ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
6923 HOUSE JUDICIARY

DRIVERS WITH A BAC OF .15% ARE
25 TIMES AS LIKELY TO BE INVOLVED IN A CRASH
AS DRIVERS WITH A .00% BAC

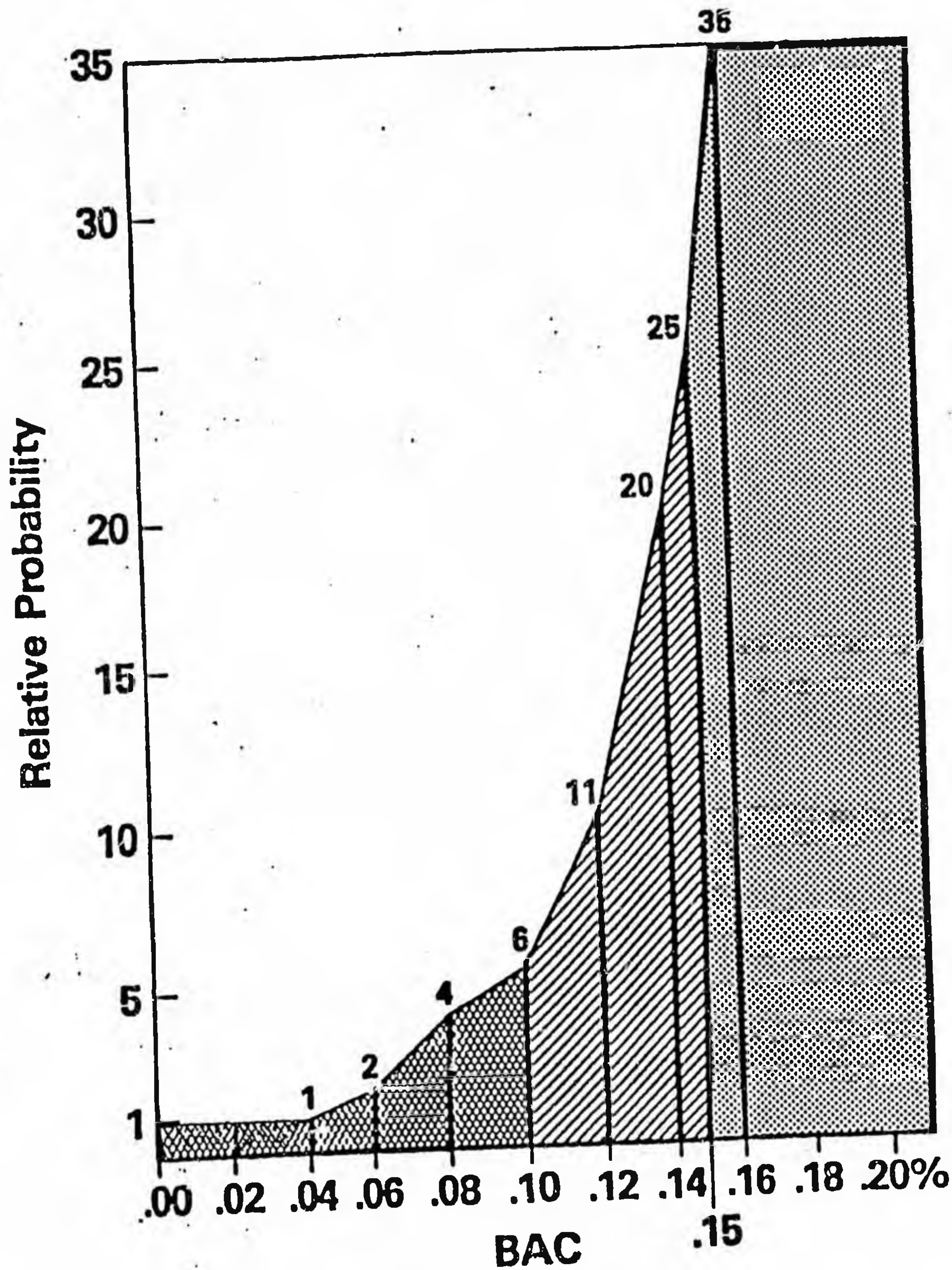


Figure 1. Aggregated probability of crash involvement by driver BAC levels

# Opinion



# State should increase drunk driving limits

**Guest Opinion**

By PERI-ANN MCILROY

Most people who drink and drive are aware that it is illegal to drive with a blood alcohol content of .10 or higher. What they may not know is that a driver with a BAC of .10 is six times more likely to have a crash than a sober driver.

Setting the legal limit for intoxication so high deceives drivers into thinking that they can drive safely with a BAC of just under .10 when, in fact, they are dangerously impaired.

Research shows that measurable impairment of vital driving skills occurs in most people at .05 and that virtually all drivers are impaired at .08. With a BAC of .04, some drivers experience impairment in judgment, simple reaction time and emergency response. They may also experience a false sense of confidence.

Important driving skills such as concentrated attention, comprehension and coordination are impaired in most drivers in .05. Driver performance tests at a BAC of .08 show impaired accuracy of steering, braking, speed control, lane tracking and judgment of speed and distance. These impaired drivers are driving legally and are, therefore, mislead into believing that they are capable of driving safely.

For a typical 150 pound person, five drinks (a drink being a shot of 80 proof liquor, a 12 oz. can of beer, or a 6 oz. glass of wine) consumed in one hour would reach the .10 threshold of legal intoxication. Consuming approximately one additional drink each hour thereafter would maintain that level of intoxication.

DWI arrest statistics for Alaska indicate that the average BAC at arrest is .19. This is almost two times the legal limit. These drivers, by the way, would have consumed more than 12 drinks. At .15 the likelihood of involvement in a crash is 25 times greater than if the driver was sober. While at .20 the chance of a crash soars to 100 times greater.

Alaska drunk driving laws should be changed to .08 per se with a BAC of .05 presumptive evidence of intoxication. HB 102, introduced by Rep. Dave Donley and eight cosponsors, would make this change. It is in the House Transportation Committee.

The legal term ".08 BAC per se" means that the offense is not driving while intoxicated; it is driving while having an illegally high BAC and constitutes the violation in and of itself. This places significantly less burden on the prosecutor to establish evidence such as slurred speech, unsteady gait, etc., to prove that a driver was intoxicated.

The legal meaning of ".05 presumptive" is that a BAC between .05 and .08 per se level may be considered along with other additional evidence, such as behavioral signs of intoxication, in determining whether a person was under the influence of alcohol.

Lower the BAC from ".10 per se" to ".08 per se and .05 presumptive" is more than a slight reduction; it is, rather, a crossing of the threshold from measurably impaired to measurably unimpaired.

In addition to making Alaska highways safer, it would:

- Increase the certainty of conviction of drunk drivers;
- Reduce litigation time and costs;
- Increase public awareness as to how little alcohol it takes to be dangerously impaired; and
- Make the state BAC legal limit more closely coincide with actual impairment.

Because of the increase in certainty of a conviction and therefore the certainty of punishment, illegal per se laws are an effective deterrent to drunk driving and in reducing alcohol-related crashes.

The National Safety Council Committee on Alcohol and Drug, the American Medical Association and the Surgeon General all recommend lowering the BAC. Five states have already lowered the limit for intoxication to .08 and most foreign nations have alcohol concentrations at .080 or lower.

During 1989, 46 Alaskans were killed and 652 more were injured in alcohol related crashes at a cost of over $21 million. The cost of human suffering is immeasurable. Adopting a ".08 per se and .05 presumptive" BAC limit would mean more effective law enforcement and safer roads.

It is a limit that is reasonable and necessary for the safety of all Alaskans.

*Peri-Ann McIlroy's two children were killed by a drunk driver in 1985. They were both students at UAF. She closely follows decisions regarding drunk driving issues*

| Peter Butteri, Tok, AK. | 2:44 a.m. Tuesday | 9 |
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| **Signed Into Carmacks** | | |
| Roger Hocking, Ester, AK. | 7:53 p.m. Monday | 12 |
| Jeninne Cathers, Whitehorse, YT. | 7:56 p.m. Monday | 12 |
| Gene Mahler, Fort Yukon, AK. | 8:58 p.m. Monday | 11 |
| Ruedi Indermuhle, Switzerland | 9:01 p.m. Monday | 12 |
| Daniel Bourassa, Lanoraie, Quebec | 12:01 a.m. Tuesday | 12 |
| Tonya Schlentner, Manley Hot Springs, AK. | 1:28 a.m. Tuesday | 12 |

RECEIVED MAR 2 0 1991

March 18, 1991

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

Dear Representative Donley:

On behalf of the Alaska Council on Prevention of Alcohol and Drug Abuse, I would like to offer our support of House Bill 102 relating to the offense of operating a motor vehicle, aircraft, or watercraft while intoxicated. The Alaska Council wholeheartedly supports your proposal to lower the legal blood alcohol content (BAC) from .10 to .08. As the prime sponsor of this legislation, you are to be commended for proposing changes to our current law which would result in a decrease in injuries and loss of lives in our state.

As you are undoubtedly aware, many studies have been conducted in recent years with common results showing that the risk of being involved in an alcohol-related crash or fatality increases after about 0.08 BAC. The effects of alcohol on a driver's mental and physical processes increase dramatically with each incremental change in blood alcohol. While many states have set .10 percent as the definition of drunk driving, much lower blood alcohol levels have been found to severely affect performance including factors such as judgment, concentration, reaction time and vision.

With the passage of HB 102, Alaska would join progressive states such as Oregon, California, Utah, Maine and Vermont which have lowered their legal BAC to .08 and reduced the risk of tragedies which can result from drinking and driving. Thank you for working to save the lives of Alaskans by proposing this necessary change to the laws of our state.

Sincerely,

Bette O'Moor

Bette O'Moor
Executive Director

**Editorial Opinion and Comment of**

**Daily News - Miner**

*"Independent In All Things. . . Neutral In None"*

Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

# *Voice of experience*

Most of the time, talk is cheap when it comes to discussing social issues. You don't have to have an abortion to express an opinion on them. Most Americans don't eat caribou, but they have an opinion on oil development near calving grounds.

But when Peri-Ann McIlroy talks about drunk driving, as she does in a guest opinion on this page, you're hearing from a direct participant.

Six years ago, she and her husband, Carl, left for a trip around the world on their 41-foot sailboat. The timing was perfect: They could lease out their home in Glennallen because their two children were enrolled at the University of Alaska Fairbanks.

William Kurt McIlroy, 22, had been an active high school student: sophomore class president, student council president, a thespian, a runner, a hockey player, a wrestler, especially a wrestler. He was regional champion for four years and team captain his senior year.

Kara Ann McIlroy, 19, had been just as active in high school. Classmates twice elected her class vice president. She won the region cross country championship. She participated in cross-country skiing and track and was named to the National Honor Society.

In mid-1985, Kurt had completed four years of a six-year engineering program at UAF. Kara had completed one year. She made the dean's list. Both took jobs at UAF that summer.

On Aug. 15, Peri and Carl called their children from Vancouver Island, Wash., just before setting sail for San Francisco. The trip would take nine days.

On Aug. 17, Kurt and Kara drove down the Parks Highway, intending to visit friends in Anchorage. They passed through Wasilla and turned onto the Glenn Highway. Just after crossing the Matanuska River, just before the highway turns into four lanes, their trip ended.

A drunk driver crossed the centerline into their lane. He was driving a three-quarter-ton pickup truck loaded with sheetrock.

The man first struck a small compact pickup truck, basically rolling over it.

Kurt and Kara's Subaru station wagon was next in line. Smashed head-on, the little car offered little protection.

Kurt died instantly. Kara, brain-dead, lingered for eight days. She died the morning of Aug. 25. Her parents reached San Francisco that night. They called their children's apartment, but got no answer. The next day, they called Peri's mother and received word that their only two children were dead.

The McIlroys buried Kurt and Kara in Glennallen. The crash permanently disabled the driver of the small pickup truck.

The drunk driver's blood alcohol content was .155. He pleaded no contest to two counts of manslaughter and was sentenced to eight years in jail. He's serving the final days of his term at a half-way house. He leaves for work each day and returns at night, an imprisonment Peri calls little more than an inconvenience.

The McIlroys stayed near Alaska through the trial. With their home leased out, they decided to stay on their boat in California, eventually resuming their trip. They moved to Fairbanks last month. Carl is pursuing a teaching certificate at UAF. Peri works at an X-ray technician at Fairbanks Memorial Hospital.

When Peri-Ann McIlroy talks about changing Alaska law to keep alcohol-impaired drivers off the road, you listen. You listen and you pray to God that you never experience what she has.

"It's almost as though my whole life has been a waste . . . They represented my achievement, everything, almost my identity. I was Kurt and Kara's mom. It's almost like finding yourself obsolete and useless.

"It's been almost six years now. It seems like it just happened the other day.

"They say time heals things, but I don't know."

Preparing to speak to Monroe Catholic High School students, Peri searches for words that can communicate her experience. She says those words have not been invented.

"If I could just find the right words, they would *never* drink and drive."

Please read Peri-Ann McIlroy's guest opinion. Then write your legislators and tell them to support House Bill 102.

Editorial Opinion and Comment of
FAIRBANKS
Daily News-Miner
"Independent in All Things; Neutral in None"
Other opinions expressed on this page do not necessarily reflect those of the Daily News-Miner.

# Tighten the limits

Three cheers for the state House Transportation Committee, which last week approved a bill that would lower the blood alcohol limit for determining if an Alaska driver is legally drunk.

House Bill 102, sponsored by Rep. Dave Donley, D-Anchorage, would lower the limit from .10 percent to .08 percent. Similar laws are credited with saving lives in California, Oregon and Utah.

Donley's bill died last year in the House Judiciary Committee. This time around, he's finding little criticism, except from legislators who say the limit should be even lower.

The bill has official endorsement from the state departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General. The bill has unofficial support from any Alaskan who has lost a loved one at the hands of a drunk driver.

Donley said a .08 limit has worked as a deterrent in other states because it has educated people about how quickly they can become impaired if they drink alcohol and then drive.

Donley said it's clear that alcohol affects people's judgment when their blood alcohol content reaches .05 percent. Federal commercial standards for truck and bus drivers is .04 percent.

It's impossible to say with certainty how much a person could drink without exceeding the .08 percent limit because of varying body weights and varying abilities to wear off alcohol. However, the difference between .10 and .08 is roughly one beer less per hour, Donley said.

