska a safer place to live.

Thank you for the opportunity to comment on this bill. If you have any further questions that we may be able to answer, please do not hesitate to call upon us.

Very truly yours,

CHARLES E. COLE  
ATTORNEY GENERAL

By: Margot O. Knuth  
Margot O. Knuth  
Assistant Attorney General

MOK:mm-026



Office of the Chairman

## National Transportation Safety Board

Washington, D.C. 20594

March 6, 1991

Honorable Dave Donely  
Chairman, House Judiciary Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Chairman Donely:

It is my understanding that the House Judiciary Committee is considering legislation to lower the blood alcohol concentration (BAC) at which a driver is presumed to be intoxicated from 0.10 percent to 0.08 percent. I would like to offer my strong support and share with you the conclusions of the National Transportation Safety Board based on its research and accident investigation experience.

Considerable research demonstrates measurable adverse effects of alcohol on performance, even at low BACs. Degradation of performance at a BAC as low as 0.035 percent was shown in a Coast Guard study completed in 1975 (CGD-134-75). This finding is supported by research completed in 1950 by K. Bjerver and L. Goldberg, documenting that the impairment threshold of expert drivers' driving ability is at BACs. of 0.035 to 0.040 percent. This study concluded that performance decrements were significant when the BAC was around 0.035 percent ("Effects of Alcohol Ingestion on Driving Ability: Results of Practical Road Tests and Laboratory Experiments," Quarterly Journal, Studies on Alcohol, Vol. 11, No. 1, 1950). In yet another study by Goldberg, "Alkohol och Trafikrisker" (published in 1970 in Sweden), it was shown that in an emergency, a BAC of 0.02 to 0.04 percent can have a critical effect. Goldberg found detrimental effects and performance impairment in subjects with BAC of 0.02 to 0.04 percent.

The 1977 study by H. Laurell, "Effects of Small Doses of Alcohol on Driver Performance in Emergency Traffic Situations," found effects on driver performance at BACs below 0.05 percent, studied in two contexts: (1) in a critical car-driving situation involving emergency braking and evasive maneuvers, and (2) in a "surprise" situation that followed the first situation and involved the sudden appearance of a human-shaped obstacle blocking the roadway. Overall, detrimental effects of alcohol at an average BAC as low as 0.042 percent were found.

Other studies substantiate performance impairment at very low BACs. For example, in an article published in 1970, "Alcohol Disturbance of Visual Acuity for Moving Objects," H. Honneger stated that the ability to distinguish close, but separated, moving objects seems to be consistently impaired at BACs sometimes as low as 0.03 percent. C. E. Billings and R. L. Wicks, in a

report prepared for the FAA ("Effects of Alcohol on Pilot Performance during Instrument Flight," FAA-AM-72-4), stated that the ability to divide attention between tasks can be impaired at very low BACs (0.02 percent). Earlier (1964) findings by O. Gruner et. al., also concluded that very low BACs impair the ability to divide attention between tasks. Further studies (H. Franks et. al., "The Relationship Between Alcohol Dosage and Performance Decrement in Humans," Journal of Studies on Alcohol, 1976) indicate that the ability to stand upright without swaying begins to decrease significantly at a BAC as low as 0.04 percent.

The American Medical Association and the National Safety Council's Committee on Tests for Intoxication, have developed a table that places the effects of a BAC of 0.03 percent in the "euphoria" range. The behavioral symptoms of this level of intoxication include increased self-confidence, decreased inhibitions, loss of efficiency in finer performance tests, and diminution of attention, judgment, and control. These symptoms were expressly characterized as not compatible with the safe operation of motor vehicles.

Further, a 1985 study by Dr. Herbert Moskowitz shows evidence of impairment on divided attention and information processing tasks beginning at a BAC as low as 0.015 percent. At a 1987 international conference, Dr. Moskowitz reported on an exhaustive review of research on low BAC effects he conducted for the National Highway Traffic Safety Administration. Based on this review of more than 200 research articles, Dr. Moskowitz stated that there is no lower limit or threshold concentration below which alcohol is not impairing to some aspect of human behavior.

Additional research completed in late 1987 by the National Academy of Sciences provided further information on the effects of low levels of alcohol. In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress requested the Academy to study the effect of various alcohol levels on the performance of truck drivers. The Academy's Transportation Research Board brought together a group of nationally recognized experts on the effects of alcohol, who concluded that "performance of driving related tasks decreases at any BAC above zero and crash risk increases sharply as BAC rises." The National Academy of Sciences recommended, and Federal Highway Administration regulations established, 0.04 BAC as the level at which commercial drivers would have an illegal alcohol level. Any alcohol ingestion can result in the commercial driver being put out of service for 24 hours. The Safety Board has recommended that States enact legislation setting 0.01 percent as the functional equivalent of a zero BAC for commercial drivers.

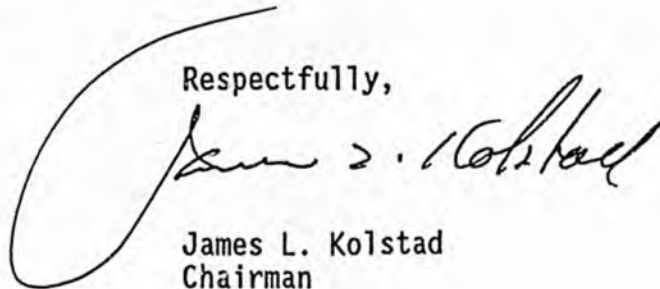
Similarly, Federal regulations prohibit aircraft crews from ingesting alcohol in the eight hours prior to flight operations and they may not have an alcohol level of 0.04 percent or above. The Safety Board has recommended that the alcohol level for air crews be the lowest level that can be reliably measured.

Honorable Dave Donely  
page 3

When combined with the impairing effects of other potential stressors found in highway operations, such as complex traffic response demands, fatigue, vibration and noise, the presence of alcohol even at very low blood alcohol concentrations must be considered a clear and definite risk to safe highway operations. Therefore, legislation to lower the definition of intoxication to 0.08 percent would be a most moderate step.

Please let us know if there is any way we can be of additional assistance.

Respectfully,

A handwritten signature in black ink, appearing to read "James L. Kolstad". The signature is written in a cursive style with a large, sweeping initial "J".