A hang-up to the bill could be the fiscal note attached by the Department of Public Safety. The department wants $500,000 to hire four new state troopers for enforcement of the law. Donley said Monday he likes the idea of added troopers, but they are not neccessary to enforce his bill.

The House Judiciary Committee will hear HB 102 on March 27. Donley chairs the committee and the bill should breeze through. The next stop is the Finance Committee and then the House floor.

We urge legislators to act quickly on HB 102 so that it can move to the Senate and begin saving lives this summer.

Anchorage Daily News 3-7-91


# Anchorage Daily News

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Katherine Fanning, Editor and Publisher 1971 to 1983

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## Too lenient

*Law lets many drinkers drive legally*

Despite a decade of heightened concern about drunken driving, Alaska is surprisingly tolerant of the practice. The problem is not that police don't take the crime seriously, or that prosecutors fail to pursue cases vigorously, or that offenders get off easy.

The problem is that the definition of drunken driving in state law is too lenient. Drivers are not legally presumed drunk until their blood alcohol level reaches 0.10. To reach that level, the average person must do a substantial amount of drinking.

A 160-pound person would have to drink five beers, or five shots of 80-proof liquor, or an entire standard-sized bottle of wine — all in one hour.

After that much drinking, a driver's abilities are considerably impaired. Research cited by the National Highway Traffic Safety Administration shows drivers with blood alcohol levels of 0.10 are 12 times more likely than non-drinkers to have a fatal accident.

Anti-drunken driving activists in Alaska would like to see state law tightened. One proposal would drop the legal blood alcohol level by 20 percent, to 0.08. Between 0.05 and 0.08, drivers would be presumed drunk, but they could rebut that presumption by showing other evidence that their driving was not actually impaired by alcohol.

Lower blood alcohol limits have drawn wide support. Among the groups pushing for a change are the National Safety Council's Committee on Alcohol and Drugs, the American Medical Association, and Mothers Against Drunk Driving.

At least four states have lowered their legal limit to 0.08. Alaska should join them.

## Gulf casualties

## Israel

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# Blood Alcohol Concentration and Driving

American College of
Emergency Physicians
Dallas, Texas

Address for reprints: American College of
Emergency Physicians, PO Box 619911,
Dallas, Texas 75261-9911

*[This position statement was approved by the Board of Directors on June 6, 1988. American College of Emergency Physicians: Blood alcohol concentration and driving. Ann Emerg Med November 1988;17:1252.]*

## BLOOD ALCOHOL CONCENTRATION AND DRIVING

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 .05 g/dL, and that all drivers are impaired at a blood alcohol concentration (BAC) of .08 g/dL.

It is therefore the position of the American College of Emergency Physicians that a BAC of .05 g/dL be considered as presumptive evidence of driving impairment and that a BAC of .08 g/dL be considered illegal *per se* to operate a motor vehicle.

ACEP urges the enactment of state legislation prohibiting alcohol-impaired driving that reflects these statements where such do not exist.

group. Some suggestive research indicates that drinking/driving populations contain drinking/driving/crash-prone subpopulations in whom the influence of alcohol on emotions and attitudes may be an important causative factor. The influence of alcohol on an emotionally charged driving style may be as important as its influence on driving skill.

Social and cultural factors that influence the magnitude, characteristics and persistence of the drinking/driving problem are not yet defined. Whether sustained shifts in social norms related to drinking and driving can be brought about – as they were in relation to littering, smoking and diet/fitness/heart disease – is a question yet to be answered.

## CONCLUSIONS

1. Alcohol causes deterioration of driving skills beginning at 0.05 percent BAC (50 mg ethanol/100 ml blood). Deterioration progresses rapidly with rising BAC to serious impairment of driving skills at BACs of 0.10 percent and above, according to scientific consensus.

2. Drivers with BACs of 0.05 percent to 0.10 percent are significantly represented in road-crash statistics.

3. Drivers aged 16 to 21 have the highest rate of alcohol-involved fatal crashes per mile, with lower average BACs than older drivers.

The Council on Scientific Affairs recommends that the AMA:

1. Direct public information and education against any drinking by drivers, and encourage other organizations to do the same.

2. Adopt a position supporting 0.05 percent BAC as per se illegal for driving, and urge incorporation of that position in all state drunk driving laws.

3. Reaffirm the position supporting 21 as the legal drinking age, support strong penalties for providing alcohol to persons younger than 21, and stronger penalties for providing alcohol to drivers younger than 21.

4. Urge adoption by all states of an administrative suspension or revocation of driver licenses, after Driving Under the Influence (DUI) conviction, and mandatory revocation after a specified number of repeat offenses.

5. Encourage automobile industry efforts to develop a safety module that thwarts operation of a car by an intoxicated person.

6. Adopt this report in lieu of Resolutions 18, 64 and 83 (A-84).

(References pertaining to Report A of the Council on Scientific Affairs are available from the Office of the Assistant Vice President for Science.)

# Surgeon General Issues "Top 10" Initiatives on Drunk Driving

At his final press conference before leaving office, Surgeon General C. Everett Koop released the formal proceedings from his December 1988 Workshop on Drunk Driving and urged Congress to act on 10 key recommendations designed to curb alcohol-impaired driving and related deaths.

SB4C

Leading the list was a proposal that Congress encourage the states to immediately reduce the legal blood alcohol concentration (BAC) from its present level of 0.10 percent to 0.08 percent, and to further reduce it to a level of 0.04 percent by the Year 2000. Additionally, Koop advocated establishing a BAC level of 0.00 percent for drivers under 21 years of age.

The broad-based plan includes initiatives ranging from injury control to law enforcement to alcohol advertising and marketing practices. States are

# .08 Per Se .05 Presumptive Legal Blood Alcohol Content Limit

## POSITION

*MADD supports setting the legal Blood Alcohol Content (BAC) limits for drivers at .08 per se and .05 presumptive.*

## BACKGROUND

The "*illegal per se*" concept is that operation of a vehicle by a person with a BAC at or above a legally defined numerical threshold (e.g. 0.08) constitutes an offense per se of drunk driving. Illegal *per se* is not rebuttable, except on grounds such as illegal arrest procedure or breath analysis machine error.

The "*presumptive*" concept states that a BAC between the numerical threshold and the per se level may be considered with other competent facts in determining whether a person was under the influence of alcohol. It is rebuttable.

Even though impairment theoretically begins with the first bit of alcohol, research has clearly shown measurable impairment occurs in most people at .05 BAC.[1] A recent study by the Transportation Research Board supported lowering the BAC limit for commercial drivers to .04 or lower.[2]

Reliable studies show that for all people, important driving skills are impaired at .08 BAC.[3]

Because measurable impairment in most people occurs at .05 BAC and because everyone is impaired at .08, MADD believes that states should enact drunk driving laws making a BAC of .05 *presumptive* evidence of intoxication and a .08 BAC *per se* evidence of intoxication.

In most industrialized nations, the legal BAC is lower than the 0.10 level which prevails in the United States. MADD believes that lowering the BAC to .05 *presumptive* and .08 *per se* will reduce drunk driving by:

- Increasing the likelihood of convicting suspected drunk drivers.
- Increasing a person's perceptions that he or she will get caught for driving after drinking, and
- Expanding the universe of arrestable impaired drivers.

---

1. Moscowitz and Robinson, "Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence," July 1987.
2. Zero Alcohol and Other Options: Limits for Truck and Bus Drivers, Special Report 216, Transportation Research Board, National Research Council, Washington, DC, August 1987.
3. Moskowitz et al.

MADD

# .08 Illegal Per Se Laws

## What is an illegal per se law?

An "illegal per se" law makes it illegal to drive or to be in control of a motor vehicle with an illegal alcohol concentration, as prescribed by State law. Unlike most driving while intoxicated (DWI) statutes wherein alcohol concentration, along with other factors such as slurred speech, unsteady gait, etc., are used as evidence to prove that a driver was intoxicated, with an "illegal per se" law, driving while at or above a specified alcohol concentration constitutes the violation in and of itself.

"Illegal per se" laws are similar to (but should not be confused with) administrative license suspension laws which are frequently called "administrative per se" laws. An "illegal per se" law specifies the violation of driving or being in control of a vehicle while at or above a specified alcohol concentration. This charge is a criminal charge which would normally be adjudicated in a court of law and a conviction would be followed by a number of appropriate sanctions or combinations of sanctions.

An "administrative per se" license suspension law provides that if a person drives or is in control of a vehicle while at or above a presecribed alcohol concentration, an administrative (as opposed to a judicial) license suspension or revocation will result. Such a law is similar to an "illegal per se" law in that it is based solely on the alcohol concentration of the driver. It differs from an "illegal per se" law in that it invokes an "administrative," rather than a "judicial" process and prescribes specifically what the administrative penalty (e.g. a 90-day license suspension) will be.

## Why is an "illegal per se" law needed?

Illegal per se laws greatly increase the probability of conviction for an alcohol-related offense. They increase the certainty of conviction and reduce litigation time and costs. Because they increase the certainty of conviction (and therefore the certainty of punishment), illegal per se laws are more effective in deterring drunk driving and in reducing alcohol-related crashes.

This is because under an "illegal per se" law, the definition of the offense is not driving while intoxicated (a less than precise term). Rather, it is driving (or being in physical control of a vehicle) while having an illegal alcohol concentration which the law defines. In such case, the prosecutor is significantly less burdened to establish additional evidence (usually behavioral) which demonstrates intoxication or impairment. Therefore, the "burden of proof" for a conviction is less for the prosecutor under a "per se" law than under a "presumptive" law where alcohol concentration is only one of several factors used to establish guilt.

It should be noted that often the police officer must collect the same type of evidence (e.g. behavioral signs of intoxication) required under a "presumptive" law in order to show the "articulable suspicion" necessary for making the stop and the "probable cause" necessary for making the arrest. Still, however, the "illegal per se" law increases the probability of a conviction and decreases the prosecutor's requirement to provide additional, less objective evidence.

## How do we know that intoxication or impairment is directly related to alcohol concentration? At what level is a person impaired?

Scores of laboratory studies have been conducted over the past three decades to determine the extent to which alcohol impairs the skills and/or judgment which are related to driving (e.g. reaction time, vision, risk taking behavior, etc.).

Such studies have indicated that impairment effects are seen in some persons at alcohol concentrations below .04 and that all persons are impaired to some extent at .08 percent (Moskowitz and Robinson, 1987). Complex tracking tasks, complex reaction time and divided attention tasks, where subjects must attend to multiple stimuli at the same time, appear to show the most degradation and onset appears to begin at very low alcohol concentrations.

More importantly, a number of "real world" (epidemiological) studies have been conducted

which have attempted to relate involvement in (and causation of) alcohol-related crashes to factors such as alcohol concentration. All such studies have shown an increased risk of involvement and causation of such crashes which is directly correlated with alcohol concentration. Most of such studies (Perrine, 1976, Borkenstein, 1968) have indicated that the risk of crash involvement begins to rise after .04 alcohol concentration and rises rapidly after .08 alcohol concentration.

## What is the current status of "illegal per se" laws in the U.S.?

As of January 1, 1988, 44 States had passed "illegal per se" laws. Most such laws have been enacted since 1980 and most (41) have established .10 as the illegal alcohol concentration. Two States, Idaho and Oregon, established .08 as the illegal concentration. Two States established a higher level (i.e. Colorado @ .15 and Georgia @ .12).

During the 1988 legislative session, several States have already changed their "per se" laws. Maryland passed such a law for the first time and established the illegal concentration at .10 and Maine lowered its illegal concentration from .10 to .08.

Thus, as of July 1, 1988, there were 45 states plus D.C. with illegal per se laws, 41 States with a .10 limit; 3 states with a .08 limit and two states with a limit greater than .10.

Five states remain without a per se law.They are: Wyoming, Kentucky, Tennessee, Massachusetts and South Carolina. Colorado and Georgia have illegal per se laws but an alcohol concentration greater than 0.10.

## How effective have "illegal per se" laws been?

Illegal per se laws are only part of a total system of laws, enforcment, license actions, prosecution, adjudication, sanctioning, education and treatment that contribute to significant reductions in alcohol-related crashses. Very often such laws have been passed and enacted as a part of comprehensive legislative packages. This has made it difficult to evaluate the effectiveness of such laws, in and of themselves.

In 1988, however, the Insurance Institute for Highway Safety (IIHS) released the results of a study which evaluated the effectiveness of "illegal per se" laws, "administrative per se" laws and mandatory jail / community service laws. The study revealed that illegal per se laws significantly reduced fatal crashes. Since more States had enacted "illegal per se" laws, more lives had been saved due to such laws than by either of the other types of laws.

## Why use .08 rather than .10 as the illegal alcohol concentration for "illegal per se" laws?

As has already been pointed out, laboratory research has indicated that virtually all drivers are impaired to some extent at an alcohol concentration of .08. Most persons show impairment in some critical tasks such as divided attention at much lower levels. Furthermore, epidemiological studies have shown that the risk of crash involvment begins to rise significantly after an alcohol concentration of .05.

A summary of both laboratory and epidemiological research can be found in the resource materials. The report entitled Alcohol and Highway Safety 1984: A Review of the State of Knowledge, and the report entitled Low BAC Impairment (Moskowitz and Robinson, 1987) should be reviewed for a thorough understanding of the effects of alcohol at low alcohol concentrations.

Most foreign nations have alcohol concentrations at .08 or lower. These include Canada, Great Britain, the Scandinavian countries, Australia and New Zealand.

## Who supports lowering the alcohol concentration limit below .10?

The National Safety Council's (NSC) Committee on Alcohol and Drugs has thoroughly reviewed the evidence regarding driving impairment and the epidemiology of crashes relative to alcohol concentration. It has resolved that all persons are impaired at an alcohol concentration of .08 and supports the lowering of "per se" limits to that level.

The American Medical Association (AMA) advocates an even lower .05 alcohol concentration limit.

The National Committee on Uniform Traffic Laws and Ordinances (NCUTLO) advocates an illegal per se limit of .08 in its most recent edition of the Uniform Vehicle Code (UVC).

Other organizations which advocate illegal per se laws at levels below .10 include: The American Spinal Injury Association (ASIA) and the States of Utah, Maine and Oregon, which have .08 per se limits.

## What provisions of an illegal per se law are desirable?

Immediately following this section is a copy of the provisions of the new Uniform Vehicle Code (UVC) which relate to an "illegal per se" law.