James L. Kolstad  
Chairman

RECEIVED

1991

*Michael T. Propst, M.D.*

ANCHORAGE, ALASKA 99508 CORPORATION  
10077 662-8800  
4335 LAUREL  
ANCHORAGE, ALASKA 99508  
(907) 563-8899

March 7, 1991

Representative Dave Donley  
Chairman, House Judiciary Committee  
P.O. Box V  
Juneau, Alaska, 99811

Dear Representative Donley:

I write in strong support of House Bill 102 regarding the lowering of the legal blood alcohol or breath alcohol to .08%. There is strong scientific documentation of impairment for operating a motor vehicle at this concentration and above. I have testified in many cases to the effect that in my expert medical opinion Alaska's drunk driving law should reflect this concentration.

Sincerely,

  
Michael T. Propst, M.D.

enc.

MTP:sp

RECEIVED MAR 21 1991



# LASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

March 18, 1991

Honorable Dave Donley  
Alaska State Legislature  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

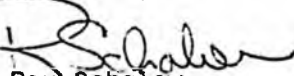
Dear Representative Donley:

The Alaska State Medical Association strongly supports your efforts in addressing the serious matter of alcohol-related accidents and fatalities through House Bill 102.

It is our belief that imposing a more restrictive legal limit on alcohol consumption for drivers does reduce the number accidents and fatalities. We applaud your efforts in reducing the amount of blood alcohol to 0.08 percent by weight of alcohol in the blood. The Alaska State Medical Association had drafted legislation to reduce the percentage to 0.05 and was prepared to introduce this legislation when your bill appeared.

If we can be a resource or assist you in any manner, please do not hesitate to call.

Sincerely,



Ray Schalow  
Executive Director

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

WALTER J. HICKEL, GOVERNOR

P. O. BOX D  
JUNEAU, ALASKA 99811-0800  
PHONE: (907) 465-2515

March 19, 1991

Honorable Dave Donley  
Chairman, House Judiciary Committee  
Alaska House of Representatives  
P. O. Box V  
Juneau, Alaska 99811

Dear Representative Donley;

Re: HB 102  
Blood Alcohol Concentration

You have asked for our opinion concerning the proposal to revise the blood alcohol concentration measure of impairment from the current 0.10% to 0.08%. We have reviewed comments by John Krizay, author of the book "The Fifty Million Dollar Drain," in which he notes that with the current BAC level of 0.10%, an average driver is six to seven times more likely to have an accident if driving. He also notes that at 0.15% the ratio is .5 to 1. He further notes that the American Medical Association recommends a much lower level contending that even professional drivers display signs of impairment at levels of 0.05% and 0.06%. The evidence suggests that the 0.10% level is an inadequate measure of impairment. Your efforts to address a more appropriate level of impairment has our support.

Very truly yours,



David J. Walsh  
Director

910319 06 DD1

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN  
SEAT A

3111 "C" STREET, SUITE 450  
ANCHORAGE, ALASKA 99503  
(907) 561-7629 (FAX) 562-4376

ALASKA LANDINGS • BENTZEN • BIRCHWOOD • CHESTER CREEK • HEATHER MEADOWS • LINCOLN PARK • MIDTOWN • NORTHSTAR  
NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK



CHAIRMAN  
JUDICIARY COMMITTEE

VICE CHAIRMAN  
REGULATION REVIEW COMMITTEE

MEMBER  
RULES COMMITTEE  
LABOR AND COMMERCE COMMITTEE

## M E M O R A N D U M

TO: All Members  
Judiciary Committee

FROM: Representative Dave Donley *DD*

RE: HB 102 - Lowering Blood Alcohol Level for DWI

DATE: April 1, 1991

As you can see by reviewing the materials in your packet, lowering the blood alcohol level for drunk driving as proposed in HB 102 is supported by:

National Transportation Safety Board  
Department of Law  
Division of Insurance  
Department of Public Safety  
Alaska State Medical Association  
Surgeon General of the United States  
American College of Emergency Physicians  
American Medical Association  
Alaska State Medical Examiner (Dr. Michael Propst)  
Association for the Advancement of Automotive Medicine  
Anchorage Daily News  
Fairbanks Daily News Minor  
Alaska Council on Prevention of Alcohol and Drug Abuse  
Fairbanks Chapter, Mothers Against Drunk Drivers  
Anchorage Chapter Mothers Against Drunk Drivers  
National Committee on Uniform Traffic Laws and Ordinances  
National Conference of Insurance Legislators

During the House Transportation Committee hearing, representatives of the State Office of Alcoholism and Drug Abuse in the Department of Health and Social Services, several different insurance companies, and the National Association of Independent Insurers testified in support of the legislation. Finally, I have received numerous public opinion messages from Alaskans who support HB 102.

DD:lc

JUNEAU OFFICE

(During Legislative Session January through May)

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



\* 722C



# Association for the Advancement of Automotive Medicine

An International multidisciplinary organization for crash injury control

## BLOOD ALCOHOL CONCENTRATION AND DRIVING

### POSITION STATEMENT

Epidemiologic and experimental data persuasively establish that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases, that measurable impairment to operate a motor vehicle begins in most drivers at or below .05g/dl, and that all drivers are impaired at a blood alcohol concentration of .08g/dl.

It is therefore the position of the Association for the Advancement of Automotive Medicine that a BAC of .05g/dl be considered as presumptive evidence of driving impairment, and that a BAC of .08g/dl be considered illegal per se to operate a motor vehicle.

The Association for the Advancement of Automotive Medicine urges the enactment of legislation prohibiting alcohol-impaired driving that reflects these statements.

Adopted 23 November 1987

# REPRESENTATIVE DAVE DONLEY

ALASKA STATE LEGISLATURE  
DISTRICT ELEVEN • SPENARD  
SEAT A

3111 "C" STREET, SUITE 450  
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NORTHWOOD • ROMIG • ROOSEVELT PARK • SPENARD • THOMPSON • TURNAGAIN • WINDEMERE • WOODLAND PARK



## SPONSOR STATEMENT

House Bill 102 reduces the legal definition of intoxication for the crime of driving while intoxicated from .10% to .08% blood alcohol content. This means that it would be illegal for a person to be in control of a motor vehicle with a blood alcohol level of .08% or greater.

Four states have already lowered their legal definition of intoxication to .08%: California, Oregon, Utah, and Maine. All of Canada has a .08% blood alcohol threshold. All European nations prohibit driving with a .08% or lower blood alcohol level. (.08% results from 4 drinks in an hour's time for the average-size adult.)

Scientific evidence persuasively establishes that the risk of a driver being involved in a serious or fatal crash increases as the alcohol concentration in the body increases. Many studies have shown that measurable impairment to operate a motor vehicle begins in most drivers at or below .05% percent blood alcohol level, and that all drivers are impaired at a blood alcohol level of .08%.

Setting the allowable blood alcohol level at .08% will greatly increase the probability of obtaining convictions for drunk driving. Because the law will increase the certainty of conviction, it will also be more effective than current law in deterring drunk driving and in reducing the number of alcohol-related crashes. In fact, after Maine reduced its legal blood alcohol level to .08%, the percentage of alcohol-related motor vehicle fatalities decreased significantly.



JUNEAU OFFICE  
(During Legislative Session January through May)  
P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3892 (FAX) 463-5661



HOUSE BILL 102

BACKGROUND

HB 102 lowers the blood alcohol content from 0.10 to 0.08 for a charge of driving while intoxicated.

California lowered the BAC standard for 0.10 to 0.08 in 1990. The Highway Patrol showed a 13.6% increase in DWI arrests with the lower BAC, and accident investigations decreased .71%. The lower BACs seemed to have the effect of lowering the accident rate.

Alaska may or may not experience a similar increase in DWI arrests. The impact on the Alcohol Safety Action Programs (ASAP) in the states which have lowered their DWI levels has varied. For planning purposes, we estimate the impact on the current ASAPs would be approximately 10 percent. This is a significant increase. The Anchorage ASAP would realize an increase of approximately 250 cases.

We know that ASAP programs are one of the most effective ways of intervening with problem drinkers early in the disease process.

Numerous studies have found that behavior change is more likely to occur if there is some consequence to the individual for modifying the behavior. The force of court intervention provides that incentive. Maine, California, Utah, Oregon and Vermont have already passed similar legislation; and Arkansas, Arizona, Florida, Indiana, Texas and Washington are some of the other states currently considering similar legislation.

Lowering the BAC to 0.08 would allow more drivers to be charged with DWI, and consequently more individuals would be screened for alcohol problems.

POSITION

The Department of Health and Social Services, Division of Alcoholism and Drug Abuse is very supportive of HB 102. We believe lowering the legal limit to 0.08 will allow more problem drinkers to access the treatment system earlier and treatment will be more cost effective as these individuals may not require costly residential care.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: \_\_\_\_\_ Department Affected: Health & Social Services  
 Title: "An Act relating to offense of operating a motor vehicle...while intoxicated." BRU: ASAP  
 Sponsor: \_\_\_\_\_ Component: Alcohol & Drug Abuse Grants  
 Requestor: Donley COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	24,987	51,848	53,792	55,809	57,901	60,072
TRAVEL						
CONTRACTUAL						
SUPPLIES	1,000	1,040	1,082	1,125	1,170	1,217
EQUIPMENT	7,500					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>33,487</b>	<b>52,888</b>	<b>54,874</b>	<b>56,934</b>	<b>59,071</b>	<b>61,289</b>

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

GENERAL FUND	33,487	52,888	54,874	56,934	59,071	61,289
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>33,487</b>	<b>52,888</b>	<b>54,874</b>	<b>56,934</b>	<b>59,071</b>	<b>61,289</b>

POSITIONS:

FULL-TIME	2	2	2	2	2	2
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact:

<p>ANALYSIS: (Attach a separate page if necessary.)                      It is anticipated no office furniture would be purchased.                       3.75% increase in personnel anticipated.</p>	<p>1 FTE Range 16A, Probation Officer III @ 12 mos. \$49,974 (FY 92).                       Supplies - general office \$1,000.                       Equipment - computer only \$7,500.</p>
---	---

Prepared By: Suzanne W. Perry Phone: 586-6201  
 Division: Alcoholism and Drug Abuse Date: 3/27/91

Approved by Commissioner: Theodore A. Mala, MD, MPH  
 Agency: Department of Health & Social Services Date: 2 April 91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Fiscal Note Analysis  
HB 102

The Anchorage ASAP office has a caseload of approximately 275 clients per probation officer. At a minimum, one full time probation officer would be needed to accommodate the expected increase due to passage of this bill. This estimate is based on an anticipated increase of 10% for the Anchorage ASAP Office. The Anchorage caseload significantly increased this past year (331 clients more than were seen in 1989) and this increase was absorbed by current staff, further increases of similar size cannot be absorbed.

Treatment agencies would also be significantly impacted as approximately 65% of clients seen at ASAPs are referred into treatment. In 1990, approximately 4,438 ASAP clients were referred into treatment. If the total number of ASAP clients increases by 10%, due to lowering the BAC to 0.08, an additional 443 clients would impact the system. It is anticipated that the Anchorage ASAP would see a significant increase, with ASAPs in other communities would see less of an increase and would therefore be able to absorb the additional clients with current staff. Of these, an additional 287 clients would be seen by treatment programs (the 65% referred to treatment). There is no fiscal impact from this anticipated increase.

BILL NO: HB 102

DATE: 3/20/91

TITLE: An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated. . .

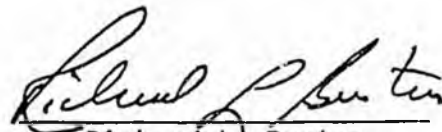
CONTACT: Gayle A. Horetski  
Deputy Commissioner  
465-4322

DEPARTMENT OF PUBLIC SAFETY  
POLICE / PUBLIC SAFETY

This bill would amend Alaska's DWI law to lower the prohibited breath or blood alcohol level from .10 to .08. The Alaska State Troopers and local police agencies would enforce the law through enhanced detection and arrest efforts. The bill also requires the Department of Public Safety, Division of Motor Vehicles (DMV), and the courts to revoke the driver's license or driving privileges of individuals arrested or convicted of DWI at an alcohol concentration level of .08 percent.

The effect of the adoption of a .08 alcohol level is difficult to predict, and will depend to a great extent upon the level of enforcement of the new law. The State of California adopted such a change effective January 1, 1990; the number of DWI arrests in that state increased 13.6 percent in the first year of enforcement. Maine adopted a similar law in 1988; the number of DWI arrests increased 20 percent in 1989, the first full year the law was in effect. Oregon adopted a .08 law in 1983. The arrest rate went up slightly in 1984, then declined for several years. As of 1989 (the latest year for which we have statistics), the number of DWI arrests is about two percent higher in Oregon than it was in 1983. In the first year of enforcement of Utah's .08 law, there was a 30% increase in the number of DWI arrests. For purposes of estimating fiscal, administrative, and enforcement impact, the Department of Public Safety estimates that there will be approximately 10 percent more DWI arrests statewide after the .08 law takes effect.