As is apparent, the primary provision in Section 11-902 is that:

> *"(a) A person shall not drive or be in actual physical control of any vehicle while:*
>
> *1. The alcohol concentration in his blood or breath is 0.08 or more..."*

Note that the (new) term "alcohol concentration" means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. This definition of alcohol concentration replaces the (old) term of blood alcohol concentration (BAC) which was expressed in terms of a percent (e.g. .08% BAC). The new term is simply "an alcohol concentration of 0.08." This definition is appropriate whether blood or breath tests are taken with no need to convert one to the other (i.e. no need to convert breath alcohol concentration [BAC] to blood alcohol concentration [BAC]).

## Are illegal per se laws constitutional?

Yes, they are constitutional. Although the U.S. Supreme Court has consistently refused to hear "illegal per se" cases, every State appellate or high court which has ruled on illegal per se laws has found such laws to be constitutional so long as adequate notice is given as to what constitutes the illegal behavior.

In order to be clearer as to what constitutes illegal behavior, some states have written in their legislation requirements for providing alcohol concentration information to the public.

## Are there any other changes that should be made to illegal per se laws?

Besides lowering the alcohol concentration limits of existing per se laws, it is important to review the "presumptive" laws which may also exist within the State which, in some cases, state that a person is *"presumed not to be under the influence of alcohol at an alcohol concentration of .05 or less."* Such a provision should be removed. Given recent research findings, it is clear that there is no positive (non-zero) alcohol concentration level where it can be presumed that a person is not under the influence of alcohol.

# Points Often Raised

### How many lives will be saved by lowering the limit from 0.10 to 0.08?

There are no scientific research studies which show the impact of reducing an illegal per se limit from 0.10 to 0.08. However, Scandinavian countries which have lower alcohol concentration limits also have fewer drivers on the road at high alcohol concentrations and a lower portion of their fatally-injured drivers have high alcohol concentrations. These lower levels are likely due to a combination of factors such as enhanced enforcement, use of roadside sobriety checkpoints, swift and sure license and jail penalties, as well as lower alcohol concentration limits. Such a (lower) limit must be viewed as an element of a total package aimed at reducing impaired driving.

In addition to the foreign experience, those states which have had lower alcohol concentration limits in the U.S. are among the states with the lowest nighttime proportion of fatal crashes and the lowest alcohol-related proportion of fatal crashes. Again, there are many factors in operation in such states. However, the lower illegal per se limits are considered to be an important such factor.

One researcher (Hurst) re-analyzed the data from the classic Grand Rapids, Michigan, study (Borkenstein, 19 ). Hurst developed a procedure for estimating what the impact of a complete enforcement of various alcohol concentration limits would be (i.e. the effect of keeping all persons above a specified alcohol concentration off the road). He estimated that a complete enforcement of a 0.08 limit would be significantly more effective in reducing serious alcohol-related crashes than a complete enforcement of a 0.10 limit. Although a complete enforcement effort may not be realistic, Hurst's analysis indicated that significant potential gains are available by reducing the alcohol concentration limit from 0.10 to 0.08.

### Will reducing the limit from 0.10 to 0.08 likely make a difference?

If the police and the courts actually carry out the intent of the law, such a reduction can make an important difference. Currently, many drivers apprehended at borderline alcohol concentrations (e.g., 0.11) are not vigorously prosecuted and may be allowed to plead to a reduced charge. Lowering the limit to .08 should increase the frequency of prosecution of this group. It should also result in the more frequent arrest and conviction of persons at .08 and .09 who are at least 2 to 3 times as likely to be involved in a serious crash as someone at .00.

### Isn't it fairer and more accurate to use appearance and behavior as an indicator of impairment or intoxication than to use an alcohol concentration?

No, it is not. Alcohol concentration is the most scientific and objective measure we can use to determine impairment or increased probability of involvement in a serious or fatal crash. That is because nearly all impairment which has been measured in laboratory situations and all risk estimates from "real world" epidemiological studies have been established relative to alcohol concentration levels.

Appearance is often misleading. Individuals who show little evidence of intoxication may still be significantly impaired in their ability to react to complex situations on the roadway.

We must rely on what we have learned from laboratory and real world studies to estimate what impact alcohol is likely to have in driving situations. Furthermore, studies have shown that both physicians and police fail to identify up to half of the drivers who are above 0.10 alcohol concentrations (NSC, 1970; NHTSA, 1984). Yet, research demonstrates that at these alcohol concentrations the ability of all drivers to react to complex situations is significantly impaired and evidence from epidemiological studies indicates that the probability of involvement in a serious injury or fatal crash is 5-6 times that of a person with a 0.00 alcohol concentration.

The most accurate and objective indicator of increased crash risk is a measure of alcohol concentration.

### If a State enacts an "illegal per se" law, should the old law(s), which are based on behavioral evidence, as well as on alcohol concentration, be discarded?

No, the older driving while intoxicated (DWI) or driving under the influence (DUI) laws should be retained for those cases in which no chemical test is available. This can occur either when an offender refuses to take a chemical test or when some problem develops with the test result. Often, an offender is charged under both the "per se" and "presumptive" laws and one of the charges is dropped at a later date.

### With all the current emphasis being placed on alcohol concentration as measured by breath testing devices, how accurate are such devices in measuring alcohol concentration?

Modern breath test devices are extremely accurate and reliable when maintained and operated according to State guidelines. All States have detailed requirements for

(1) the qualifications of breath testing equipment.
(2) the training of breath test operators and
(3) the procedures to be used in conducting breath tests.

Only when all of these requirements are met are tests admitted as evidence.

Most of the errors which can be made in collecting breath tests provide a result which is favorable to the accused (e.g., the devices are calibrated to read lower, rather than higher).

The principal risk in administering a breath test is failure to wait 15-20 minutes before administering the test. This must be done to ensure that any alcohol residue in the mouth from the person's last drink is gone. Such "mouth alcohol" could result in an erroneously high alcohol concentration reading. All States require at least a 15-20 minute wait before an evidential breath test can be conducted.

### Isn't blood alcohol, rather than breath alcohol, a more accurate measure on which to base impairment?

No. Most of the laboratory research which has measured impairment relative to alcohol concentrations has employed the use of breath test devices to measure alcohol concentration. In addition, most of the evidence gathered from roadside surveys (a critical element of epidemiological studies) has been based on the administration of breath tests.

Since it is alcohol in the brain which presumably causes impairment, perhaps the best measure of alcohol impairment would be the alcohol concentration of the brain. Such a measure, however, is not practical to collect.

There is no evidence that blood alcohol concentration provides any better measure of impairment than does breath alcohol concentration. Defense lawyers would like to make a judge and jury believe that blood is a better measure, but it is not.

The dependence on blood alcohol concentration (BAC) began decades ago when blood provided the primary means for determining alcohol concentration. When breath test devices were first developed, they were based on a conversion factor (i.e. 2100:1) to convert the breath alcohol readings to blood alcohol equivalents. That was unfortunate and defense lawyers began to challenge the 2100:1 conversion ratio. Newer State legislation is progressing beyond that stage by defining violations in terms of the more general term "alcohol concentration" (not blood alcohol concentration) which means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

### Isn't it unfair to define an alcohol-related (per se) offense in terms of alcohol concentration when an individual has no direct way of determining what his or her alcohol concentration is?

It is true that a precise measure of one's alcohol concentration is difficult to obtain unless the person has his or her own breath test device. However, a person can use simple guidelines such as no more than a drink in an hour or "know your limit" cards to estimate his or her alcohol concentration. Furthermore, the legal limit of .08 is sufficiently high that more than just a moderate amount of drinking is necessary to reach the legal limit.

A person would have to drink more than just a drink an hour to reach such a limit. An average 160 lb. male would have to drink more than 3 drinks in the first hour to reach that limit and could have nearly one additional drink for each additional hour of drinking without exceeding the limit.

# Illegal Per Se at .08% Law

*Uniform Vehicle Code*

## I. Criminal offenses

**§ 11-902--Driving while under the influence of alcohol or drugs**

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.08 or more based on the definition of blood and breath units in § 11-903 (a)(5); (New, 1971; Revised, 1979, 1984.)
2. Under the influence of alcohol; (Revised, 1971.)
3. Under the influence of any other drug or combination of other drugs to a degree which renders him incapable of safely driving; or (Formerly §11-902.1; Revised, 1971, 1979, & 1984.)
4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving. (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section. (Formerly §11-902.1; Revised, 1971, 1984.)

(c) In addition to the provisions of §11-904, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days or more than one year, or by fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment and on a second or subsequent conviction, he shall be punished by imprisonment for not less that 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000. (Formerly §11-902.2; Revised, 1971, 1984.)

## II. Admissibility of chemical tests for intoxication

**§11-903--Chemical and other tests**

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply; (New, 1971; Revised, 1979, 1984.)

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (Formerly §11-902 (c).)
2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of §6-207 or §6-209, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens. (Formerly § 11-902 (d).)
3. The person tested may have a physician, or a qualified technician, chemist, registered nurse,

or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (Formerly §112-902(c).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (Formerly §11-902 (f).)

## III. Definition of alcohol concentration

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (Formerly §11-902(b)4; Revised, 1979.)

## IV. Presumptions for under the influence alcohol offense

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions: (Revised, 1979.)

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol. (Revised, 1979.)
2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol. (Revised, 1979, 1984.)
3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol. (Revised, 1979, 1984.)
4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol. (Formerly § 11-902(b).)

(c) If a person under the arrest refuses to submit to a chemical test under the provisions of §6-207, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs. (Formerly §11-902 (g), Revised, 1984; Section Renumbered, 1986.)

# .08 Per Se

In Rapid City, South Dakota, a young resident was engaged to be married when he was struck by a car whose driver had been drinking, but whose blood alcohol test was below the legal intoxication limit.

Even though Ricky was hospitalized five months and in a coma more than a month, no charges were filed. Because of this paralysis, he will live in a nursing home for the rest of his life.

Arlene Feuerback had just celebrated her 40th wedding anniversary in August, 1987, reflecting on her years of happiness. She had recently been named one of five "Master Homemakers" in Iowa. She was a hospital volunteer, a leader in her church, an active Farm Bureau woman, and coordinator of a food pantry for the needy.

As she rode her bicycle along the highway she was hit and killed by an offender who fell asleep at the wheel. Because his blood alcohol level tested at .053, he was charged only with reckless driving and fined $30 plus court costs.

A study was made of 388 drunk driving cases dropped by the State Attorney's office in West Palm Beach. Florida revealed that 75 (19%) were dropped because of blood alcohol levels of less than .10. Officers say they continue to file charges against offenders who register below .10 because they fear the offenders will have fatal crashes if let go.

# .08 Per Se Resources

## Agencies

National Transportation Safety Board
Washington, DC 20594
(202) 382-6572

National Highway Traffic Safety Administration
Office of Alcohol and State Programs
400 - 7th Street, S.W., Suite 5130
Washington, DC 20590
(202) 366-9550

National Safety Council
Committee on Alcohol and Drugs
444 N. Michigan Ave.
Chicago, IL 60616
(312) 527-4800

National Committee on Uniform Traffic Laws and Ordinances
The Traffic Institute -
Northwestern University
405 Church Street
Evanston, IL 60201
(312) 491-5280

Mothers Against Drunk Driving
National Office
669 Airport Freeway, Suite 310
Hurst, TX 76053
(817) 268-6233

## Consultants

John H. Lacey
UNC Highway Safety Research Center
CTP. 197A
Chapel Hill, NC 27514

John V. Moulden, Advisory
National Transportation Safety Board
Washington, DC 20594

Robert B. Voas, PhD.
Pyramid Planning
7315 Wisconsin Avenue
Bethesda, MD 20814

## References

"Effects of Low Doses of Alcohol on Driving Skills: A Review of the Evidence," Moscowitz, Herbert and Robinson, Christopher D., National Technical Information Service, Springfield, VA, for the U.S. Department of Transportation, July 1987.

Zero Alcohol and Other Options, Special Report 216, Transportation Research Board, National Research Council, Washington, DC, 1987.

"A Study of the Feasibility of Establishing Lower Blood Alcohol Content Limits in Sections of the Wisconsin Statutes Related to Operating a Vehicle While Intoxicated," contract study for Council on Highway Safety, Wisconsin Department of Transportation, 1984.

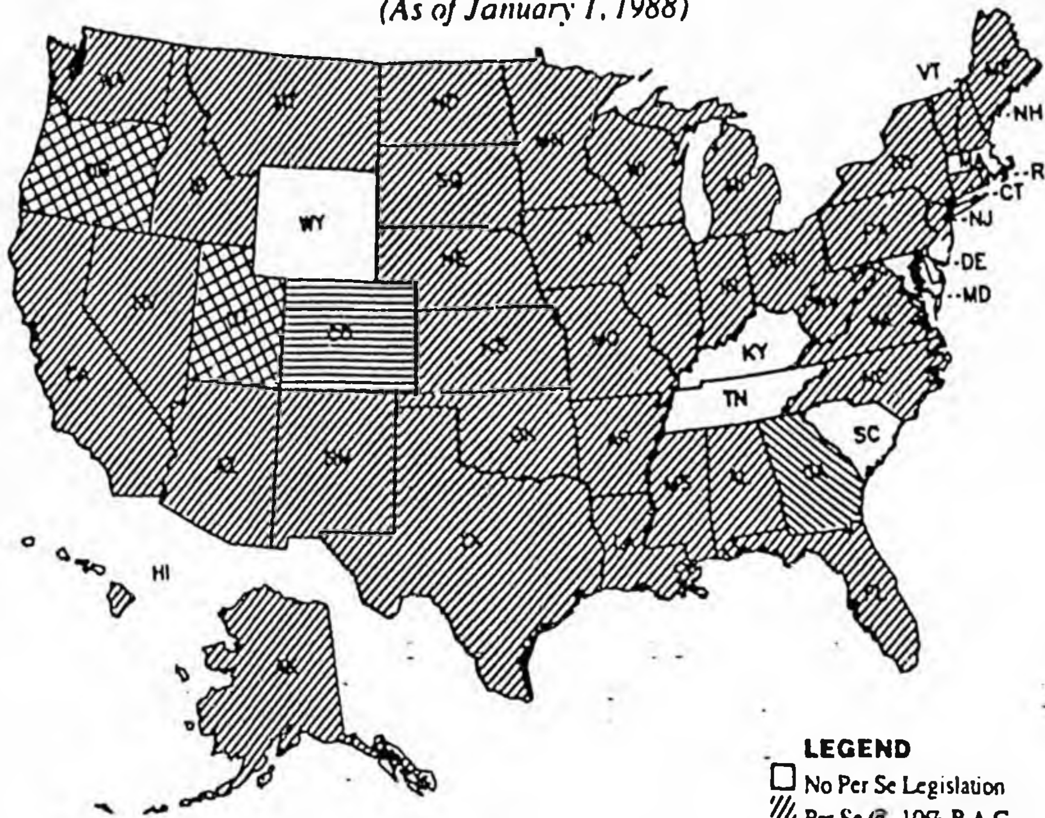
"Fatal Crash Involvement and Laws Against Alcohol-Impaired Driving," Zador, P. L.; Lund, A. K.; Fields, M.; and Weinberg, K.; Insurance Institute for Highway Safety, Washington, D.C., February, 1988.