The department supports HB 102. This bill has the potential to reduce alcohol-related traffic accidents in general, and particularly alcohol-related traffic deaths. It also promotes the safety of the motoring public. In order to be effective, however, the new law must be accompanied by concerted enforcement and public education efforts. Adequate funding for these efforts is essential.

  
Richard L. Burton  
Commissioner

# STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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

March 29, 1991

The Honorable Dave Donley  
Alaska State Legislature  
P. O. Box V  
Juneau, AK 99811

Re: House Bill 102

Dear Representative Donley:

In reference to your letter dated March 23, 1991, asking that I reanalyze the fiscal impact of HB 102, the following is my response.

I agree that just the actual changing of the law from .10 to .08 percent would have no direct bearing on the cost of enforcing drunk driving laws in the State of Alaska. I also agree that the extent to which our DWI laws are enforced is a policy issue that must be addressed and debated separately is correct; however, any increased effort in enforcement at all is going to cost money whether it is attached to the fiscal note to this bill or whether it shows up in the budget.

The very fact that the Department of Corrections has submitted a zero fiscal note based on the extremely small number of people who are stopped by police for driving with blood alcohol level below .10 percent is proof that we are not arresting the drunk drivers in that percentage range which poses a threat to public safety. This can be attributed to the fact that we do not have enough manpower resources to effectively mount preventive patrols as we should to protect the public's safety on the highways. When Corrections talks about their knowledge of the number of people stopped by the police, I question this since their figures could only be derived from those people actually booked in the correctional facilities as opposed to the number stopped.

To be more specific and to address HB 102, I would have to agree with you at this point and say that there is no direct

The Hon. Dave Donley

-2-

March 29, 1991

fiscal impact related to lowering the alcohol level from .10 to .08 percent. Therefore, I withdraw my fiscal impact note as pertains directly to HB 102.

I do want to state here, however, that you will probably not see a lot of arrests made in the near future for driving at .08 since our level of enforcement ability will not increase any time in the foreseeable future.

It is too late this year but I think a role for our Department would be to have specialized traffic units to work statewide in combatting DWI and other major traffic offenses on the state highway system. That, of course, is going to take additional manpower, equipment, and training. I know I can look forward to your support for this kind of program.

Thank you for your past and present support not only for the Department of Public Safety but for all law enforcement statewide. I look forward to working with you on matters of mutual interest in the future.

Sincerely,

A handwritten signature in cursive script that reads "Dick".

Richard L. Burton  
Commissioner

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 3  
BILL Bill Version: HB 102  
(H) Publish Date: 3/22/91

Revision Date: \_\_\_\_\_  
Title: Operating a motor vehicle  
while intoxicated.  
Sponsor: Representative Donley  
Requestor: House Transportation

Department Affected: Public Safety  
BRU: Motor Vehicles  
Component: Driver Services

COMPONENT SERIAL NO. 

	5	0	0
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	7.6	15.3	15.3	15.3	15.3	15.3
TRAVEL	1.2	2.4	2.4	2.4	2.4	2.4
CONTRACTUAL	.6	.6	.6	.6	.6	.6
SUPPLIES	.1	.1	.1	.1	.1	.1
EQUIPMENT	1.6	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>11.1</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>

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

GENERAL FUND	11.1	18.4	18.4	18.4	18.4	18.4
FEDERAL FUNDS	0	0	0	0	0	0
OTHER/PROG RCPT	0	0	0	0	0	0
<b>TOTAL</b>	<b>11.1</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>	<b>18.4</b>

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: JML Juanita M. Hensley Phone: 465-4335  
Division: Motor Vehicles Date: 3/20/91  
Approved by Commissioner: Richard L. Burton Richard L. Burton  
Agency: Department of Public Safety Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

**COMMITTEE COPY**

Page 1 of 4

The State of California adopted a .08 percent alcohol level effective January 1, 1990. Statistics from California show a 13% increase in arrests for the first year.

In 1990, the Department revoked approximately 5,000 drivers licensed as a result of .10 alcohol concentration or refusal to submit to a chemical test. If the number of arrests increased by 10% as a result of lowering the alcohol concentration to .08 percent, the Division of Motor Vehicles would be required to revoke approximately 500 additional driver's licenses, thus increasing the number of administrative hearings and requests for limited licenses.

A permanent part-time Clerk Typist III will be required to handle the clerical duties, relieving the hearing officers to handle the additional hearings. At the present time, the hearing officers are required to perform clerical duties such as setting up files, verifying records, copying records, typing correspondence. The estimated increase in arrests under this bill will increase the number of requests for administrative hearing and the number of limited licenses requested.

Travel expenses are based on two trips for FY92 and four trips per year for FY93 through FY97. Hearing Officers travel to Kodiak, Juneau, and Fairbanks when individuals request an administrative review hearing to contest the revocation of their driver's license or to request a limited license. Travel is only done when the individual requests an in-person hearing; otherwise hearings are conducted telephonically.

DETAIL

		FY92	FY93+
100	PERSONAL SERVICES		
	One Clerk Typist III Part-time	7.6	15.3
200	TRAVEL		
	4 additional trips per year 2 to Juneau, 2 to Fairbanks	1.2 2 trips	2.4 4 trips
300	CONTRACTUAL		
	Postage and Toils	.6	.6
400	COMMODITIES		
	Normal office supplies	.1	.1
500	EQUIPMENT		
	1 Desk	1.0	
	1 Chair	.3	
	1 File Cabinet	.3	
	TOTAL:	11.1	18.4

Position Title Clerk Typist III			No. of Positions 1	Range/Step 8A	Barg. Unit GGU			
Time Status PPT	Staff Months 6 months		Location Anchorage		Election District			
Type of Expenditure			Justification  This legislation will require action against the driving privileges of an estimated additional 500 individuals arrested for DWI. This position will prepare files for administrative hearings; verify prior DWI convictions by obtaining certified records from other states; enter license actions on the individual's driving record; send notice of time and location of the administrative hearing; assist in the correspondence concerning license actions; prepare and send a temporary license to the individual pending the administrative hearing.					
1		2				3		
Salary*		5.3				////////////////////		
Benefits*		2.3				////////////////////		
Premium Pay (Included in Above)		////////////////////				////////////////////		
Other		////////////////////				////////////////////		
Total Personal Services		////////////////////				7.6		
Travel						-0-		
Contractual						.6		
Commodities						.1		
Equipment						1.6		
Other						-0-		
Total Cost						9.9		
Funding Source for Total Cost								
Federal Receipts		1002						
G.F. Match		1003						
General Fund		1004						
Program Receipts/GF		1005						
I-A Receipts		1007						
IP Receipts		1061						
Other								
* Personal Services Salary and Benefits Costs are from PACS calculations. Salary and benefits are based on six months of FY 92.								

REQUEST FOR  
NEW POSITION

AGENCY Department of Public Safety  
 BRU Division of Motor Vehicles  
 COMPONENT Driver Services

Page 4 of 4  
Revised Date

FY 92

FISCAL NOTE

No. 2

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL

Bill Version: HB 102

(H) Publish Date: 3/22/91

Revision Date: \_\_\_\_\_

Department Affected: Public Safety

Title: Lowering the DWI Blood  
Alcohol to .08

BRU: Alaska State Troopers

Component: Detachments

Sponsor: Representative Donley

Requestor: House Transportation

COMPONENT SERIAL NO. 

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	136.3	272.6	272.6	272.6	272.6	272.6
TRAVEL	21.4	42.3	42.3	42.3	42.3	42.3
CONTRACTUAL	42.4	84.7	84.7	84.7	84.7	84.7
SUPPLIES	4.5	9.0	9.0	9.0	9.0	9.0
EQUIPMENT	103.8					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>308.4</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	308.4	408.6	408.6	408.6	408.6	408.6
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	<b>308.4</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>	<b>408.6</b>

POSITIONS:

FULL-TIME	4	4	4	4	4	4
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Francis C. Allan

Phone: 269-5691

Division: Alaska State Troopers

Date: 3/20/91

Approved by Commissioner: Richard L. Burton

Richard L. Burton

Agency: Department of Public Safety

Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Rev 10/90

**COMMITTEE COPY**

Page 1 of 5

This bill will have a significant impact on the Department of Public Safety. All DWI enforcement and training is now aimed at detecting, testing and convicting persons at levels of .10 or higher. New training will be prepared and annually delivered to all Public Safety Troopers.

Specific training will be aimed at detecting horizontal gaze nystagmus at the lower levels with other training aimed at detecting subtle driving clues presented by a .08 driver.

This legislation would be a message to the Department to increase enforcement activity and aim enforcement activity directly at the lower blood alcohol levels. Four additional State Troopers would be assigned DWI enforcement tasks in historically high accident areas statewide, to include Anchorage, Fairbanks, Palmer, Soldotna, and Glennallen.

Department of Public Safety needs would be as follows:

1. Annual Academy training for 24 DWI instructors (Travel and per diem)	\$12,000
2. Four-hour blocks of instruction annually for all DPS State Troopers in clue detection and upgrade horizontal gaze nystagmus	22,300
3. Four additional statewide AST Troopers for highway patrol areas	453,108
4. A continuing public information program aimed at informing the public of the new legislation for a time period before the law goes into effect and a public information program to maintain awareness and compliance.	<u>25,000</u>
Total FY 92 Cost (effective date 1/1/92)	\$308,408
Total Cost FY 93-FY 97	<u>\$408,608</u>

Average State Trooper Costs

PERSONAL SERVICES - 100

Salary - Including 120 hours OT	\$47,560	
Benefits	<u>20,594</u>	
TOTAL PERSONAL SERVICES		\$68,154

TRAVEL AND PER DIEM - 300

Average - This will vary		
TOTAL TRAVEL AND PER DIEM		2,000

CONTRACTUAL - 300

Telephone/Postage, \$85 per month x 12	1,020	
Photo processing, \$40 per month x 12	480	
PSEA Physical exam, average	300	
PSEA Uniform Cleaning Allowance	636	
HWC Vehicle - Monthly Replacement Cost \$605 per month + \$435 per month x 12	<u>12,480</u>	
TOTAL CONTRACTUAL		14,916

SUPPLIES AND MATERIALS - 400

Uniforms with all accessories, jacket, hats handcuffs, etc.	1,657	
Film supplies, office supplies	300	
Vehicle accessories - blanket, tire chains, snow tires, flares, etc.	<u>300</u>	
TOTAL SUPPLIES AND MATERIALS		2,257

EQUIPMENT - 500

Patrol vehicle - initial cost	21,000	
Car radio	1,900	
Portable radio w/ charger	2,400	
Firearms (revolver & shotgun)	650	
TOTAL EQUIPMENT		<u>25,950</u>

TOTAL TROOPER COST		<u>\$113,277</u>
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COMMITTEE COPY

Four Troopers

PERSONAL SERVICES - 100

Four Troopers		
Salary - including		
120 hours OT	\$190,240	
Benefits	<u>82,376</u>	
TOTAL PERSONAL SERVICES		\$272,616

TRAVEL AND PER DIEM - 200

Average - This will vary		
TOTAL TRAVEL AND PER DIEM	2,000 x 4 =	8,000

CONTRACTUAL - 300

Telephone/Postage, \$85 per month x 12	1,020	
Photo processing, \$40 per month x 12	480	
PSEA Physical exam, average	300	
PSEA Uniform Cleaning Allowance	636	
HWCF Vehicle - Monthly Replacement Cost		
\$605 per month + \$435 per month x 12	<u>12,480</u>	
TOTAL CONTRACTUAL	14,916 x 4 =	59,664

SUPPLIES AND MATERIALS - 400

Uniforms with all accessories, jacket, hats handcuffs, etc.	1,657	
Film supplies, office supplies	300	
Vehicle accessories - blanket, tire chains, snow tires, flares, etc.	<u>300</u>	
TOTAL SUPPLIES AND MATERIALS	2,257 x 4 =	9,028

EQUIPMENT - 500 (One-time FY 92)

Patrol vehicle - initial cost	21,000	
Car radio	1,900	
Portable radio w/ charger	2,400	
Firearms (revolver & shotgun)	<u>650</u>	
TOTAL EQUIPMENT	25,950 x 4 =	<u>103,800</u>