MADD

# States With Illegal PerSe Laws

## 44 States and Washington, D.C.

*(As of January 1, 1988)*




**LEGEND**

- ☐ No Per Se Legislation
- /// Per Se @ .10% B.A.C.
- \\\ Per Se @ .12% B.A.C.
- ≡ Per Se @ .15% B.A.C.
- ⊠ Per Se @ .08% B.A.C.

*Source: NHTSA Legislative Digest*

Alabama
Alaska
Arizona
California
Colorado*
Connecticut
Delaware
District of Columbia
Florida
Georgia**
Hawaii
Idaho

Illinois
Indiana
Iowa
Kansas
Louisiana
Maine***
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada

New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oklahoma
Oregon***
Pennsylvania
Rhode Island
South Dakota

Texas
Utah***
Vermont
Virginia
Washington
West Virginia
Wisconsin

Total = 44
*BAC = 0.15
**BAC = 0.12
***BAC = 0.08

## 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 [illegible] 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*

HB 100
101
103

Anchorage Times Wed 3/6/91

# 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

# 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

<u>HB 102: Lowering BAC for DWI to .08%</u>

EXCERPT FROM:

<u>Laws to Stop Rising Car Insurance Costs: A Comprehensive Study</u>, Report of the National Conference of Insurance Legislators' Subcommittee on Automobile Insurance at pg. 2:

"Recommendation 17: Reduce BAC standard to .08%."

JUNEAU OFFICE
(During Legislative Session January through May)

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

# UNIFORM VEHICLE CODE

# AND

# MODEL TRAFFIC ORDINANCE

Cumulative
SUPPLEMENT IV, 1984

to 1968 Edition

RECEIVED
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Reference Library

NATIONAL COMMITTEE

ON

UNIFORM TRAFFIC LAWS AND ORDINANCES

## ARTICLE IX—SERIOUS TRAFFIC OFFENSES

### § 11-901—Reckless driving

(b) Every person convicted of reckless driving shall be punished upon a first conviction by imprisonment for a period of not less than five days nor more than 90 days, or by a fine of not less than $25 nor more than ($500), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than 10 days nor more than six months, or by a fine of not less than $50 nor more than ($500) or by both such fine and imprisonment. (REVISED, 1971.)

### § 11-902—Driving while under the influence of alcohol or drugs

(a) A person shall not drive or be in actual physical control of any vehicle while:

1. The alcohol concentration in his blood or breath is 0.08 or more based on the definition of blood and breath units in § 11-902.1(a)(5); (New, 1971; Revised, 1979, 1984.)

2. Under the influence of alcohol; (Revised, 1971.)

3. Under the influence of any other drug or combination of other drugs to a degree which renders him incapable of safely driving; or (Formerly § 11-902.1; Revised, 1971, 1979, & 1984.)

4. Under the combined influence of alcohol and any other drug or drugs to a degree which renders him incapable of safely driving. (New, 1971; Revised, 1979, 1984.)

(b) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drug shall not constitute a defense against any charge of violating this section. (Formerly § 11-902.1; Revised, 1971, 1984.)

(c) In addition to the provisions of § 11-902.2, every person convicted of violating this section shall be punished by imprisonment for not less than 10 days nor more than one year, or by fine of not less than $100 nor more than $1,000, or by both such fine and imprisonment and on a second or subsequent conviction, he shall be punished by imprisonment for not less than 90 days nor more than one year, and, in the discretion of the court, a fine of not more than $1,000. (Formerly § 11-902.2; Revised, 1971, 1984.)

Former subsection, (b), (c), (d), (e), (f), and (g) have been moved to § 11-902.1 on chemical tests, below.

### § 11-902.1—Persons under the influence of drugs

Contents of section moved to § 11-902, above.

## ƎERIOUS TRAFFIC OFFENSES

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and (g) have been moved to § 11-902.1 on chemical tests, below.

ence of drugs

902, above.





### § 11-902.1—Chemical and other tests

(a) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol or other drugs, evidence of the concentration of alcohol or other drugs in a person's blood or breath at the time alleged, as determined by analysis of the person's blood, urine, breath or other bodily substance, shall be admissible. Where such a test is made the following provisions shall apply. (New, 1971, Revised, 1979, 1984.)

1. Chemical analyses of the person's blood, urine, breath, or other bodily substance to be considered valid under the provisions of this section shall have been performed according to methods approved by the (State department of health) and by an individual possessing a valid permit issued by the (State department of health) for this purpose. The (State department of health) is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the (State department of health). (Formerly § 11-902(c).)

2. When a person shall submit to a blood test at the request of a law enforcement officer under the provisions of § 6-205.1, only a physician or a registered nurse (or other qualified person) may withdraw blood for the purpose of determining the alcoholic or other drug content therein. This limitation shall not apply to the taking of breath or urine specimens. (Formerly § 11-902(d).)

3. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer. The failure or inability to obtain an additional test by a person shall not preclude the admission of evidence relating to the test or tests taken at the direction of a law enforcement officer. (Formerly § 11-902(e).)

4. Upon the request of the person who shall submit to a chemical test or tests at the request of a law enforcement officer, full information concerning the test or tests shall be made available to him or his attorney. (Formerly § 11-902(f).

5. Alcohol concentration shall mean either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. (Formerly § 11-902(b)4; Revised, 1979.)

(b) Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a vehicle while under the influence of alcohol, the concentration of alcohol in the person's blood or breath at the time alleged as shown by analysis of the person's blood, urine, breath, or other bodily substance shall give rise to the following presumptions: (Revised, 1979.)

1. If there was at that time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol. (Revised, 1979.)

2. If there was at that time an alcohol concentration in excess of 0.05 but less than 0.08, such fact shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol. (Revised, 1979, 1984.)

3. If there was at that time an alcohol concentration of 0.08 or more, it shall be presumed that the person was under the influence of alcohol. (Revised, 1979, 1984.)

4. The foregoing provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether the person was under the influence of alcohol. (Formerly § 11-902(b).)

Optional (c) If a person under arrest refuses to submit to a chemical test under the provisions of § 6-205.1, evidence of refusal shall be admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a motor vehicle while under the influence of alcohol or other drugs. (Formerly § 11-902(g), Revised 1984.)

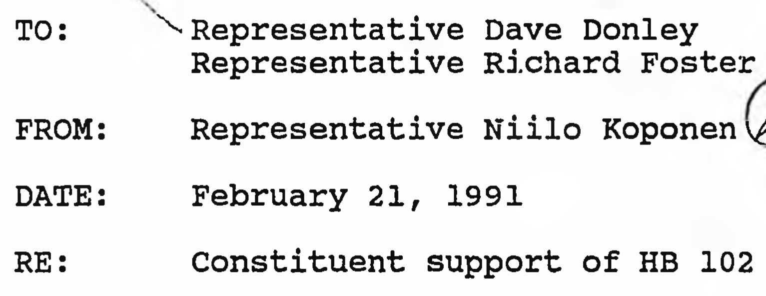
HB 102


# Alaska State Legislature
**Representative Niilo Koponen**
House District 21

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

119 N. Cushman, Suite 207
Fairbanks, Alaska 99701
(907) 456-8172


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



TO: Representative Dave Donley
Representative Richard Foster

FROM: Representative Niilo Koponen

DATE: February 21, 1991

RE: Constituent support of HB 102

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At 7:00 am this morning I received a telephone call from a constituent strongly supportive of HB 102. She requested that the bill be heard within the next few weeks. There is, as I am sure you know, strong support for the bill in my community.

-Committee, said he thinks the Senate will accept the changes Monday.

The House Finance Committee, meanwhile, planned to work through the weekend to complete a proposed

seen it.

Gov. Wally Hickel requested quick action on the budget, but Democrats also want to ensure time at the end of the session to consider possible overrides of any

closely tracking the House bill, Pourchot said.

"There will be differences, but I think they will be select and minor," he said. The differences are expected to be worked out in a

HB 102

Anch Daily 3-23-91

# Bill to lower drivers' alcohol limit to 0.08 passes first legislative test

The Associated Press

JUNEAU — A bill that would lower the blood alcohol limit for determining if a driver is drunk has passed its first test in the 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 state departments of Law and Public Safety, the National Transportation Safety Board and the U.S. Surgeon General.

Donley said a highly publicized drop to 0.08 percent would serve as a strong deterrent to drunken driving. He said drunken-driving arrests in Oregon declined steadily after an initial surge when the lower limit took effect.

The only debate at 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.

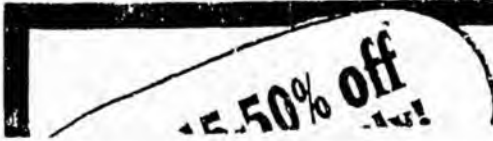
Gayle Horetski, Public Safety deputy commissioner, said the lower limit would require the department to increase its staff and training.

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

"It would be a roving drunk-busters team," she said.

Rep. Jerry Mackie, D-Craig, said he supports the troopers' new program, but it should not be pinned to Donley's bill because it might reduce the measure's chance of passage.

Rep. Loren Leman, R-Anchorage, said the measure doesn't go far enough. He said it should be against the law for people to drive with any alcohol in their system.



HB
103

# Alaska Association Chiefs of Police

February 2, 1991

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

Dear Representative Donley,

On behalf of the Alaska Association of Chiefs of Police I want to express our whole hearted support for House Bill 103. The ability to Fingerprint juveniles would be an important law enforcement tool.

We know that the majority of property offenses are committed by juveniles. House Bill 103 would help apprehend juveniles while still young. This would greatly aid efforts to correct their behavior before they become adult career criminals. It would also help us recover stolen property and return it to victims.

If we can do anything to assist you in the passage of this bill, please contact me.

Sincerely,

Duane S. Udland

Duane S. Udland
President

Chiefs of Police Position

**BILL NO:** HB 103

**DATE:** February 7, 1991

**TITLE:** An Act Relating to the Fingerprinting of Minors

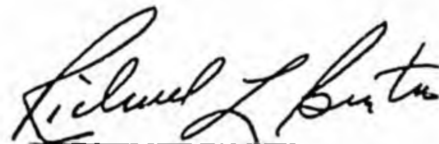
**CONTACT:** Gayle A. Horetski
Deputy Commissioner

POSITION PAPER / DEPARTMENT OF PUBLIC SAFETY

This bill would allow the fingerprinting of juveniles age 14 and older who are arrested for criminal offenses. The fingerprints would be taken for comparison with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS).

This bill should have a positive impact on the ability of police to solve cases involving juvenile offenders. Over 40% of all persons arrested for theft and burglary offenses are juveniles (see attached chart). Fingerprint evidence is frequently found at crime scenes, but is not matched to any suspect because juveniles are not fingerprinted. A large number of theft and burglary offenses are "cleared" when adults are arrested and their fingerprints matched to latents from crimes committed when the offender was a juvenile. AAFIS records indicate that 22% of the crime scene prints identified by the system since 1985 have been from first-time adult arrests which matched latent prints taken from the scenes of crimes committed when the offender was a juvenile. See attached graph. Had these persons been fingerprinted as juvenile offenders they could have been identified, solving additional cases, and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

The Department of Public Safety supports HB 103.



Richard L. Burton
Commissioner

Pub. Safety, Position Paper

## JUVENILE ARRESTS*

| | 1987 | % | 1988 | % | 1989 | % |
|---|---|---|---|---|---|---|
| **MAJOR FELONIES**** | | | | | | |
| Total Arrests | 990 | | 1100 | 2090 | | |
| Juveniles | 96 | 9.7% | 97 | 9% | | |
| **BURGLARY** | | | | | | |
| Total Arrests | 1041 | | 960 | | 1004 | |
| Juveniles | 475 | 46.0% | 509 | 49% | 527 | 52.5% |
| **LARCENY** | | | | | | |
| Total Arrests | 4934 | | 4398 | | 4487 | |
| Juveniles | 1754 | 36.0% | 1624 | 37% | 1761 | 39.2% |
| **MOTOR VEHICLE THEFT** | | | | | | |
| Total Arrests | 331 | | 481 | | 512 | |
| Juveniles | 166 | 50.0% | 214 | 44% | 272 | 53.0% |

*Data obtained from the 24 agencies submitting UCR figures to DPS.
**Major Felonies = Combined figures for Murder, Manslaughter, Rape, Robbery and Aggravated Assault.

**KENNETH C. KIRK**
Attorney-at-Law
540 L Street, Suite 206
Anchorage, Alaska 99501
(907) 279-1659

February 19, 1991

VIA FAX - 465-2652

House Health and Social
Services Committee

Re: HB 44

To Whom it May Concern:

I am writing to comment on House Bill 44, an act relating to domestic violence.

My primary concern with regard to this bill are the two sections in which a judge in a domestic violence case loses the option of ordering family counseling. I believe that judges should retain this option.

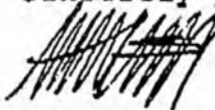
I suspect those who are pushing for this language will press the concept that all of these domestic violence cases involve husbands who intimidate and beat their wives, and that therefore it is unreasonable to force the battered wife into counseling. Unfortunately, that does not square with the facts of most domestic violence cases. I would guess that the majority of such petitions involve threats, property damage, mutual violence, or very light physical contact such as grabbing somebody by the arm or pushing somebody on the way out the door. The petitions are usually granted by the courts because they are concerned that the situation might elevate into actual, serious domestic violence. Nonetheless, they are not battering cases and don't deserve to be treated as if they are.

Another thing to keep in mind is that family counseling is merely an option for the judge, and not mandatory. I haven't seen anything to suggest that judges are overusing family counseling; in fact a family counseling order is fairly rare in the courtroom on the days these cases are heard. Nonetheless, it is an option available to the judge if he gets one of those cases in which it appears that the central problem is that communications within the family are breaking down. This is not the old days in which judges felt morally compelled to try to force warring couples back together; judges have generally used the power to order family counseling very conservatively.