TOTAL TROOPER COST		<u>\$453,108</u>
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COMMITTEE COPY

Position Title <b>State Trooper</b>		No. of Positions 4	Range/Step 76/A	Barg. Unit PSEA
Time Status PFT	Staff Months 12	Location Statewide		Election District 99
Type of Expenditure		Justification		
1	2	3		
Salary*	190.2	Personal Services: 4 PFT Salary and Benefits \$272,616		
Benefits*	82.4	Travel and Per Diem: \$ 8,000		
Premium Pay (Included in Above)	////	Contractual:		
Other	////	Telephone \$4,080		
Total Personal Services	////	Photo 1,920		
Travel	8.0	PSEA Physical 1,200		
Contractual	59.7	PSEA Uniform 2,544		
Commodities	9.0	HWCF 49,920 \$ 59,664		
Equipment	103.8	Supplies:		
Other		Uniforms \$6,628		
Total Cost	453.1	Film, etc. 1,200		
Funding Source for Total Cost		Vehicle access 1,200 \$9,028		
Federal Receipts	1002	Equipment (one-time):		
G.F. Match	1003	Patrol vehicles (4) \$84,000		
General Fund	1004	Car Radios 7,650		
Program Receipts/GF	1005	Portable Radios 9,600		
I-A Receipts	1007	Firearms 2,600 \$103,800		
CIP Receipts	1061			
Other				
* Personal Services Salary and Benefits Costs are from PACS calculations.				

REQUEST FOR  
NEW POSITION

AGENCY Department of Public Safety  
 BRU Alaska State Troopers  
 COMPONENT Detachments

Page 5 of 5  
Revised Date

FY 92

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BIL. No. 1  
Bill Version: HB 102  
(H) Publish Date: 3/22/91

Revision Date: \_\_\_\_\_  
Title: Lowering the DWI Blood  
Alcohol to .08  
Sponsor: Representative Donley  
Requestor: House Transportation

Department Affected: Public Safety  
BRU: DPS Statewide Support  
Component: Contract Jails

COMPONENT SERIAL NO. 

	5	2	2
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	36.0	72.0	72.0	72.0	72.0	72.0
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>36.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	36.0	72.0	72.0	72.0	72.0	72.0
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	<b>36.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>	<b>72.0</b>

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Capt. Thomas T. Stearns Phone: 465-4322  
Division: Office of the Commissioner Date: 3/20/91  
Approved by Commissioner: *Richard L. Burton* Richard L. Burton  
Agency: Department of Public Safety Date: 3/20/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

The Department of Public Safety contracts with 19 communities for jail service for persons charged with violation of state laws. This includes housing of defendants pending arraignment or release on bail; many persons sentenced for DWI convictions also serve their jail sentences in local "contract jails".

The annual average number of persons housed in contract jails over the last four years for DWI is 1,937. Those persons spent an annual average of 6,000 prisoner days within the facility. The average FY 90 daily cost per person was \$120.00.

Assuming a 10% increase in DWI arrests upon the passage of HB 102, there will be an annual estimated increase in contract costs of \$72,000.

10% x 6,000 average annual prisoner days = 600  
600 x \$120.00 average prisoner day cost = \$72,000

FISCAL NOTE

No. 4  
 Bill Version: HB 102  
 (H) Publish Date: 3/22/91

STATE OF ALASKA  
 1991 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Department Affected: Department of Law  
 Title: "...relating...to operating a motor vehicle...while intoxicated..." BRU: Prosecution  
 Component: All  
 Sponsor: Representative Donley  
 Requestor: House Judiciary COMPONENT SERIAL NO. 

		8	9
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
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FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

Estimate of current year impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)

Please see the attached analysis

Prepared By: Richard I. Pegues, Director Phone: 465-3672  
 Division: Administrative Services Date: March 20, 1991  
 Approved by Commissioner: Charles E. Cole, Attorney General  
 Agency: Department of Law Date: March 20, 1991

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

## CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 102

This bill amends AS 28.35.030(a) and AS 28.35.033(a) to lower the blood/alcohol limit for the crime of driving while under the influence of intoxicating liquor from 0.10 percent or more by weight alcohol in a person's blood to 0.08 percent.

Other jurisdictions, most notably California and Maryland, experienced about a ten percent increase in DWI arrests in the year immediately following their lowering of the limit to 0.08 percent. However, Oregon, which lowered its limit in 1983, saw a small decrease in arrests. It is not known why their results differed, or what impact enforcement and public information efforts may have had on them. Consequently, we cannot predict the result in Alaska, but some increase in arrests may occur if the bill is approved.

During the last fiscal year 4,106 DWI complaints were referred to Department of Law prosecutors. If Alaska follows the California example, a ten percent increase would result in 411 new DWI cases statewide. If they occur, the largest number of new cases would be experienced in the Anchorage and Matsu Valley areas. Because the Governor's revised budget includes adding new prosecutors in Anchorage, where the current caseload has nearly overwhelmed the existing staff, the department is not going to request fiscal note funds at this time. We continue to caution, however, that adding new or increased agency responsibilities should be avoided at a time when agency resources have been stretched as thin as our's have been. Therefore, if the bill results in a heavier caseload than we have anticipated, it will be necessary to seek additional funding next year.

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

No. 5  
Bill Version: HB 102  
(H) Publish Date: 3/22/91

Revision Date: \_\_\_\_\_ Department Affected: Corrections  
Title: "An Act relating to the offense of operating a motor vehicle, while intoxicated..." BRU: Statewide Operations  
Sponsor: Rep. Donley Component: All Institutions  
Requestor: Rep. Donley COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: No significant impact on Department operations.

ANALYSIS: (Attach a separate page if necessary.)

See attached page.

Prepared By: Tom Sutton, Director Phone: 465-3376  
Division: Administrative Services Date: 03-19-91  
Approved by Commissioner: \_\_\_\_\_  
Agency: Department of Corrections Date: 03-19-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Department of Corrections  
Division of Administrative Services

House Bill No. 102, lowers the blood alcohol level for drunk driving from .10 percent to .08 percent.

The Department contacted three police departments, Anchorage, Fairbanks and Juneau. We asked each Department if data was available for us to determine the blood alcohol level of those who have been charged for drunk driving. Fairbanks and Anchorage police departments did not have that information readily available. However, for both cities, the staff stated it would be their best estimate that there would be few instances where the blood level would fall within the .08 to .10 percentage rate.