An additional word on mutual violence: The petitioner is simply the party who got down to the courthouse first to file something. The question of who is the petitioner and who the respondent can be an arbitrary one. In some cases the language being proposed may prevent the court from ordering counseling for the real instigator of domestic violence.

The divorce rate in this country is a national tragedy. This is a societal problem, and there is rarely anything the courts or the lawyers can do to change that statistic. There are those, however, who continually push for additional legislation or court decisions which impel marriages which might otherwise be salvageable toward an inevitable divorce. For instance, attorneys who push for absolute no-contact orders (no phone, no letters, no counseling, no intermediaries) early in a separation are contributing to the divorce rate. All marriages have problems at some point or other, but we should not necessarily assume that the marriage is irreparable merely because one of the parties went down to the night magistrate and filed a paper to try to get the other party removed from the house. Commentators constantly bemoan the high divorce rate in this county; in HB 44 the legislature is being tempted to make it worse.

Sincerely yours,



KENNETH C. KIRK

KCK/baj

# Alaska State Legislature

## House of Representatives

House Judiciary Committee

P. O. Box V
State Capitol
Juneau, Alaska 99811
(907) 465-4990
(907) 465-4712

SPONSOR STATEMENT

House Bill 103 allows law enforcement authorities to place the fingerprints of minors who are arrested for committing a crime in the state fingerprint computer. The legislation will help prevent criminal behavior by giving police officers the tools necessary to solve crimes and by allowing the early apprehension of repeat juvenile offenders.

One of the single most important investigative tools available to law enforcement officers is the ability to match unidentified fingerprints taken from a crime scene with known fingerprints that are stored in the state fingerprint computer. This tool increases the ability of police to protect the public, and helps ensure that people who have committed criminal acts are identified, apprehended, and convicted. However, because the fingerprints of minors are rarely allowed to be placed in the state fingerprint computer, this tool is not available to solve crimes committed by juveniles. Since the majority of burglary arrests in Alaska are of juveniles between the ages of 14 and 18, the restriction on placing minors' fingerprints in the computer significantly hinders the ability of police to solve crimes.

From 1984 through 1989, the fingerprints of 124 persons arrested for the first time as adults were matched with unidentified latent fingerprints taken from the scenes of unsolved crimes that were committed when the arrestee was a juvenile. It is likely that these offenders could have been identified and arrested earlier, and before they committed criminal acts as adults, if authority existed to place the fingerprints of minors in the state fingerprint computer.

The legislation has been a priority of the Alaska Peace Officers' Association for many years, and is strongly supported by the Alaska Association of Chiefs of Police, the Department of Public Safety, and the Department of Law.

SPONSOR STATEMENT

Offered: 4/23/90 6-1845G
Referred: Judiciary, and Finance

Original sponsor(s): SEN. FISCHER, Kelly

1 IN THE SENATE BY THE HESS COMMITTEE
2 HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 358 (HESS)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 SIXTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to fingerprinting of minors; and
7 providing for an effective date."
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
9 * Section 1. INTENT. It is the intent of the amendment made to AS 44.-
10 41.025(c) by sec. 2 of this Act that, consistent with the current manner of
11 managing the Alaska automated fingerprint system, the commissioner of
12 public safety manage and strictly limit use of the fingerprints of minors
13 taken under AS 47.10.097 for purposes of identification. The commissioner
14 may not maintain those fingerprints for the purpose of developing or aug-
15 menting a criminal record for the minor.
16 * Sec. 2. AS 44.41.025(c) is amended to read:
17 (c) The department may enter into the Alaska automated finger-
18 print identification system the fingerprints of a minor whose finger-
19 prints are taken under AS 47.10.097. <u>The commissioner of public</u>
20 <u>safety shall assure that fingerprints entered into the Alaska auto-</u>
21 <u>mated fingerprint system under AS 47.10.097 are not cross-referenced</u>
22 <u>with a record showing that the minor has been arrested or adjudicated</u>
23 <u>a delinquent.</u>
24 * Sec. 3. AS 47.10.097(a) is amended to read:
25 (a) Except as provided in (b) of this section, a minor in the
26 custody of the department or of a law enforcement agency may not be
27 fingerprinted for reference to or entry into the Alaska automated
28 fingerprint system without a court order upon good cause shown. <u>Good</u>
29 <u>cause exists if the minor is in custody for an offense that is a</u>

1 felony or if identification of the minor is necessary for the safety
2 of the minor or of other persons.
3 * Sec. 4. AS 47.10.097(b) is amended to read:
4 (b) A law enforcement officer may fingerprint a minor who is 14
5 [16] years of age or older for reference to or entry into the Alaska
6 automated fingerprint system without a court order when the minor is
7 arrested [CONVICTED OF, OR ADJUDICATED A DELINQUENT] for [,] an of-
8 fense that is a felony.
9 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

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

**BILL NO.** HB 103

Revision Date: ____________

Title: "An Act relating to fingerprinting."

Sponsor: Representative Donley

Requestor: House Judiciary

Department Affected: Department of Law

BRU: Prosecution/Legal Services

Component: Prosecution/Criminal Justice Litigation Legal Services/Operations

COMPONENT SERIAL NO. | | | 8 | 9 |
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 | | | | | | |
| REVENUE | | | | | | |

FUNDING: (Thousands of Dollars)

| | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|---|---|---|---|---|---|---|
| GENERAL FUND | -0- | -0- | -0- | -0- | -0- | -0- |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | | | | | | |

POSITIONS:

| | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|---|---|---|---|---|---|---|
| FULL-TIME | -0- | -0- | -0- | -0- | -0- | -0- |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: ____________

ANALYSIS: (Attach a separate page if necessary.)
This bill invovles fingerprinting of minors in custody, which is a concern of law enforcement agencies and the Division of Family and Youth Services. There will not be a fiscal impact for the Department of Law.

Prepared By: Richard I. Pegues, Director
Phone: 465-3672
Division: Administrative Services
Date: February 15, 1991
Approved by Commissioner: Charles E. Cole, Attorney General
Agency: Department of Law
Date: February 15, 1991

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

Rev 10/90

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 103

Revision Date:
Title: An Act Relating to the Fingerprinting of Minors
Sponsor: Rep. Donley
Requestor: House Judiciary

Department Affected: Public Safety
BRU: DPS Statewide Support
Component: AK Criminal Records & ID

COMPONENT SERIAL NO. 1 1 9 0

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

| OPERATING | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|---|---|---|---|---|---|---|
| PERSONAL SERVICES | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| TRAVEL | | | | | | |
| CONTRACTUAL | | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| CAPITAL | 0 | 0 | 0 | 0 | 0 | 0 |
| REVENUE | 0 | 0 | 0 | 0 | 0 | 0 |

FUNDING: (Thousands of Dollars)

| | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|---|---|---|---|---|---|---|
| GENERAL FUND | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |
| FEDERAL FUNDS | | | | | | |
| OTHER/PROG RCPT | | | | | | |
| TOTAL | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 | 10.0 |

POSITIONS:

| | FY 92 | FY 93 | FY 94 | FY 95 | FY 96 | FY 97 |
|---|---|---|---|---|---|---|
| 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: Ken Bischoff
Phone: 465-4336
Division: Administrative Services
Date: 1/25/91
Approved by Commissioner: [signature] for Richard L. Burton
Agency: Department of Public Safety
Date: 2/07/91

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

Rev 10/90



FN - 10.0 - DPS

ANALYSIS:

This bill would allow the fingerprinting of juveniles age 14 or older who are arrested for criminal offenses. These fingerprints would be compared with latent (crime scene) prints contained in the Alaska Automated Fingerprint Identification System (AAFIS). The DPS Records and Identification Section operates the Alaska Automated Fingerprint Identification System (AAFIS) and maintains criminal history record information used by police and other criminal justice agencies.

This bill would have a positive impact on the ability of police to solve cases involving juvenile offenders. Over 40% of all persons arrested for burglary and theft are juveniles. Many other crimes remain unsolved, however, as fingerprint evidence frequently found at the scene is not matched to any suspect because juveniles are not fingerprinted. AAFIS records indicate that 22% of the crime scene prints identified by the system since 1985 have been from first-time adult arrests which matched latent prints taken from crimes committed when the offender was a juvenile. Of these cases 86% were for burglary and theft offenses. Had these persons been fingerprinted as juvenile offenders they could have been identified, solving additional cases, and enabling the court to consider the offender's complete conduct when deciding the disposition of a case.

Existing AAFIS staff are not able to keep current with their present work load. Additional funding is required in Personal Services to increase the staff months of a part-time position approved for this unit for FY91 under a fiscal note for HB 52 (Chp 7 SLA 1990). The increased work load expected as a result of this bill is estimated as follows:

Estimated number of juvenile fingerprint cards - 2700

Total time to complete 15 processing steps - 504 hrs

Clk IV - Range 9A (4.0 months)

# HOUSE COMMITTEE REPORT

2/27

(7)
Date Referred: February 20, 1991

FURTHER REFERRALS: Finance

Date of Committee Action: 2-25-91

The JUDICIARY Committee considered: HB 103

HOUSE BILL NO. 103 — FINGERPRINTING OF MINORS

"An Act relating to fingerprinting of minors."

RECOMMENDATIONS:
be replaced with ______ [ ] the same title [ ] a new title

[ ] have attached amendments(s)
[X] do pass
[ ] do not pass
[ ] no recommendations
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: ______ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact ______
[ ] zero fiscal note ______

APPROVES PREVIOUS: (Dept/Date)
[X] fiscal note(s) Public Safety 2-20-91
[X] zero fiscal note(s) Law 2-20-91

| SIGNING DO PASS: | SIGNING OTHER RECOMMENDATIONS: Check appropriate column: | Do Not Pass | No Rec | Amend |
|---|---|---|---|---|
| Dave Donley | | | | |
| [signature, crossed out] | [signature] | | ✓ | |
| | | | | |
| Kevin Pat Parnell | | | | |
| Mark Hanley | | | | |
| Terry Martin | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Dave Donley
Chairman's Signature

HB

104

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY
## STATE OF ALASKA

*P.O. Box Y, Juneau, Alaska 99811*
*(907) 465-3867 or 465-2450*
*FAX (907) 465-2029*

*Deliveries to: 240 Main Street*
*Court Plaza, Room 500*
*Mail Stop 3101*


**MEMORANDUM**

February 19, 1991

**SUBJECT:** CS's for HB 104

**TO:** Representative Dave Donley
Attn: Laurie Otto

**FROM:** John B. Gaguine JBG
Legislative Counsel

As you requested, enclosed are two proposed committee substitutes for HB 104. Version J retains the new offenses of felon connected misconduct involving weapons in the first and second degrees. Version M does not retain these, but places all felon-related weapons misconduct under AS 11.61.200, misconduct involving weapons in the first degree. Both versions make the other changes you requested.

If I may be of further assistance, please advise.

JBG:pl
91-095.plm

Enclosure

7-LS0010\M
Gaguine
2/20/91

## CS FOR HOUSE BILL NO. 104 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES DONLEY, Ulmer, Barnes, C.Davis

## A BILL

## FOR AN ACT ENTITLED

1 **"An Act defining defensive weapons and prohibiting their possession and use in certain**
2 **circumstances; and amending the criminal laws relating to misconduct involving weapons."**

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

4 *** Section 1.** AS 11.41.500(a) is amended to read:
5 (a) A person commits the crime of robbery in the first degree if the person violates
6 AS 11.41.510 and, in the course of violating that section or in immediate flight thereafter, that
7 person or another participant
8 (1) is armed with a deadly weapon <u>or a defensive weapon</u> or represents by
9 words or other conduct that either that person or another participant is so armed;
10 (2) uses or attempts to use a dangerous instrument or represents by words or
11 other conduct that either that person or another participant is armed with a dangerous instrument;
12 or
13 (3) causes or attempts to cause serious physical injury to any person.
14 *** Sec. 2.** AS 11.56.300(a) is amended to read:

1 (a) One commits the crime of escape in the first degree if, without lawful authority, one
2 removes oneself from official detention by means of a deadly weapon **or a defensive weapon**.
3 * **Sec. 3.** AS 11.56.375(a) is amended to read:
4 (a) A person commits the crime of promoting contraband in the first degree if the person
5 violates AS 11.56.380 and the contraband is
6 (1) a deadly weapon **or a defensive weapon**;
7 (2) an article that is intended by the defendant to be used as a means of
8 facilitating an escape; or
9 (3) a controlled substance.
10 * **Sec. 4.** AS 11.61.200(a) is amended to read:
11 (a) A person commits the crime of misconduct involving weapons in the first
12 degree if the person
13 (1) knowingly possesses a firearm capable of being concealed on one's person
14 **or a semi-automatic firearm** after having been convicted of a felony by a court of this state,
15 a court of the United States, or a court of another state or territory;
16 (2) knowingly sells or transfers a firearm capable of being concealed on one's
17 person **or a semi-automatic firearm** to a person who has been convicted of a felony by a court
18 of this state, a court of the United States, or a court of another state or territory;
19 (3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
20 (4) knowingly sells or transfers a firearm to another whose physical or mental
21 condition is substantially impaired as a result of the introduction of an intoxicating liquor or
22 **controlled substance** [DRUG] into that other person's body;
23 (5) removes, covers, alters, or destroys the manufacturer's serial number on a
24 firearm with intent to render the firearm untraceable;
25 (6) possesses a firearm on which the manufacturer's serial number has been
26 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
27 covered, altered, or destroyed with the intent of rendering the firearm untraceable;
28 (7) violates AS 11.46.320 and, during the violation, possesses on the person a
29 firearm **when the person's physical or mental condition is impaired as a result of the**
30 **introduction of an intoxicating liquor or controlled substance into the person's body**
31 [WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR DRUG];

1 (8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on
2 premises or in a propelled vehicle in violation of a provision of an order issued under
3 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive
4 weapon or a deadly weapon, other than an ordinary pocketknife; [OR]
5 (9) communicates in person with another in violation of AS 11.61.120(a)(6) and,
6 during the communication, possesses on the person a defensive weapon or a deadly weapon,
7 other than an ordinary pocketknife; or
8 **(10) knowingly resides in a dwelling where there is a firearm capable of being**
9 **concealed on one's person, a prohibited weapon, or a semi-automatic firearm if the person**
10 **has been convicted of a felony by a court of this state, a court of the United States, or a**
11 **court of another state or territory**.
12 * Sec. 5. AS 11.61.200(b) is amended to read:
13 (b) It is an affirmative defense to a prosecution under (a)(1), (2), or (10) [(a)(1) OR (2)]
14 of this section that
15 (1) the person convicted of the prior offense on which the action is based received
16 a pardon for that conviction;
17 (2) the underlying conviction upon which the action is based has been set aside
18 under AS 12.55.085 or as a result of post-conviction proceedings; or
19 (3) a period of **10** [FIVE] years or more has elapsed between the date of the
20 person's unconditional discharge on the prior offense and the date of the possession, sale, or
21 transfer of the firearm **or the date of the person's residing in a dwelling listed in (a)(10) of**
22 **this section, and the prior conviction did not result from a violation of AS 11.41 or of a**
23 **similar law of the United States or of another state or territory**.
24 * Sec. 6. AS 11.61.200(e) is amended to read:
25 (e) As used in this section,
26 (1) "prohibited weapon" means any
27 (A) explosive, incendiary, or noxious gas
28 (i) mine or device that is designed, made, or adapted for the
29 purpose of inflicting serious physical injury or death;
30 (ii) rocket, other than an emergency flare, having a propellant
31 charge of more than four ounces;

1 (iii) bomb; or
2 (iv) grenade;
3 (B) device designed, made, or adapted to muffle the report of a firearm;
4 (C) [METAL KNUCKLES;
5 (D) SWITCHBLADE OR GRAVITY KNIFE;
6 (E)] firearm that is capable of shooting more than one shot automatically,
7 without manual reloading, by a single function of the trigger; or
8 (D) [(F)] rifle with a barrel length of less than 16 inches, shotgun with a
9 barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as
10 modified, has an overall length of less than 26 inches;
11 (2) **"semi-automatic firearm" means a firearm designed or specifically**
12 **adapted to fire a single cartridge and automatically chamber a succeeding cartridge ready**
13 **to fire, with a single function of the trigger or firing mechanism;**
14 (3) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.
15 * **Sec. 7.** AS 11.61.210(a) is amended to read:
16 (a) A person commits the crime of misconduct involving weapons in the second degree
17 if the person
18 (1) possesses on the person a firearm **when the person's physical or mental**
19 **condition is impaired as a result of the introduction of an intoxicating liquor or a controlled**
20 **substance into the person's body** [WHILE UNDER THE INFLUENCE OF AN
21 INTOXICATING LIQUOR OR DRUG] in circumstances other than described in
22 **AS 11.61.200(a)(5)** [AS 11.61.200(a)(7)];
23 (2) discharges a firearm from, on, or across a highway; [OR]
24 (3) discharges a firearm with reckless disregard for a risk of damage to property
25 or a risk of physical injury to a person**;**
26 **(4) manufactures, possesses, transports, sells, or transfers metal knuckles; or**
27 **(5) manufactures, sells, or transfers a switchblade, a gravity knife, or a**
28 **butterfly knife**.
29 * **Sec. 8.** AS 11.61.220(a) is amended to read:
30 (a) A person commits the crime of misconduct involving weapons in the third degree if
31 the person

1 (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife
2 **or a defensive weapon**, that is concealed on the person;
3 (2) knowingly possesses a loaded firearm on the person in any place where
4 intoxicating liquor is sold for consumption on the premises; [OR]
5 (3) being an unemancipated minor under 16 years of age, possesses a firearm
6 without the consent of a parent or guardian of the minor**;**
7 **(4) knowingly possesses a loaded firearm within the grounds of or on a**
8 **parking lot immediately adjacent to a public or private preschool, elementary, junior high,**
9 **or secondary school, without the permission of the chief administrative officer of the school**
10 **or district or the designee of the chief administrative officer; or**
11 **(5) possesses or transports a switchblade, a gravity knife, or a butterfly knife.**
12 * **Sec. 9.** AS 11.61.220(c) is amended to read:
13 (c) The provisions of (a)(1)**,** [AND] (2)**, and (4)** of this section do not apply to a peace
14 officer acting within the scope and authority of the officer's employment.
15 * **Sec. 10.** AS 11.81.900(b) is amended by adding a new paragraph to read:
16 (58) "defensive weapon" means an electric stun gun, or a device to dispense
17 mace, pepper, or a similar chemical agent, that is not designed to cause death or serious physical
18 injury.
19 * **Sec. 11.** AS 11.61.215 is repealed.

7-LS0010\J
Gaguine
2/19/91

# CS FOR HOUSE BILL NO. 104 (JUDICIARY)

## IN THE LEGISLATURE OF THE STATE OF ALASKA

## SEVENTEENTH LEGISLATURE - FIRST SESSION

**BY THE HOUSE JUDICIARY COMMITTEE**

**Offered:**
**Referred:**

**Sponsor(s):** REPRESENTATIVES DONLEY, Ulmer, Barnes, C.Davis

## A BILL

## FOR AN ACT ENTITLED

1 "An Act defining defensive weapons and prohibiting their possession and use in certain
2 circumstances; and amending the criminal laws relating to misconduct involving weapons."

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

4 * **Section 1.** AS 11.41.500(a) is amended to read:
5 (a) A person commits the crime of robbery in the first degree if the person violates
6 AS 11.41.510 and, in the course of violating that section or in immediate flight thereafter, that
7 person or another participant
8 (1) is armed with a deadly weapon <u>or a defensive weapon</u> or represents by
9 words or other conduct that either that person or another participant is so armed;
10 (2) uses or attempts to use a dangerous instrument or represents by words or
11 other conduct that either that person or another participant is armed with a dangerous instrument;
12 or
13 (3) causes or attempts to cause serious physical injury to any person.
14 * **Sec. 2.** AS 11.56.300(a) is amended to read:

1 (a) One commits the crime of escape in the first degree if, without lawful authority, one
2 removes oneself from official detention by means of a deadly weapon **or a defensive weapon**.
3 * **Sec. 3.** AS 11.56.375(a) is amended to read:
4 (a) A person commits the crime of promoting contraband in the first degree if the person
5 violates AS 11.56.380 and the contraband is
6 (1) a deadly weapon **or a defensive weapon**;
7 (2) an article that is intended by the defendant to be used as a means of
8 facilitating an escape; or
9 (3) a controlled substance.
10 * **Sec. 4.** AS 11.61.200(a) is amended to read:
11 (a) A person commits the crime of misconduct involving weapons in the first degree if
12 the person
13 (1) [KNOWINGLY POSSESSES A FIREARM CAPABLE OF BEING CON-
14 CEALED ON ONE'S PERSON AFTER HAVING BEEN CONVICTED OF A FELONY BY A
15 COURT OF THIS STATE, A COURT OF THE UNITED STATES, OR A COURT OF
16 ANOTHER STATE OR TERRITORY;
17 (2) KNOWINGLY SELLS OR TRANSFERS A FIREARM CAPABLE OF
18 BEING CONCEALED ON ONE'S PERSON TO A PERSON WHO HAS BEEN CONVICTED
19 OF A FELONY BY A COURT OF THIS STATE, A COURT OF THE UNITED STATES, OR
20 A COURT OF ANOTHER STATE OR TERRITORY;
21 (3)] manufactures, possesses, transports, sells, or transfers a prohibited weapon;
22 (2) [(4)] knowingly sells or transfers a firearm to another whose physical or
23 mental condition is substantially impaired as a result of the introduction of an intoxicating liquor
24 or **controlled substance** [DRUG] into that other person's body;
25 (3) [(5)] removes, covers, alters, or destroys the manufacturer's serial number on
26 a firearm with intent to render the firearm untraceable;
27 (4) [(6)] possesses a firearm on which the manufacturer's serial number has been
28 removed, covered, altered, or destroyed, knowing that the serial number has been removed,
29 covered, altered, or destroyed with the intent of rendering the firearm untraceable;
30 (5) [(7)] violates AS 11.46.320 and, during the violation, possesses on the person
31 a firearm **when the person's physical or mental condition is impaired as a result of the**

1 introduction of an intoxicating liquor or a controlled substance into the person's body
2 [WHILE UNDER THE INFLUENCE OF AN INTOXICATING LIQUOR OR DRUG];
3 (6) [(8)] violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully
4 on premises or in a propelled vehicle in violation of a provision of an order issued under
5 AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive
6 weapon or a deadly weapon, other than an ordinary pocketknife; or
7 (7) [(9)] communicates in person with another in violation of AS 11.61.120(a)(6)
8 and, during the communication, possesses on the person a defensive weapon or a deadly
9 weapon, other than an ordinary pocketknife.
10 * Sec. 5. AS 11.61.200(c) is amended to read:
11 (c) It is an affirmative defense to a prosecution under (a)(1) [(a)(3)] of this section that
12 the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in
13 accordance with registration under 26 U.S.C. 5801 - 5872 (National Firearms Act).
14 * Sec. 6. AS 11.61.200(d) is amended to read:
15 (d) The provisions of (a)(1) [(a)(3)] of this section do not apply to a peace officer acting
16 within the scope and authority of the officer's employment.
17 * Sec. 7. AS 11.61.210(a) is amended to read:
18 (a) A person commits the crime of misconduct involving weapons in the second degree
19 if the person
20 (1) possesses on the person a firearm when the person's physical or mental
21 condition is substantially impaired as a result of the introduction of an intoxicating liquor
22 or a controlled substance into the person's body [WHILE UNDER THE INFLUENCE OF AN
23 INTOXICATING LIQUOR OR DRUG] in circumstances other than described in
24 AS 11.61.200(a)(5) [AS 11.61.200(a)(7)];
25 (2) discharges a firearm from, on, or across a highway; [OR]
26 (3) discharges a firearm with reckless disregard for a risk of damage to property
27 or a risk of physical injury to a person;
28 (4) manufactures, possesses, transports, sells, or transfers metal knuckles; or
29 (5) manufactures, sells, or transfers a switchblade, a gravity knife, or a
30 butterfly knife.
31 * Sec. 8. AS 11.61.220(a) is amended to read:

1 (a) A person commits the crime of misconduct involving weapons in the third degree if
2 the person
3 (1) knowingly possesses a deadly weapon, other than an ordinary pocket knife
4 or a defensive weapon, that is concealed on the person;
5 (2) knowingly possesses a loaded firearm on the person in any place where
6 intoxicating liquor is sold for consumption on the premises; [OR]
7 (3) being an unemancipated minor under 16 years of age, possesses a firearm
8 without the consent of a parent or guardian of the minor;
9 **(4) knowingly possesses a loaded firearm within the grounds of or on a**
10 **parking lot immediately adjacent to a public or private preschool, elementary, junior high,**
11 **or secondary school, without the permission of the chief administrative officer of the school**
12 **or district or the designee of the chief administrative officer; or**
13 **(5) possesses or transports a switchblade, a gravity knife, or a butterfly knife.**
14 *** Sec. 9.** AS 11.61.220(c) is amended to read:
15 (c) The provisions of (a)(1), [AND] (2), **and (4)** of this section do not apply to a peace
16 officer acting within the scope and authority of the officer's employment.
17 *** Sec. 10.** AS 11.61 is amended by adding new sections to read:
18 Sec. 11.61.225. FELON CONNECTED MISCONDUCT INVOLVING WEAPONS IN
19 THE FIRST DEGREE. (a) A person commits the crime of felon connected misconduct
20 involving weapons in the first degree if the person, having been convicted of a felony by a court
21 of this state, a court of the United States, or a court of another state or territory, manufactures,
22 possesses, transports, sells, or transfers
23 (1) a firearm capable of being concealed on one's person;
24 (2) a prohibited weapon; or
25 (3) a semi-automatic firearm.
26 (b) Felon connected misconduct involving weapons in the first degree is a class B felony.
27 Sec. 11.61.226. FELON-CONNECTED MISCONDUCT INVOLVING WEAPONS IN
28 THE SECOND DEGREE. (a) A person commits the crime of felon-connected misconduct
29 involving weapons in the second degree if the person
30 (1) knowingly sells or transfers a semi-automatic firearm or a firearm capable of
31 being concealed on one's person to a person who has been convicted of a felony by a court of

1 this state, a court of the United States, or a court of another state or territory; or
2 (2) knowingly resides in a dwelling where there is a weapon listed in
3 AS 11.61.225(a) if the person has been convicted of a felony by a court of this state, a court of
4 the United States, or a court of another state or territory.
5 (b) Felon connected misconduct involving weapons in the second degree is a class C
6 felony.
7 Sec. 11.61.227. DEFENSES. It is an affirmative defense to a prosecution under
8 AS 11.61.225 or 11.61.226 that
9 (1) the person convicted of the prior offense on which the action is based received
10 a pardon for that conviction;
11 (2) the underlying conviction upon which the action is based has been set aside
12 under AS 12.55.085 or as a result of post- conviction proceedings; or
13 (3) a period of 10 years or more has elapsed between the date of the person's
14 unconditional discharge on the prior offense and the date of the violation of AS 11.61.225 or
15 11.61.226, and the prior conviction did not result from a violation of AS 11.41 or of a similar
16 law of the United States or of another state or territory.
17 * **Sec. 11.** AS 11.61 is amended by adding a new section to read:
18 Sec. 11.61.260. DEFINITIONS. In AS 11.61.200 - 11.61.260,
19 (1) "prohibited weapon" means any
20 (A) explosive, incendiary, or noxious gas
21 (i) mine or device that is designed, made, or adapted for the
22 purpose of inflicting serious physical injury or death;
23 (ii) rocket, other than an emergency flare, having a propellant
24 charge of more than four ounces;
25 (iii) bomb; or
26 (iv) grenade;
27 (B) device designed, made, or adapted to muffle the report of a firearm;
28 (C) firearm that is capable of shooting more than one shot automatically,
29 without manual reloading, by a single function of the trigger; or
30 (D) rifle with a barrel length of less than 16 inches, shotgun with a barrel
31 length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified,

1 has an overall length of less than 26 inches;

2 (2) "semi-automatic firearm" means a firearm designed or specifically adapted to
3 fire a single cartridge and automatically chamber a succeeding cartridge ready to fire, with a
4 single function of the trigger or firing mechanism;

5 (3) "unconditional discharge" has the meaning given in AS 12.55.185.

6 * **Sec. 12.** AS 11.81.900(b) is amended by adding a new paragraph to read:

7 (58) "defensive weapon" means an electric stun gun, or a device to dispense
8 mace, pepper, or a similar chemical agent, that is not designed to cause death or serious physical
9 injury.

10 * **Sec. 13.** AS 11.61.200(b), 11.61.200(e), and 11.61.215 are repealed.