Fortunately, the Juneau Police department was able to provide us with records for testing on the intoximeter for the entire year of 1990. Our review of 148 charged with a DWI provided us with the following information:

Average Blood Alcohol Level	=	.1998
Blood Alcohol Level below .100	=	2
Blood Alcohol Level above .100	=	146
Blood Alcohol Level between .080 - .100%	=	0
Blood Alcohol Level between .050 - .080	=	2

The Department of Corrections reviewed its own records relative to DWI offenders and found the following admission rates and sentenced offenders in our institutions:

Calendar Year	1986	1987	1988	1989	1990
Admissions for DWI (A)	3536	3686	3603	3539	4033
Sentenced for DWI	3560	3081	2603	2584	2544

(A) Admission into facilities relates to those who are in an unsentenced status.

Considering the zero frequency rate of the number of offenders whose test results fall into .08 and .10; and the declining impact of sentenced DWI offenders into our system, it is my opinion that HB 102 will not have a significant fiscal impact upon the Department.

**FISCAL NOTE**

**STATE OF ALASKA**  
**1991 LEGISLATIVE SESSION**

BILL NO. HB 102

Revision Date: \_\_\_\_\_ Department Affected: Health & Social Services  
 Title: "An Act relating to offense of operating a motor vehicle...while intoxicated." BRU: Alcohol Safety Action Program  
 Sponsor: \_\_\_\_\_ Component: Alcohol & Drug Abuse Grants  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES	25.0	51.8	53.8	55.8	57.9	60.1
TRAVEL						
CONTRACTUAL						
SUPPLIES	1.0	1.0	1.1	1.1	1.2	1.2
EQUIPMENT	7.5					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>33.5</b>	<b>52.9</b>	<b>54.9</b>	<b>56.9</b>	<b>59.1</b>	<b>61.3</b>

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

GENERAL FUND	33.5	52.9	54.9	56.9	59.1	61.3
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>33.5</b>	<b>52.9</b>	<b>54.9</b>	<b>56.9</b>	<b>59.1</b>	<b>61.3</b>

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

Estimate of current year impact:

ANALYSIS: (Attach a separate page if necessary.) It is anticipated that no office furniture would be purchased. 3.75% increase in personnel anticipated.	1 FTE Range 16A, Probation Officer III @ 12 mos. \$49,974 (FY 92). Supplies - general office \$1,000. Equipment - computer only \$7,500.
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Prepared By: Suzanne W. Perry Phone: 586-6201  
 Division: Alcoholism and Drug Abuse Date: 4/4/91  
 Approved by Commissioner: [Signature]  
 Agency: Department of Health and Social Services Date: \_\_\_\_\_

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 102

Revision Date: 4/3/91  
Title: Lowering the DWI Blood Alcohol to .08  
Sponsor: Representative Donley  
Requestor: House Judiciary

Department Affected: Public Safety  
BRU: Alaska State Troopers  
Component: Detachments

COMPONENT SERIAL NO. 

	7	9	9
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EXPENDITURES/REVENUES: (Thousands of Dollars) (Inflation not Included)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL	12.5	12.5	-0-	-0-	-0-	-0-
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	12.5	12.5	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND	12.5	12.5	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER/PROG RCPT						
<b>TOTAL</b>	12.5	12.5	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact none

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Gayle A. Horetski Phone: 465-4322  
Division: Commissioner's Office Date: 4/3/91  
Approved by Commissioner: Richard L. Burton  
Agency: Department of Public Safety Date: 4/3/91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

Statistics show that "lower level" or "borderline" DWI offenders are not being apprehended now. The average breath alcohol concentration (BAC) of DWI arrestees in 1989 was .19 percent--well over the legal limit of .10. Concerted, long-term training will be needed to assist law enforcement officers to detect and apprehend DWI offenders at lower BAC levels. The need for such training, and for more effective enforcement efforts will be an issue addressed in the Department's FY 93 budget request. In the meantime, \$25,000 in contractual funding is needed to develop and implement a concentrated public information program to educate the public about the dangers of drinking and driving and about the content of the new law.

This education campaign would begin 7/1/91, six months before the new law is scheduled to take effect, and would continue on after 1/1/92.

# HOUSE COMMITTEE REPORT

(7)

Date Referred: March 22, 1991

FURTHER REFERRALS:

Finance

Date of Committee Action: 4-3-91

The JUDICIARY Committee considered:

HB 102

HOUSE BILL NO. 102

LOWER ALCOHOL LIMIT TO 0.08

"An Act relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated; and providing for an effective date."

**RECOMMENDATIONS:**

be replaced with C.S HB 102 (Jud)  the same title  
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): \_\_\_\_\_ (Dept)

APPROVES PREVIOUS: \_\_\_\_\_ (Dept/Date)

2  fiscal impact Pub. SAF 4/3/91 Hess

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

2  zero fiscal note(s) Law 3/22/91; Corrections 3/22/91

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Terre Martin</i>	✓				
<i>Mark Hanberg</i>	✓				
<i>Mike Miller</i>	✓				
<i>Kevin Pat Powell</i>	✓				
<i>Al Ellis</i>	✓				
<i>Wanda Donley</i>	✓				
<i>W. J. Gumbert</i>	✓				

*Wanda Donley*  
 CHAIRMAN'S SIGNATURE

CURRICULUM VITAE

Michael T. Propst, M.D.

EDUCATION:

Preliminary: Klamath Union High School, Klamath Falls, Oregon, 1954 - 1958

University: Oregon State University, 1958 - 1961  
Bachelor of Science, General Science

University of Oregon Medical School, 1961 - 1966  
M.D., June, 1966  
Post Sophomore Fellow in Pathology, 1963 - 1966

Post-Graduate: Mary Imogene Eassett Hospital, Cooperstown, New York  
Rotating Intern, 1966 - 1967

Medical Centers Hospitals of Vermont - University of Vermont  
College of Medicine.  
Residency in Pathology, 1967 - 1971

MEDICAL LICENSURE: Vermont and Alaska

CERTIFICATION: American Board of Pathology:  
Anatomic and Clinical Pathology, 1972  
Forensic Pathology, 1977

FELLOWSHIP: College of American Pathologists, 1974  
American Society of Clinical Pathologists, 1975  
American Academy of Forensic Sciences, 1979

HOSPITAL APPOINTMENTS:

Humana Hospital Alaska, Anchorage, Alaska  
The Alaska Hospital and Medical Center, Anchorage, Alaska  
Central Peninsula General Hospital, Soldotna, Alaska  
Peninsula Hospital, Homer, Alaska  
Cordova Community Hospital, Cordova, Alaska  
Norton Sound Regional Hospital, Nome, Alaska  
Seward General Hospital, Seward, Alaska  
Alaska Native Service Hospital System

TEACHING APPOINTMENTS:

Medical Director, Medical Laboratory Technician Training Program  
Anchorage Community College, 1972 - 1983.  
Police Instructor, State of Alaska Police Standards Council

MILITARY:

Major, U.S.A.F., 1971 - 1974 U.S.A.F. Hospital, Elmendorf AFB,  
Alaska: Chief of Pathology  
Awards: U.S.A.F. Commendation Medal

SOCIETIES:

College of American Pathologists  
American Academy of Forensic Sciences  
National Association of Medical Examiners  
American Society of Clinical Pathologists  
Anchorage Medical Society  
Alaska State Medical Association

CURRICULUM VITAE

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PUBLICATIONS: Contributor to: "Alcohol and Highway Safety: Behavioral and Medical Aspects", Final Report to U.S. Department of Transportation, Sept., 1971

"Death on Denali" Western Journal of Medicine, 128-471, 1978. (coauthor).

PROFESSIONAL INTERESTS:

Laboratory management and administration, dermatopathology, forensic pathology, and clinical chemistry.

POSITIONS:

1974-1984

Medical Director, Clinical Laboratory, Humana Hospital Alaska  
Direction of clinical laboratory including microbiology, hematology, blood bank, chemistry, special chemistry, toxicology, and specimen acquisition and distribution in this 199 bed acute care hospital, which evolved from Anchorage Community Hospital to Humana Hospital Alaska during these years.

Responsible for all laboratory work including quality assurance and control for all laboratory sections. Provided continuing education for laboratory staff.

Worked with two other pathologists and some 50 - 60 technical staff to provide full time laboratory service.

Shared anatomic pathology workload with colleagues.

1984-present

Medical Director, Alaska Operations, Physicians Medical Laboratory  
Duties similar to those above for this private medical laboratory which primarily serves physician's offices and small hospital laboratories as a reference laboratory. In Alaska hematology, microbiology, chemistry, and anatomic pathology are done in house. Multi-channel screening and exotic testing are sent to the parent facility.

1984-present

Medical Examiner, State of Alaska

Performing forensic autopsies and providing forensic pathology consultation for various private and governmental agencies and individuals, including interpretation of toxicology results and drug screens.

PROFESSIONAL RECOGNITION:

Certificate of Civic Achievement, Anchorage Police Department, 1986.  
Listed in Who's Who in the West and Who's Who in Emerging Leaders in the USA.



# Association for the Advancement of Automotive Medicine

An International multidisciplinary organization for crash injury control

## BLOOD ALCOHOL CONCENTRATION AND DRIVING

### BACKGROUND PAPER

Traditionally, about one half of the total road casualties in the United States have implicated alcohol use. While there has been a downward shift between 1982-1986 in both the proportion of legally intoxicated drivers (BAC > .10g/dl\*) among all drivers (from 30% to 26%) and fatally injured drivers who were legally intoxicated (from 44% to 39%), the inappropriate use of alcohol in relation to driving still remains a significant social, legal and public health problem.

A substantial scientific literature, both experimental<sup>1-8</sup> and epidemiologic,<sup>9-14</sup> documents the effects of alcohol upon the body and the consequences upon driving. Laboratory studies have shown that although performance of simple tasks does not deteriorate markedly with low blood alcohol concentrations (< .05g/dl BAC), complex tasks such as driving which requires divided attention are noticeably affected at lower BACs.

In general, epidemiologic data show an increase in crash risk at BACs above .05g/dl. At .08g/dl there is about a 3 fold increase in crash risk over that with no alcohol, which rises about 6 fold at .10g/dl and 25 fold or more at .15g/dl (Figure 1).

While the results of experimental research cannot necessarily be extrapolated to the actual circumstances of each individual drinking driver, laboratory studies do provide another dimension to monitoring skills and behavior under controlled conditions and are complementary to epidemiologic research which focuses on relative crash risks at various BACs. Both types of research show that by .08g/dl BAC, all persons are significantly impaired regardless of factors such as experience with drinking.

Forty three states have enacted illegal per se laws; the remaining states rely on presumptive laws.<sup>15</sup> Per se laws make it illegal to drive with a BAC at or above a specified level, whether or not there are observable behavioral effects. Presumptive laws, on the other hand, only "presume" guilt of impaired driving at a specified BAC which is rebuttable, with the burden of proof upon the arresting officer. Per se law assumes that all persons with a BAC exceeding the limit will have had their ability to drive impaired by alcohol and will have had an increased risk of crash involvement.

Any discussion of the alcohol and driving issue will always involve social and political considerations. It is fundamental, however, that public policy on this subject be based on documented scientific evidence.

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\* .10g/dl = one tenth of a gram of alcohol per one tenth of a liter of blood.

## References

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2. Moskowitz H, and Sharma S. Effects of alcohol on peripheral vision as a function of attention. *Human Factors*, 1974, 16, 174-180.
3. Wilson G, and Mitchell R. The effect of alcohol on the visual and ocular motor systems. *Australian Journal of Ophthalmology*, 1983, 11, 315-319.
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9. Goldberg. Tolerance to alcohol in moderate and heavy drinkers and its significance to alcohol and traffic. Proceedings First International Conference on Alcohol and Road Traffic, Stockholm, 1950. Stockholm: Kugelbergs Boktryckeri, 1951, 85-106.
10. McCarroll JR, Haddon W, Jr. A controlled study of fatal automobile accidents - New York City. *Journal of Chronic Diseases* 15: 811-826, 1962.
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12. Perrine MW, Waller JA, Harris LF. Alcohol and highway safety: Behavioral and medical aspects. National Highway Traffic Safety Administration Technical Report. DOT HS 800 599, 1971.
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14. Alcohol and Highway Safety 1984: A Review of the State of Knowledge. National Highway Traffic Safety Administration Technical Report. DOT HS 806-569, February 1985.
15. Definition of Impairment Essential to Prosecuting "Drunken Drivers," *Medical News, JAMA* 1985. 253:3509-3515.