BILL NO: HB 104

DATE: February 8, 1991

TITLE: Relating to Misconduct Involving Weapons

CONTACT: Gayle A. Horetski
Deputy Commissioner
465-4322

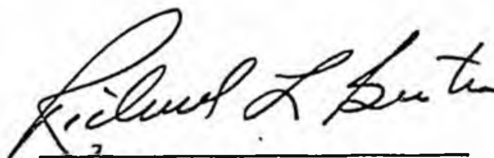
DEPARTMENT OF PUBLIC SAFETY / POSITION PAPER

HB 104 makes several changes to Alaska's weapons laws. Overall, the Department of Public Safety supports HB 104. We have concerns about a few aspects of the bill, discussed below:

1. In sec. 4 (page 2, line 31, page 3, lines 1 and 2) and sec. 7 (page 3, lines 21 - 24) the new language "Substantially impaired", appears to be a higher standard than that of "under the influence" of an intoxicating liquor. Perhaps the existing definition in AS 11.61.215 could be modified so that these offenses (including potentially dangerous domestic violence confrontations) would be easier to prove.

2. At page 3, line 30 and page 4, line 14 add "throwing star" to the list of weapons which may not be manufactured or possessed.

3. At least as regards convicted felons, the penalty for possession of a switchblade and other prohibited knives should not be dropped from the present C felony to a class B misdemeanor. The Department suggests that this be at least an A misdemeanor offense.



Richard L. Burton
Commissioner

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. HB 104

Revision Date:
Title: An Act defining definsive weapons & prohibiting their possession & use
Sponsor: Rep. Donley
Requestor: House Judic. Comm.

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

COMPONENT SERIAL NO.

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 | | | | | | |
| **TOTAL OPERATING** | 0 | 0 | 0 | 0 | 0 | 0 |
| **CAPITAL** | | | | | | |
| **REVENUE** | | | | | | |

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---|---|---|---|---|---|---|
| GENERAL FUND | | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER/PROG RCPT | | | | | | |
| **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)
No substantial fiscal impact on the Alaska State Troopers is expected.

Prepared by: Gayle A. Horetski
Division: Commissioner's Office
Phone: 465-4322
Date: February 8, 1991

Approved by Commissioner: [signature], Dep. Comm.
Agency: Department of Public Safety
Date: 2-8-91

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

Rev 10/90

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 11, 1991

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

Re: HB 104 ("Use and Possession of Defensive and Deadly Weapons")

Dear Representative Donley:

By letter dated January 31, 1991, you have asked us whether we believe there are any "legal, constitutional, policy, or practical problems" with the above-referenced bill. You have also asked whether we support or oppose the bill.

We do not believe that there are any legal or constitutional problems with this bill and we support most of its provisions. There are some, however, as to which we either have no objection or we take no position. Furthermore, there are two proposed amendments that we find troublesome.

We support:

clarifying the law on "defensive weapons"

making it a crime (class B felony) for felons to possess (for some period of time following conviction) semi-automatic firearms

making it a crime (class C felony) to sell a semi-automatic firearm to a felon

prohibiting felons from living where firearms and prohibited weapons are located during the period that they are banned from possessing these weapons

adding "butterfly knives" to the list of prohibited knives

These proposals address "gaps" in existing law and are consistent with the intent of our current laws.



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We have no objection to:

making it a crime (class B misdemeanor) to possess firearms on school grounds

making the ban on felons possessing concealable firearms, semi-automatic firearms, and prohibited weapons permanent when the felon's conviction was for a violent crime

otherwise, increasing to ten years the period of time during which felons are banned from possessing these weapons

We take no position with respect to:

increasing the level of offense to a class B felony for felons to possess (for some period of time following conviction) concealable firearms and prohibited weapons

reducing the penalty for selling or possessing metal knuckles, or for selling switchblades and other prohibited knives, from a class C felony to a class A misdemeanor

reducing the penalty for possessing switchblades and other prohibited knives from a class C felony to a class B misdemeanor

We are concerned, however, by the bill's proposals that weaken existing law regulating the possession of firearms by intoxicated persons. AS 11.61.200(a)(1) makes it a misdemeanor to possess a firearm while under the influence of an intoxicating liquor or drug. AS 11.61.200(a)(7) makes it a felony to commit criminal trespass while intoxicated and in possession of a firearm. HB 104 proposes changing each statute's requirement that the person be "under the influence of an intoxicating liquor or drug" to instead require that the person's "physical or mental condition [be] substantially impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body."

It is more difficult for the state to prove that a person's condition is "substantially impaired" than it is to prove that the person is "under the influence," which is defined in AS 11.61.215 as occurring when the person's "physical or mental abilities are impaired so that the person no longer has the ability to possess a firearm with the caution characteristic of a sober person of ordinary prudence under the same or similar circumstances." It is not apparent to us why this change is being

proposed and, in the absence of additional information, we oppose the change.

Once again, however, we support most of this bill's provisions, believing that they will help prevent crime and improve our justice system. 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:me-018

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

February 21, 1991

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

RE: HB 104, An Act Relating to Weapons

Dear Representative Donley:

At the House Judiciary Committee meeting regarding HB 104 last week, a representative of the National Rifle Association suggested that state law be amended so that it would no longer be against the law for a person to possess metal knuckles, a switch blade knife, or a gravity knife. You asked me to let you know the position of the Department of Public Safety regarding this proposal.

Briefly stated, the Department of Public Safety opposes the "decriminalization" of these weapons. These weapons are not tools, as are fishing/hunting knives. Neither are they ordinary pocket knives that could be used as letter openers or fingernail parers. These are dangerous weapons because they can be folded or closed and concealed on the person, but can be brought into play instantly through the pressing of a mechanical spring switch or by a flick of the wrist. A person may seem unarmed, yet in a heartbeat become dangerously armed. The act of producing a mechanical knife from some concealed place and activating the mechanism itself involves a high degree of intimidation.

The Department of Public Safety supports the present bill's inclusion of a butterfly knife as a form of prohibited weapon; butterfly knives are merely another, more complex, form of gravity knife. We also encourage you to add "throwing star" to the list of prohibited weapons. Throwing stars are discs approximately three or four inches in diameter, of the weight and thickness of an average knife blade. They are cut into "star" shapes and have six to eight points. The points are sharp, and if the star is



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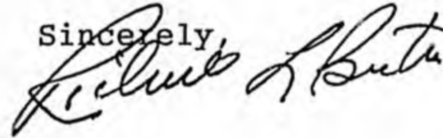
thrown, it spins, "frisbee" style. The star can be thrown short distances with some accuracy. The points are sharp, and the star "sticks" when thrown. Such a weapon could be very dangerous, and we are aware of no legitimate sporting or recreational use for such a device.

I hope this will be of assistance to the Committee during its consideration of HB 104.

Sincerely,



Richard L. Burton
Commissioner

cc: Lori Nottingham
Governor's Office

Margo Knuth
Department of Law

HB 104

# ANCHORAGE POLICE DEPARTMENT
## FAX MESSAGE
## TO BE RUN

DATE: 02-25-91

TO: FAX NUMBER: 465-4565

NAME: House Judiciary Att: Lauri Otto

FROM: Duane Udland
Anchorage Police Dept.

NUMBER OF PAGES 9 INCLUDING COVER SHEET

COMMENTS:

These are all of our ordinance concerning weapons. Call if you have a question.

8.05.060 Child abuse.

A. It is unlawful for any person to commit child abuse.

B. A person commits child abuse if he knowingly, intentionally or negligently and without justifiable excuse causes or permits a child to be:

1. placed in a situation that may endanger its life or health; or

2. abandoned, tortured, cruelly confined or cruelly punished; or

3. deprived of necessary food, clothing or shelter.

C. In this section, "child" means a person under the age of 16 years. (CAC 8.47.010).

8.05.070 Concealed weapon.

A. It is unlawful for any person to carry concealed about his person in any manner:

1. a revolver, pistol or other firearm; or

2. a knife (other than an ordinary pocket knife), or a dirk or dagger; or

3. a slingshot, metal knuckles, club, billy, blackjack or any other instrument or thing the principal purpose or use of which is as a weapon; or

4. any other instrument or thing which, because of the manner in which it is concealed and the accompanying circumstances, could reasonably be construed as being kept as a weapon or in order to achieve some violent purpose, and by which injury could be inflicted upon the person of another.

B. Upon conviction of violation of subsection A.1 of this section, the defendant shall be sentenced to no less than five days in jail, which term of imprisonment may be neither suspended nor deferred.

C. This section shall not apply to peace officers. (Adapted from AS 11.55.010-.020).

8.05.080 Consuming liquor in public place.

A. It is unlawful for any person to consume any alcoholic beverage on the traveled portion of any public street,

complaint or citation for violation of any state law or municipal ordinance to provide such officer with false information concerning the person's name, address, driver's license, date of birth, or any other matter necessary to proper issuance of the citation or complaint. (GAAB 18.05.030, am AO 82-134).

8.05.210 False bomb report.

It is unlawful for any person to:

A. Report to any police officer, prosecutor, employee of a fire department or fire service, district attorney, newspaper, radio station, television station, assistant district attorney, employee of an airline, airport, railroad or bus line, employee of a telephone company, occupants of a building, or a news reporter in the employ of a newspaper or radio or television station that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such report is false.

B. Maliciously inform any other person that a bomb or other explosive device has been placed or secreted in any public or private place, knowing that such information is false. (Adapted from CPC 148.1).

8.05.220 False pretenses--Obtaining money by.

It is unlawful for any person to obtain money, property or other things of value, including but not limited to the use of coin vending devices, or the use of any public utility service:

A. By false pretenses or representations, whether oral, written or otherwise; or

B. By use of any device or means by which the use of any such machine or service is secured without paying or contracting to pay the established consideration therefor; or

C. When the consideration therefor is charged to another person without the authorization or subsequent consent of the person. (Adapted from GAAB 18.05.010KK).

8.05.240 Firearms--Discharging of.

A. It is unlawful for any person to:

1. shoot, discharge or flourish any firearm, air rifle or air pistol from or upon a public road or highway;

2. flourish, point or discharge a firearm, air rifle or air pistol in the former City or Spenard service areas or other urban area or in or on any means of public transportation, or in or near a park or public grounds, or at a public place, whether public in itself or made public at the time by an assemblage of people, except in those areas open to the public for lawful hunting or upon established shooting ranges;

3. discharge or shoot a pistol or other firearm, air rifle or air pistol into, in, through or against a dwelling, house, schoolhouse, church building, factory, storehouse, courthouse or a house or building used for manufacturing purposes, or any house or building used for the assembling of people for business or pleasure;

4. have in his possession or under his control, or use or discharge, a firearm while such person is under the influence of intoxicating liquor or a narcotic, stimulant, hallucinogenic or depressant drug.

B. This section shall not apply to any officer of the United States, the State of Alaska or the municipality who is authorized to use firearms in the enforcement of any law or ordinance and who is actually engaged in such enforcement. (Adapted from AS 11.55.050-.070 and GAAB 18.05.010D).

8.05.250 Firearms on licensed premises.

A. It is unlawful for any person to have in his possession or control any firearm on premises licensed for the sale of alcoholic beverages for consumption, or for any person to conceal a firearm on licensed premises.

B. Subsection A of this section shall not apply to the owner of the premises, or to an employee of the premises while performing his duties, or to a peace officer. (new, am AO 79-24).

8.05.270 Fireworks.

It is unlawful for any person to sell, possess or use any explosive fireworks or stench bomb to which fuses are attached or which are capable of ignition by matches or percussion, without permission of that municipal official charged with issuing permits for such activities. This section does not apply to sale, possession or use of highway or other warning flares, or of ammunition for firearms unless used for other than their intended purposes. (Adapted from GAAB 18.05.010Y and new).

Submitted by: Chairman of the Assembly
at the Request of the Mayor
Prepared by: Department of Law
For reading: September 18, 1990

APPROVED
Date: 10-9-90

ANCHORAGE, ALASKA
AO NO. 90- 122

AN ORDINANCE OF THE MUNICIPALITY OF ANCHORAGE AMENDING TITLE 8 OF THE ANCHORAGE MUNICIPAL CODE AND PERTAINING TO FIREARMS ON SCHOOL GROUNDS

THE ANCHORAGE ASSEMBLY ORDAINS:

Section 1. That a new section of the Anchorage Municipal Code to be numbered 8.05.255 is hereby enacted to read as follows:

8.05.255 Firearms on School Grounds.

A. It is unlawful for any person to have in his possession or control within the grounds of or on a parking lot immediately adjacent to a public or private preschool, elementary, junior high or secondary school:

1. A revolver, pistol, or other firearm, or

2. A switchblade, gravity or any knife other than a folded pocket knife (one which requires the bearer to physically pull the blade from the handle before it can be used), or a dirk or dagger; or

3. A slingshot, metal knuckles, club, billy, blackjack, or other instrument or thing the principal purpose or use of which is as a weapon.

B. Subsection A of this section shall not apply to peace officers or persons who have express authorization of the Anchorage School District Superintendent or his designee or, in the case of a private or religious school, express authorization of the chief administrative officer of that school.

Section 2. That Anchorage Municipal Code section 8.50.010.B is hereby amended to read as follows:

B. . . .

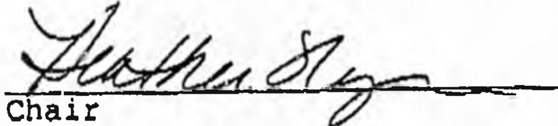
1. . . .

2. . . .

3. 8.05.170 through [8.05.250] 8.05.255;

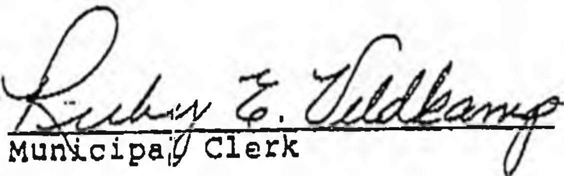
. . .

PASSED AND APPROVED by the Anchorage Assembly this 9th day of October, 1990.



Chair

ATTEST:



Municipal Clerk

MAG/cre
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e. lewd exhibition of the genitals or pubic area of any person. (AO 77-332A).

8.05.430 Minors--Sale of firearms to.

It is unlawful for any person to give, barter, sell, lease or otherwise make available to any person under the age of 18 years any firearm, including but not limited to pistols, rifles and shotguns, or any ammunition therefor, without consent of the parent or guardian of the minor. (Adapted from GAAB 18.05.060).

8.05.440 Minors--Curfew.

A. It is unlawful for any person under 16 years of age to be upon the public streets, alleys, parks, public buildings, places of amusement and entertainment, vacant lots, or other unsupervised places, between the hours of 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday, during school term, and 11:00 p.m. otherwise, and 5:00 a.m. of any day, unless such person shall be accompanied by and in the charge of his/her parent or other competent and adult person, or upon an emergency errand or at the direction of his or her parent, guardian or other adult person having the care and custody of the minor.

B. It is unlawful for any parent, guardian or other person having custody and control of children under the age of 16 years to allow such child to go or be upon any public street, or other places as listed in this section, between the hours of 10:00 p.m. Sunday through Thursday, and 11:00 p.m. Friday and Saturday, during school term, and 11:00 p.m. otherwise, and 5:00 a.m. of any day, unless such child shall be accompanied by his/her parent or other competent and adult person, or is upon an emergency errand or at the direction of his or her parent, guardian or other adult person having the care and custody of the minor.

C. In any prosecution for the violation of any provision of this section, the presence of any person under 16 years of age, unattended as herein required, upon any of the public streets or other places as listed in this section shall be deemed prima facie evidence of the guilt of such parent of the violation of the provisions hereof. (Adapted from GAAB 18.05.070).

8.05.450 Minors--Sale of tobacco products to.

It is unlawful for any person to sell cigarettes, cigars or tobacco in any form to any person under 18 years of age. (GAAB 18.05.010X).

E. It is unlawful for the driver of any motor vehicle to willfully fail or refuse to bring his or her vehicle to a stop, or otherwise attempt to elude a pursuing police vehicle, when given visual or audible signal to bring his or her vehicle to a stop by a police officer. The signal given by such police officer may be by hand, voice, emergency light or siren, and the officer giving such signal shall be in uniform and his or her vehicle shall display an emergency light or siren. (Adapted from CPC 102, 148, and 148.2, am AO 82-126).

8.05.550 Shoplifting--Removal and concealment of merchandise.

A. Removal of merchandise. It is unlawful for any person to take or remove any merchandise or thing of value from the premises where such merchandise or thing of value is kept for purposes of sale, barter or storage without the consent of the owner or person lawfully entitled to its possession.

B. Concealment of merchandise. It is unlawful for any person, without authority, willfully to conceal upon or about his person any merchandise or thing of value upon the premises where such merchandise or thing of value is kept for the purposes of sale, barter or storage. Any merchandise or thing of value found concealed upon or about the person and which has not theretofore been purchased by the person is prima facie evidence of willful concealment.

C. Consent. As used in this section, "consent" shall mean express consent, or consent implied by possession of a sales ticket, slip or receipt issued for and accompanied by the article or articles of merchandise or thing or things of value. (Adapted from GAAB 18.05.040).

8.05.560 Solicitation to illegal act.

It is unlawful to solicit a person for the purpose of committing any illegal act. (GAAB 18.05.010R).

8.05.580 Switchblade knives.

It is unlawful for a person to sell, offer for sale, display or carry about his person, a knife which has a blade which can be opened by a spring mechanism, exertion of pressure on the handle, or by gravity. This section does not apply to any officer of the United States, the State of Alaska or the municipality whose carrying or displaying of such a knife is necessary in the course of his official duties. (Adapted from CAC 8.50.010 and new).

unless a notice waiving the necessity for such report is posted in the facility by the owner or his agent.

B. In this section, "occupied" means that the premises is being used by one or more persons entitled to its enjoyment and use, and this includes actual as well as constructive occupancy. (Adapted from AS 11.20.135).

8.05.660 Vehicle--Tampering with.

It is unlawful for any person, either individually or in concert with one or more other persons, willfully to:

A. Injure or tamper with any motor vehicle or the contents thereof, or to break or remove any part of a vehicle, without the consent of the owner; or

B. With the intent to commit malicious destruction or injury, or any other crime, climb into or upon a motor vehicle; or

C. With the intent to commit malicious destruction or injury, or any other crime, attempt to manipulate or actually manipulate any mechanism or device which is part of a motor vehicle which is at rest and unattended; or

D. With the intent to commit malicious destruction or injury, or any other crime, set in motion any vehicle while the same is at rest and unattended. (Adapted from CVC 10852 and 10853).

8.05.670 Weapon--Possession of with intent to assault.

It is unlawful for any person to have upon or about him any dangerous weapon with intent to assault another. (Adapted from CPC 467).

STATE OF ALASKA

**DEPARTMENT OF LAW**

CRIMINAL DIVISION

WALTER J. HICKEL, GOVERNOR

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February 26, 1991

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

Re: HB 104 (Defensive Weapons/Misconduct Inv. Weapons)

Dear Representative Donley:

You have asked us to address three issues that arose at the House Judiciary Committee hearing on February 22, 1991, relating to HB 104 ("An Act defining defensive weapons and prohibiting their possession and use in certain circumstances; and amending the criminal laws relating to misconduct involving weapons"). Our responses are as follows.

First, the Committee requested proposed language that would make it a crime for a person to possess a firearm in a motor vehicle while under the influence of an intoxicating liquor or drug. This is not a crime under existing law because the statute, AS 11.61.210(a)(1), only prohibits an intoxicated person from possessing a firearm "on the person." We suggest the following amendment to AS 11.61.210(a)(1), at page 3, line 21, of HB 104:

> (1) possesses on the person <u>or in a motor vehicle</u> a firearm ....

Second, the Committee expressed interest in language that would create a limited exception to the proposed prohibition against possessing firearms on school grounds to allow parents or other adults to possess firearms in their vehicles when picking children up from school. We suggest that HB 104 be amended at page 4, line 13, to add language as follows:

> the designee of the chief administrative officer <u>except that a person 18 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a locked container within the vehicle</u>; or ....

Third, the Committee requested more information about "butterfly knives." Our court of appeals has addressed knives as



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prohibited weapons on several occasions. In State v. Weaver, 736 P.2d 781 (Alaska App. 1987), the court noted:

> The pertinent characteristics which a switchblade and a gravity knife have in common are that they are easily concealed and quickly brought to bear. These characteristics are indicative of knives which are used as weapons rather than tools. Some utility knives are quickly brought to bear, such as a fishing knife or hunting knife in a sheaf, but are not easily concealed. ... An ordinary pocket knife may be concealed upon the person.... However, an ordinary pocketknife is incapable of being quickly brought to bear.

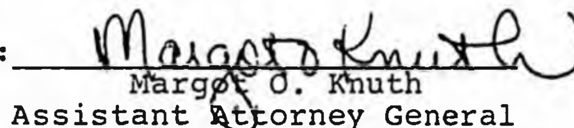
736 P.2d at 782-83 (footnote omitted). In State v. Strange, 785 P.2d 563, 565 (Alaska App. 1990), the court recited testimony presented at a superior court hearing that butterfly knives are "primarily used in the martial arts and in combat." The knives can be "easily concealed on the body and [can] quickly be brought to bear by a series of wrist movements utilizing centrifugal or inertial force." Id.

When speaking informally with the owner of a local weapons shop, I was advised that there is no utilitarian purpose to the butterfly knife in Alaska. According to that weapons dealer, their foremost purpose seems to be to "impress people," most often "other kids." I also spoke with Investigator Johnston of the Alaska State Troopers office in Anchorage, who is a weapons expert. He similarly voiced the opinion that butterfly knives are principally used in this state by "kids" and mostly to impress or intimidate each other. Officer Jennings of the Juneau Police is a weapons expert in this community and he indicates that butterfly knifes are most useful for "stabbing" and "slashing," in part because of their double-edged blade.

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
Assistant Attorney General

MOK:mm-027

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RUPE ANDREWS
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March 13, 1991

Representative Dave Donley
Chairman, House Judiciary Committee
Alaska House of Representatives
Capitol Building
Juneau, AK 99801

Dear Representative Donley:

This letter is to express the support of the National Rifle Association for CSHB-104. I have appreciated the close working relationship with your committee and staff in the markup and committee discussions of CSHB-104.

My personal thanks to you and staffer Ms. Laurie Otto for your sincere consideration of the NRA's input to this statue. I believe that you have accomplished the goal of the Judiciary Committee in strengthening the weapons statue and the penalties for violation.

Sincerely,

Rupe Andrews, Field Representative, Alaska

ty. Thus, the state's sentence appeal can be treated, on appellate review, as the equivalent of a petition for review under Appellate Rule 402(b)(2) and (3). *State v. Price*, 715 P.2d 1183, 1185–86 (Alaska App. 1986). The double jeopardy clauses of the United States and Alaska Constitutions do not preclude us from vacating the sentences, and ordering the sentencing judge to impose the full mandatory minimum sentence and fine on both Knutson and Gudmundson. *State v. LaPorte*, 672 P.2d 466, 468 (Alaska App.1983).

Therefore, we AFFIRM the convictions, but VACATE the sentences. The case is REMANDED for resentencing for the imposition of the full mandatory minimum sentence and fine on both Knutson and Gudmundson.

BRYNER, C.J., not participating.

STATE of Alaska, Appellant,

v.

Mark A. WEAVER, Appellee.

Mark A. WEAVER, Appellant

v.

STATE of Alaska, Appellee.

A-1584, A-1616.

Court of Appeals of Alaska.

May 8, 1987.

Rehearing Denied June 1, 1987.

Defendant was indicted for first-degree misconduct involving weapons, for his alleged possession of "gravity knife." The Superior Court, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, J., granted defendant's motion to dismiss indictment on ground that statute was unconstitutionally vague, and State appealed. The Court of Appeals, Coats, J., held that: (1) use of term "gravity knife" within statute prohibiting possession of such weapon was not unconstitutionally vague; (2) statute which makes possession of "gravity knife" in one's home a crime does not violate right to privacy under State Constitution; but (3) remand was required due to trial court's failure to make factual finding concerning whether knife seized from defendant was "gravity knife" within statute's meaning.

Reversed and remanded.

1. Constitutional Law ⟹258(2)

Statute is impermissibly vague and violates due process if it is so indefinite that person of ordinary intelligence would have to guess what conduct it prohibits. U.S.C.A. Const.Amends. 5, 14.

2. Constitutional Law ⟹90(1)
Criminal Law ⟹13.1(1)

In determining whether statute is unconstitutionally vague, reviewing court must determine whether statute provides adequate notice of prohibited conduct, whether statute has potential for arbitrary enforcement, and whether statute infringes on First Amendment right of freedom of expression. U.S.C.A. Const.Amends. 1, 5, 14.

3. Weapons ⟹3

Term "gravity knife," which is included as prohibited weapon under statute making it a felony to possess such weapon, is not unconstitutionally vague; "gravity knife" is commonly understood as knife in which blade opens, falls into place, or is ejected into position by force of gravity or by centrifugal force, and "gravity knife" is included in statute in conjunction with switchblade knife, thus providing ordinary person with notice that "gravity knife" must be similar to switchblade in operating automatically or semiautomatically. AS 11.61.200(e)(1)(D).

See publication Words and Phrases for other judicial constructions and definitions.

**4. Constitutional Law ⚖82(7)**
**Weapons ⚖3**

Statute which makes possession of "gravity knife" in one's home a felony does not violate right to privacy under State Constitution; legislature may properly prohibit possession of object which interferes in serious manner with health, safety, rights, and privileges of others, or with public welfare. AS 11.61.200(a)(3); Const. Art. 1, § 22.

**5. Criminal Law ⚖1181.5(3)**

Trial court's failure to make factual finding as to whether knife seized from defendant was "gravity knife" within meaning of statute making possession of such weapon a felony required remand for further proceedings. AS 11.61.200(a)(3).

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Robert D. Bacon, Asst. Atty. Gen., Office of Special Prosecutions and Appeals, Anchorage, and Harold M. Brown, Atty. Gen., Juneau, for the State of Alaska.

William A. Davies, Asst. Public Defender, Fairbanks, and Dana Fabe, Public Defender, Anchorage, for appellee and appellant Weaver.

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

OPINION

COATS, Judge.

A grand jury indicted Mark Weaver for first-degree misconduct involving weapons. AS 11.61.200(a)(3). The indictment charged Weaver with possessing a gravity knife. He moved to dismiss the indictment, contending that the statute was unconstitutionally vague. Superior Court Judge Gerald J. Van Hoomissen granted the motion and the state appeals. We reverse on the issue of the statute's constitutionality, but remand for further proceedings.

**[1, 2]** A statute is impermissibly vague and violates due process if it is so indefinite that a person of ordinary intelligence would have to guess what conduct it prohibits. *Kolender v. Lawson*, 461 U.S. 352, 357, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903 (1983); *Williford v. State*, 674 P.2d 1329, 1330 (Alaska 1983). Our courts consider three factors in evaluating a statute's vagueness. First, we examine whether the statute provides adequate notice of the prohibited conduct. Second, we consider the statute's potential for arbitrary enforcement. Third, we determine whether the statute infringes on the first amendment right of freedom of expression. *Summers v. Anchorage*, 589 P.2d 863, 866–67 (Alaska 1979); *Stock v. State*, 526 P.2d 3, 7–9 (Alaska 1974). Weaver has conceded that there are no first amendment considerations at issue here.

Alaska Statute 11.61.200(a)(3) makes it a felony to possess a "prohibited weapon." "Prohibited weapon" is defined in AS 11.61.200(e)(1)(D) to include a "switchblade or gravity knife." Neither "switchblade" nor "gravity knife" is defined in the criminal law statutes.

**[3]** We find that the term "gravity knife" is not improperly vague. The term has a readily ascertainable and consistent definition. As commonly understood, a gravity knife is one in which the blade opens, falls into place, or is ejected into position by the force of gravity or by centrifugal force. Webster's Third New International Dictionary defines a "gravity knife" as "a switchblade knife in which the blade is sprung by a downward snap of the wrist." *Webster's Third New International Dictionary of the English Language Unabridged*, 993 (1963). Statutes of other states defining the term "gravity knife" are consistent with this straightforward definition. *See, e.g.*, Colo.Rev.Stat. § 18–12–101(*l*)(e) (1986); N.J.Stat.Ann. § 2C:39–1(h) (West Supp.1986); N.Y. Penal Law § 265.00(5) (McKinney 1980).

Furthermore, in the Alaska Statute on prohibited weapons, the term "gravity knife" is used in conjunction with "switchblade knife." AS 11.61.200(e)(1)(D). The ordinary person is therefore put on notice that a "gravity knife" must be similar to a switchblade in operating automatically or semi-automatically. The pertinent characteristics which a switchblade and a gravity knife have in common are that they are